## DECLARATION ESTABLISHING RIMFIRE LODGE CONDOMINIUM AT SNOWSHOE MOUNTAIN RESORT, POCAHONTAS COUNTY, WEST VIRGINIA

BY

INTRAWEST RESORTS, INC.
a Delaware corporation
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## DECLARATION ESTABLISHING RIMFIRE LODGE CONDOMINIUM AT SNOWSHOE MOUNTAIN RESORT, POCAHONTAS COUNTY, WEST VIRGINIA

THIS DECLARATION ESTABLISHING RIMFIRE LODGE CONDOMINIUM at Snowshoe Mountain Resort, Pocahontas County, West Virginia, is made as of May 13, 1999, by Intrawest Resorts, Inc., a West Virginia corporation.

#### Recitals

- A. Declarant owns 1.398 acres of land described on Exhibit A attached hereto and made a part hereof and certain improvements thereon situate at the Snowshoe Mountain Resort in Edray Tax District of Pocahontas County, West Virginia, having acquired the same from Snowshoe Resort, Inc. by deed dated July 18, 1998, of record in the Pocahontas County Records in Deed Book 255 at page 151.
- B. Declarant desires to create a condominium on the Property pursuant to the West Virginia Common Interest Ownership Act, Chapter 36B of the Code of West Virginia of 1931, as the same may be amended from time to time.
- C. Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

#### Declaration

In consideration of the foregoing, Declarant hereby declares as follows:

## ARTICLE I DECLARATION

#### 1.01 Declaration.

Declarant hereby submits the Property to the provisions of the Act and hereby creates a condominium named "Rimfire Lodge Condominium" on the Property and declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration. The address of the Condominium is Snowshoe Mountain Drive, Snowshoe, West Virginia 26209.

## 1.02 Covenants Running with the Land.

All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, the Owners (as such term is defined below), all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

#### ARTICLE II DEFINITIONS

#### 2.01 Basic Definitions.

As used in this Declaration, the following terms have the meanings given to them in this Section 2.01.

- (a) "Act" means the West Virginia Common Interest Ownership Act, Chapter 36B of the Code of West Virginia of 1931, as the same may be amended from time to time.
- (b) "Area" of a Unit means the total number of square feet of such Unit as shown on the Maps, or if the square footage of a Unit is not shown on the Maps, then "Area" means the total number of square feet of such Unit as determined by the Executive Board.
- (c) "Articles" means the articles of incorporation of the Association, as the same may be amended from time to time.
- (d) "Assessment" means a General Assessment, a Special Assessment or a Default Assessment levied and assessed pursuant to Article VII below.
- (c) "Assessment Lien" means the lien of the Association on a Condominium Unit described in Section 7.08 below.
- (f) "Association" means Rimfire Lodge Condominium Association, Inc., a West Virginia nonprofit corporation, and its successors and assigns.
- (g) "Association Documents" means this Declaration, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.
- (h) "Bylaws" means the bylaws of the Association, as the same may be amended from time to time.
- (i) "Commercial Unit" means each unit designated as a Commercial Unit on the Map.

(j) "Common Elements" means the General Common Elements and the Limited Common Elements.

## (k) "Common Expenses" means:

- (i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (B) providing facilities, services and other benefits to Owners; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) regulating and managing the Condominium; and (F) operating the Association; and
  - (ii) reserves for any such costs, expenses and liabilities.
- (I) "Condominium" means Rimfire Lodge Condominium, the common interest community created on the Property by this Declaration, consisting of the Units and the Common Elements.
- (m) "Declarant" means Intrawest Resorts, Inc., a Delaware corporation, and its successors and assigns.
- (n) "Declarant Control Period" has the meaning given to that term in Section 6.03 below.
- (o) "Declaration" means this Declaration Establishing Rimfire Lodge Condominium at Snowshoe Mountain Resort, Pocahontas County, West Virginia, as the same may be amended from time to time.
- (p) "Default Assessment" has the meaning given to that term in Section 7.06 below.
  - (q) "Design Review Board" means the Resort Owner's design review board.
- (r) "Director" means a duly elected or appointed member of the Executive Board.
  - (s) "Executive Board" means the Board of Directors of the Association.
- (t) "First Mortgage" means any Mortgage which is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

- (u) "First Mortgagee" means a Mortgagee under a First Mortgage.
- (v) "Garage" means the underground parking spaces contained in the Condominium.
- (w) "General Assessment" means an Assessment levied and assessed against a Unit pursuant to Section 7.04 below.
- (x) "General Common Elements" means all of the Condominium, other than the Units and the Limited Common Elements. Without limiting the generality of the foregoing, the General Common Elements include, without limitation:

#### (i) the Land;

- (ii) all Improvements, including, without limitation all foundations, columns, girders, beams, supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, storage areas, roofs, chimneys, drainage facilities, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, except for those Improvements that are designated by the Act, by this Declaration or by the Maps as Units or as Limited Common Elements; and
- (iii) any parcels of real property and improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, casement or other agreement, and (B) that are used or possessed by the Association for the benefit of all Owners.
- (y) "Guest" means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.
- (z) "Improvement" means any building, structure or other improvement (including all fixtures and improvements contained therein) located on the Land and within which one or more Units or Common Elements are located.
- (aa) "Interest in General Common Elements" means the undivided interest in the General Common Elements appurtenant to each Unit determined in accordance with the terms and conditions of Section 3.02 below.

## (bb) "Land" means:

(i) the real property located in Pocahontas County, West Virginia, that is described and shown as such on Exhibit A attached hereto and made a part hereof; and

- (ii) any real property that is later made subject to this Declaration in accordance with the terms and conditions contained herein.
- (cc) "Limited Common Elements" means portions of the Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of one or more Units, but fewer than all of the Units. Without limiting the generality of the foregoing, "Limited Common Elements" include, without limitation:
  - (i) any shutters, awnings, window boxes, window and doors located at the boundaries of Units, utility systems, mechanical systems, exhaust and ventilation systems, fireplaces, recreational facilities, elevators, waiting areas, libraries, laundry facilities, storage spaces, ski lockers, restrooms, entrances, exits, walkways, patios, balconies, decks, porches, the Garage and other areas and Improvements that are designed to serve fewer than all of the Units; and
  - (ii) any parcels of real property and improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of Owners of fewer than all of the Units; and
  - (iii) any physical portion of the Condominium, that is designated on the Maps as "Limited Common Element" or "LCE."

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements. Non-structural walls located wholly within a Unit are Limited Common Elements appurtenant to the Unit in which they are located.

- (dd) "Majority," whether or not capitalized, means any percentage greater than 50 percent.
- (ee) "Maps" means the survey and condominium map of Rimfire Lodge Condominium attached hereto and made a part hereof as Exhibits B and C, as the same may be amended from time to time.
- (ff) "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.
- (gg) "Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such Person under a Mortgage.

- (uu) "Special Declarant Rights" means all "special declarant rights (as such term is defined in the Act) that Declarant reserves for itself and its successors and assigns in this Declaration.
- (vv) "Successor Declarant" means any Person who succeeds to any Special Declarant Right.
- (ww) "Total Commercial Unit Area" means the Area of all Commercial Units in the Condominium, as determined in accordance with paragraph 2.01(c) above.
- (xx) "Total Condominium Area" means the Area of all Units in the Condominium, as determined in accordance with paragraph 2.01(c) above.
- (yy) "Total Residential Unit Area" means the Area of all Residential Units in the Condominium, as determined in accordance with paragraph 2.01(c) above.
  - (72) "Unit" means a physical portion of the Condominium that:
    - (i) is created by this Declaration;
    - (ii) is designated for separate ownership; and
  - (iii) has boundaries that are described in this Declaration or shown on the Maps.

If walls, floors or ceilings are designated as boundaries of a Unit, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements.

## 2.02 Gender and Number.

Wherever the context of this Declaration so requires;

- (a) words used in the masculine gender shall include the feminine and neuter genders;
- (b) words used in the neuter gender shall include the masculine and feminine genders;
  - (c) words used in the singular shall include the plural; and
  - (d) words used in the plural shall include the singular.

# ARTICLE III UNITS AND COMMON ELEMENTS

#### 3.01 Units.

- (a) Declarant hereby creates 141 Residential Units and three Commercial Units within the Condominium, the boundaries and identifying numbers of which are shown on the Maps. No Unit bears the same identifying number as any other Unit.
- (b) Declarant reserves the right to create an additional 20 Commercial Units within the Condominium.
- (c) No Owner may alter its Unit, subdivide its Unit or relocate the boundaries between its Unit and an adjacent Unit, except as provided by this Declaration or the Act.
- (d) Except as expressly provided to the contrary in this Declaration, the Interest in General Common Elements and the right to use Limited Common Elements appurtenant to the Unit may not be partitioned or separated from the Unit or any part thereof.
- (c) Notwithstanding anything to the contrary contained in paragraph 3.01(c) above, paragraph 3.01(d) above or elsewhere in this Declaration:
  - (i) nothing in paragraph 3.01(c) above, paragraph 3.01(d) above or elsewhere in this Declaration shall prevent or limit Declarant's exercise or enjoyment of any Special Declarant Right;
  - (ii) an Owner may grant its rights to use any General Common Element or any Limited Common Element appurtenant to the Owner's Unit to the Owner's Guests;
  - (iii) the Owner of a Commercial Unit may construct partitions within its Commercial Unit and lease separate portions of its Commercial Unit to one or more lesses; and
  - (iv) the Owner of a Commercial Unit may assign all or a portion of the voting rights allocated to the Commercial Unit to one or more lessees to whom the Owner leases all or a portion of its Commercial Unit, in accordance with the terms and conditions of paragraph 5.01(g) below.

#### 3.02 Interests in General Common Elements.

(a) The Interests in General Common Elements shall be allocated among the Units as set forth in this Section 3.02. The Interest in General Common Elements appurtenant to a Unit shall be expressed as a percentage. The aggregate Interests in General

Common Elements appurtenant to all Commercial Units shall be 10%. The aggregate Interests in General Common Elements appurtenant to all Residential Units shall be 90%. The Interest in General Common Elements appurtenant to a Residential Unit shall be calculated in accordance with the following formula:

Interest in General (<u>Area of the Residential Unit</u>)
Common Elements = (the Total Residential Unit Area) x (90%)

The interest in General Common Elements appurtenant to a Commercial Unit shall be calculated in accordance with the following formula:

Interest in General (<u>Area of Commercial Unit</u>)
Common Blements = (Total Commercial Unit Area) x (10%)

- (b) The Interests in General Common Elements appurtenant to the initial 144 Units of the Condominium are set forth on Exhibit D attached hereto and made a part hereof.
- (c) If any Units are added to or withdrawn from the Condominium, the Interests in General Common Elements for all Units within the Condominium after such addition or withdrawal shall be recalculated in accordance with the formulas set forth in paragraph 3.02(a) above.
- (d) Except as expressly provided to the contrary elsewhere in the Declaration, an Interest in General Common Elements may not be partitioned from the Unit to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Interest in General Common Elements made without the Unit to which the Interest in General Common Elements is appurtenant shall be void.

## 3.03 Limited Common Elements.

Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Elements shown on the Maps or by operation of the Act may not be altered without the consent of all Owners whose Units would be affected by such reallocation, and then, only in accordance with the terms and conditions of the Act.

## 3.04 Separate Taxation of Condominium Units.

Pursuant to the Act, each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

## 3.05 <u>Description of Condominium Units</u>.

To convey, encumber or otherwise affect legal title to a Unit an instrument must describe the Unit in the following or a substantially similar manner:

[Residential Unit \_\_/Commercial Unit \_\_\_] of Rimfire Lodge Condominium, Edray Tax District of Pocahontas County, West Virginia, according to the Declaration Establishing Rimfire Lodge Condominium at Snowshoe Mountain Resort, Pocahontas County, West Virginia, recorded in the Pocahontas County Records.

# ARTICLE IV THE ASSOCIATION

#### 4.01 Formation of the Association.

On or before the date on which Declarant conveys the first Unit to a Purchaser, Declarant shall form the Association.

## 4.02 Purposes and Powers.

- (a) The Association's purposes are:
- (i) to manage, operate, insure, improve, repair, replace and maintain the Common Elements;
- (ii) to provide certain facilities, services and other benefits to the Owners:
- (iii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;
- (iv) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;
- (v) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements with the Declarant, the Resort Owner, any governmental or quasi-governmental entity or any other Person, which contemplate the sharing of expenses among the Association and such other Persons for Improvements, facilities and services that serve the Association and such other Persons;
- (vi) to assist Owners in their payment of the Snowshoe Service Assessment by collecting the same from the Owners and disbursing the same to the Resort Owner;
- (vii) to take any action that it deems necessary or appropriate to protect the general welfare of Owners; and

- (viii) to regulate and manage the Condominium.
- (b) Unless expressly prohibited by law or any of the Association Documents, the Association may:
  - (i) take any and all actions that it deems necessary or advisable to fulfill its purposes;
  - (ii) exercise any powers conferred on it by the Act or any Association Document; and
  - (iii) exercise all powers that may be exercised in West Virginia by nonprofit corporations.
- (c) Without in any way limiting the generality of paragraph 4.02(b) above, the Association may, but is not obligated to:
  - (i) provide or contract for certain facilities and services to the Owners, such as (A) recreational facilities and services, (B) water, sewer, gas, electric, cable television and other utility facilities and services, (C) parking facilities and services, (D) trash collection facilities and services, and (E) snow removal facilities and services;
  - (ii) acquire, sell, lease and grant easements over, across and through Common Elements;
  - (iii) borrow monies and grant security interests in the Common Elements and in the assets of the Association as collateral therefor;
  - (iv) make capital improvements, repairs and replacements to the Common Elements; and
  - (v) hire and terminate managing agents and other employees, agents and independent contractors.

#### 4.03 Association Documents.

- (a) This Declaration creates the Condominium and certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to the Property. The Articles create the Association. The Bylaws provide for the regulation and management of the Association and the Rules and Regulations provide for the regulation and management of the Condominium.
- (b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the

Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

#### 4.04 Books and Records.

Upon request, the Association shall allow Owners, Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

#### ARTICLE V VOTING

## 5.01 <u>Voting</u>.

- (a) The total number of votes appurtenant to the initial 144 Units shall be 221. The 221 votes shall be allocated among the initial Units as follows:
  - (i) each Residential Unit shall be entitled to one vote;
  - (ii) each Commercial Unit shall be entitled to the number of votes calculated as follows:

- (b) The votes allocated to the initial 144 Units of the Condominium are set forth on Exhibit D attached hereto and made a part hereof.
- (c) If any Units are added to or withdrawn from the Condominium, or the Area of one or more Commercial Units is increased or decreased, the total number of votes allocated to all Units and the allocation thereof after such addition, withdrawal, increase or decrease shall be recalculated as follows:
  - (i) each Residential Unit shall be entitled to one vote;
  - (ii) each Commercial Unit shall be entitled to the number of votes equal to the product obtained by multiplying (A) the quotient obtained by

- dividing (I) the Area of that Commercial Unit, by (II) the Total Commercial Unit Area, by (B) a factor equal to 56 percent of the then current number of Residential Units, it being the intent of this Declaration to provide to the Owners of the Commercial Units the ability to elect one-third of the Directors to the Executive Board after the expiration of the Declarant Control Period.
- (d) Each Unit shall be entitled to the number of votes allocated to it in accordance with paragraphs 5.01(a), (b) and (c) above, regardless of the number of Owners of the Unit. Fractional voting shall be allowed for votes allocated to Commercial Units, but shall not be allowed for votes allocated to Residential Units. If the Owners of a Residential Unit cannot agree among themselves as to how to east their votes on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a particular Residential Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner owns the Residential Unit, unless objection thereto is made by an Owner of that Residential Unit to the Person presiding over the meeting at the time the vote is cast. If more than the number of allocated votes are cast for any particular Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.
- (e) Only the Owners of the Commercial Units may vote as to those matters concerning only Commercial Units and only the Owners of the Residential Units may vote as to those matters concerning only Residential Units. All Owners shall vote on matters concerning the Commercial Units and Residential Units and matters that cannot be clearly categorized as affecting only Commercial Units or Residential Units exclusively.
- (f) The Association shall have no voting rights appurtenant to any Unit owned by the Association.
- (g) Notwithstanding anything to the contrary in this Declaration, an Owner may assign its voting rights to any Person by a duly executed proxy timely delivered to the Association.

## ARTICLE VI EXECUTIVE BOARD

## 6.01 Number and Election of Directors.

(a) The Executive Board shall consist of three Directors. The initial Directors shall hold office until the election or appointment of their successors at the 1999 annual meeting. Thereafter, subject to the terms and conditions of Sections 6.03 and 6.04 below, each Director will hold office for a term of one year and the Owners shall elect the Directors at the annual meetings.

- (b) In any election of Directors to the Executive Board, each Unit shall be entitled to the number of votes that is equal to the product obtained by multiplying:
  - (i) the number of votes allocated to that Unit in accordance with Section 5.01 above, by
    - (ii) the number of Directors to be elected.
- (c) Cumulative voting shall be allowed in the election of Directors to the Executive Board, but for no other purpose. Under cumulative voting, an Owner may cast all of the votes allocated to its Unit in an election of Directors for a single Director position, or otherwise distribute those votes among the candidates for Director positions in any manner the Owner desires. As a result, if the Owners of the Commercial Units cast all of their votes for a single Director, they shall have the ability to elect one Director to the Executive Board.

#### 6.02 Powers of the Executive Board.

- (a) Except as provided in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.
  - (b) The Executive Board may not act on behalf of the Association to:
    - (i) amend this Declaration;
    - (ii) terminate the Association, this Declaration or the Condominium;
  - (iii) elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of any Director's term, subject to Declarant's rights under Section 6.03 below; or
  - (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

#### 6.03 Declarant Control Period.

- (a) Subject to the terms and conditions of paragraphs 6.03(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. The phrase "Declarant Control Period" means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:
  - (i) the date that is sixty days after convoyance to Purchasers of 75 percent of the maximum number of Units that may be created by Declarant under this Declaration;

- (ii) the date that is two years after Declarant has ceased to offer Units for sale in the ordinary course of business; or
- (iii) the date that is two years after any right to add new Units was last exercised.
- (b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.
- (c) Notwithstanding anything to the contrary contained in paragraph 6.03(a) above, not later than sixty days after the conveyance of 25 percent of the Units that may be created under this Declaration to Purchasers, one Director appointed by Declarant shall be replaced with a Director elected by Owners other than Declarant.
- (d) During the thirty-day period immediately preceding the date on which the Declarant Control Period expires, the Owners shall elect an Executive Board of three Directors, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. Such Directors shall take office upon election.

## 6.04 Removal of Directors.

Notwithstanding any provision of this Declaration or any other Association Document to the contrary, the Owners, by a 67 percent vote of the votes allocated to Units present at any meeting at which a quorum is present, may remove any Director, with or without cause, other than a Director appointed by Declarant during the Declarant Control Period.

## ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

## 7.01 Obligations for Assessments.

- (a) Each Owner, by accepting a deed to a Unit (whether or not it shall be expressly stated in such deed), shall be deemed to have covenanted and agreed, to pay to the Association all:
  - General Assessments;
  - (ii) Special Assessments;
  - (iii) Default Assessments; and

## (iv) other charges,

that the Association is required or permitted to levy or impose on such Owner or such Owner's Unit pursuant to this Declaration or any other Association Document.

## (b) Notwithstanding the definition of the term "Owner":

- (i) a Person who acquires a Unit in a foreclosure sale shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date of the foreclosure sale; and
- (ii) a Person who acquires a Unit by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date on which the Owner of the unit executes the deed-in-lieu of foreclosure.
- (c) No Owner shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Unit against which such Assessments or other charges are made.
- (d) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Unit during the period of such Owner's ownership of the Unit. If there is more than one Owner of a Unit, each Owner shall be jointly and severally liable with the other Owners of the Unit for all Assessments and other charges levied on the Unit or any Owner of the Unit.
- (e) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other amount, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

## 7.02 Shates of Common Expenses.

(a) Except as otherwise set forth in this Declaration, the Association's Common Expenses shall be allocated among the Units as set forth in this Section 7.02. The Share of Common Expenses allocated to a Unit shall be expressed as a percentage. The aggregate Share of Common Expenses allocated to all Commercial Units shall be 10%. The aggregate Share of Common Expenses allocated to all Residential Units shall be 90%. The Share of the Common Expenses allocated to a Residential Unit shall be calculated in accordance with the following formula:

# Common Expenses ( Area of the Residential Unit \_) (the Total Residential Unit Area) x (90%)

The Share of Common Expenses allocated to a Commercial Unit shall be calculated in accordance with the following formula:

Shares of ( Area of Commercial Unit )
Common Expenses = (the Total Commercial Unit Area) x (10%)

- (b) The Share of Common Expenses attributable to the initial 144 Units of the Condominium are set forth on Exhibit D attached hereto and made a part hereof.
- (c) If any Units are added to or withdrawn from the Condominium, the Shares of Common Expenses for all Units within the Condominium after such addition or withdrawal shall be recalculated in accordance with the formulas set forth in paragraph 7.02(a) above.
- (d) Until the Association levies an Assessment, Declarant shall pay all Common Expenses.

#### 7.03 <u>Budgets</u>.

- (a) Prior to the first levy of a General Assessment, and thereafter on or before the 90th day prior to the commencement of each fiscal year, the Executive Board shall adopt a proposed annual budget for the Association for the following calendar year that sets forth:
  - (i) the Executive Board's estimates of Common Expenses for the next calendar year;
  - (ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments; and
  - (iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments.
- (b) Within thirty days after adopting a proposed annual budget, the Executive Board shall deliver a summary of the proposed annual budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall not be less than fourteen days nor more than thirty days after the delivery of the summary of the proposed annual budget to the Owners. Unless at that meeting a majority of the votes allocated to all Units rejects the proposed annual budget, the proposed annual budget shall be deemed ratified, whether or not a quorum is present. If the proposed annual budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent annual budget proposed by the Executive Board.

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(c) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under paragraph 7.03(b) above, the Executive Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days nor more than sixty days after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Units, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

#### 7.04 General Assessments.

- (a) After the Owners ratify an annual budget pursuant to paragraph 7.03(b) above, the Association shall levy an assessment for Common Expenses (a "General Assessment") on each Unit. The amount of the General Assessment levied against a Unit shall equal the product obtained by multiplying:
  - (i) the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, by
    - (ii) that Unit's Share of Common Expenses.
- (b) The Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Association.
- (c) If the Owners ratify an amendment to the General Assessment portion of an annual budget pursuant to paragraph 7.03(c) above, the amount of the General Assessment levied against each Unit shall be adjusted accordingly, as shall the amount of each Owner's periodic installments.
- (d) If the Owners fail to ratify an annual budget for any calendar year prior to January 1 of that calendar year, the Owners shall continue to pay periodic installments of the General Assessment to the Association at the rate payable during the prior calendar year until such time as the Owners ratify a new annual budget for the then current calendar year. Once the Owners ratify a new annual budget, the Association shall levy against each Unit the General Assessment for the then current calendar year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such calendar year, giving the Owners credit, in such manner as the Executive Board deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such calendar year.
- (e) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of Common Expenses allocated to such Owner's Unit.

## 7.05 Special Assessments.

- (a) The Assessments that the Association may levy pursuant to this Section 7.05 are referred to in this Declaration as "Special Assessments."
- (b) Notwithstanding anything to the contrary contained in Section 7.04 above, if any Common Expense is attributable to the operation, maintenance, repair, replacement, alteration or improvement of a Limited Common Element, the Association may levy an Assessment for such Common Expense against the Units to which that Limited Common Element is assigned, equally, in proportion to the Shares of Common Expenses attributable to those Units or in any other equitable proportion as the Association reasonably deems appropriate. For example, any Common Expense attributable to the operation, maintenance, repair, replacement, alteration or improvement of the Garage shall be levied as a Special Assessment against only the Residential Units.
- (c) Each Special Assessment levied against any Unit shall be shown on an annual budget, or an amendment to an annual budget, ratified by the Owners pursuant to Section 7.03 above and shall be paid as and when required by the Association.

#### 7.06 Default Assessments.

- (a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by:
  - the negligence or misconduct of an Owner or an Owner's Guest;
  - (ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's Guest,

the Association may levy an Assessment for such Common Expense against such Owner's Unit. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon an Owner for the Owner's violation of any covenant or condition of any Association Document are each referred to herein as a "Default Assessment."

- (b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners pursuant to Section 7.03 above.
- (c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

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## 7,07 <u>Assignment of Assessments.</u>

The Association shall have an unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved by a majority of the votes allocated to Units present at a meeting at which a quorum is present.

### 7.08 Assessment Lien.

- (a) The Association shall have a lien on each Unit for any Assessment levied against that Unit and any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against its Owner under any Association Document. The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.
- (b) An Assessment Lien is prior to all other liens and encumbrances on a Unit, except:
  - (i) liens and encumbrances recorded prior to the recordation of this Declaration;
  - (ii) a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent; and
  - (iii) liens for real estate taxes and other governmental assessments or charges against the Unit.
- (c) Notwithstanding the terms and conditions of subparagraph 7.08(b)(ii) above, an Assessment Lien is also prior to a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, to the extent permitted by the Act.
- (d) The Association may perfect and preserve its Assessment Lien by the giving and recording of notice as required by the Act.
- (e) An Assessment Lieu is extinguished unless proceedings to enforce the Assessment Lieu are instituted within three years after the full amount of the Assessment secured thereby becomes due.
- (f) This Section 7.08 does not prohibit actions or suits to recover sums secured by an Assessment Lien or to prohibit the Association from taking a deed in lieu of foreclosure.

- (g) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.
  - (h) An Assessment Lien may be enforced as provided by the Act.

## 7.09 Estoppel Certificates; Notices to Mortgagees.

- (a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within ten calendar days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.
- (b) If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Unit subject to a First Mortgage held by the First Mortgagee, the Association shall report to the First Mortgagee any unpaid Assessments levied against such Unit that remain unpaid for more than sixty days after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, the First Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

## 7.10 Reserve Fund.

- (a) The Association shall have the right to maintain a reserve fund for Common Expenses. The reserve fund will be funded as follows. At the closing of the sale of a Unit by Declarant to a Purchaser, the Purchaser shall pay to the Association an amount equal to 25 percent of the Association's estimate of Common Expenses for the fiscal year in which the sale of the Unit occurs. Thereafter, the Association may increase the reserve fund or replace funds withdrawn from the reserve fund with funds collected through Assessments.
- (b) Payments by Purchasers to the Association at closings under paragraph 7.10(a) above shall not be credited against, or relieve Purchasers from, their obligation to pay Assessments levied against Units by the Association.

(c) Upon the sale of a Unit from one Owner to another, the Association shall not be obligated to return to the transferor any funds held in reserve, but the transferor shall be entitled to an appropriate credit from its transferee.

# ARTICLE VIII UTILITY AND OTHER SERVICES

#### 8.01 Water and Sewer Services.

- (a) The Association shall be responsible for obtaining water and sewer services for all portions of the Condominium, except the Commercial Units and the Limited Common Elements appurtenant thereto. The Owner of a Commercial Unit shall be responsible for obtaining water and sewer services for its Unit and the Limited Common Elements appurtenant thereto and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the water or sewer company providing the same.
- (b) The Association shall allocate all Common Expenses for water and sewer services among all Residential Units and charge the Owners of the Residential Units in accordance with their Shares of Common Expenses (adjusted to reflect the exclusion of the Commercial Units' Shares of Common Expenses from such allocation).

## 8.02 <u>Propane Gas</u>.

- (a) The Association shall be responsible for obtaining propane gas services for all portions of the Condominium, except the Commercial Units and the Limited Common Elements appurtenant thereto. The Owner of a Commercial Unit shall be responsible for obtaining gas services for its Unit and the Limited Common Elements appurtenant thereto and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the utility or gas company providing the same.
- (b) Common Expenses for propane gas services shall be allocated among the Residential Units equally and charged to the Owners of the Residential Units as Special Assessments.

#### 8.03 Electric.

(a) Each Owner shall be responsible for obtaining electric services for its Unit and the Limited Common Elements designed to serve only its Unit and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the utility or service company providing the same.

- (b) The Association shall determine what, if any, electric services are necessary for the Limited Common Elements that are designated on the Map as "LCER" and for "LCER-CU#3", and shall be responsible for obtaining those services. The Common Expenses incurred by the Association for those services shall be allocated among the Residential Units and Commercial Unit No. 3 equally (i.e., 1/142<sup>nd</sup> each) and charged to the Owners of such Units as Special Assessments.
- (c) Each Owner shall ensure that its Unit is sufficiently heated to prevent the freezing of water and sewer lines serving the Condominium.

#### 8.04 <u>Cable Television</u>.

- (a) The Association shall be responsible for obtaining cable television services for the Residential Units and the Limited Common Elements appartenant thereto. Each Owner of a Commercial Unit shall be responsible for obtaining cable television services for its Unit and the Limited Common Elements appartenant thereto and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the cable company providing the same.
- (b) Common Expenses for cable television shall be allocated among all Residential Units equally and charged to the Owners of the Residential Units as Special Assessments.

## 8.05 <u>Telephone</u>.

- (a) The Association shall be responsible for obtaining telephone services for the Residential Units and the Limited Common Elements appurtenant thereto. Each Owner of a Commercial Unit shall be responsible for obtaining telephone services for its Unit and the Limited Common Elements appurtenant thereto and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the telephone company providing the same.
- (b) Common Expenses for telephone services shall be allocated among all Residential Units equally and charged to the Owners of the Residential Units as Special Assessments.

#### 8.06 Trash Removal.

(a) The Association shall be responsible for obtaining trash removal services for all portions of the Condominium, provided that, by the majority vote of the votes

allocated to the Commercial Units, the Owners of the Commercial Units may elect to obtain their own trash removal services.

- (b) Common Expenses incurred by the Association for trash removal services shall be allocated as follows:
  - (i) If the Owners of the Commercial Units use the trash removal services obtained by the Association (A) 50% of all Common Expenses incurred by the Association for trash removal services shall be allocated among the Residential Units equally without regard to usage, and shall be charged to the Owners of the Residential Units as Special Assessments; and (B) 50% of all Common Expenses incurred by the Association for trash removal services shall be allocated among the Commercial Units in accordance with their proportionate Shares of Common Expenses (adjusted to reflect the exclusion of the Residential Units' Shares of Common Expenses from such allocation), and shall be charged to the Owners of the Commercial Units as Special Assessments.
  - (ii) If the Owners of the Commercial Units elect not to use the trash removal services obtained by the Association (A) all Common Expenses incurred by the Association for trash removal services for the Residential Units and Limited Common Elements that are designed to serve the Residential Units shall be allocated among the Residential Units equally, without regard to usage, and shall be charged to the Owners of the Residential Units as Special Assessments; and (B) all Common Expenses incurred by the Association for trash removal services for the General Common Elements (to the extent that the Association can distinguish those Common Expenses from the Common Expenses described in clause 8.06(b)(ii)(A) above) shall be allocated among all Units and charged to the Owners in accordance with the Shares of Common Expenses appurtenant to the Units as a portion of the General Assessments.

## 8.07 Other Utilities.

If the Association incurs Common Expenses for any utility service not described above, or if the manner of providing or metering any utility service described above changes from the manner in which such service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner approved by at least 67 percent of all of votes allocated to all Units.

# ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND UNITS

## 9.01 Maintenance of Common Elements.

- (a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate the Common Elements as it deems necessary or appropriate. In addition, the Association shall ensure that all interior Common Elements are sufficiently heated to prevent the freezing of water and sewer lines serving the Condominium. In this regard the Association may:
  - (i) construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any Common Element;
  - (ii) plant and replace trees, shrubs and other vegetation on any Common Element;
    - (iii) place, maintain and replace signs upon any Common Element;
  - (iv) adopt and enforce Rules and Regulations regulating the use of Common Elements; and
  - (v) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements.
- (b) If the Association fails to perform its obligations under this Section 9.01, either Declarant or the Resort Owner may, but is not obligated to, cure such failure at the Association's sole cost and expense. If either Declarant or the Resort Owner cures any such failure, the Association shall pay to Declarant or the Resort Owner, as appropriate, the amount of all costs and expenses incurred by Declarant or the Resort Owner in connection therewith plus interest thereon at 18% per annum from the date expended by the Declarant or the Resort Owner within thirty days after the Association receives a written invoice therefor from Declarant or the Resort Owner, as the case may be.

## 9.02 Maintenance of Units.

Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair its Unit (including all fixtures located therein), and the Limited Common Elements assigned solely to its Unit, other than those Limited Common Elements which the Association chooses to maintain for reasons of uniformity or structural considerations. Without limiting the generality of the foregoing the Association may maintain and repair decks, porches and patios and other exterior portions of the Condominium even if appurtenant to only a single Unit. All costs incurred by the Association in connection with

any such maintenance or repair shall be charged to the Owners as Special Assessments in accordance with Section 7.05 above.

## 9.03 Mechanic's Liens and Indemnification.

No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis either for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same, or against Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and any Mortgagee from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Elements or any Association Property for construction performed or for labor, materials, services or supplies incorporated in the Owner's Unit at the Owner's request.

# ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS

## 10.01 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided herein, the covenants, conditions and restrictions set forth in this Article X shall apply to all Units and Common Elements.

## 10.02 Association Documents.

Each Owner shall comply with, and shall require its Guests to comply with, all provisions of the Association Documents that apply to the Owner or the Owner's Units.

## 10.03 Notice of Conveyance, Assignment or Encumbrance.

- (a) Promptly after a conveyance of a fee simple interest in a Unit or portion thereof, the grantee shall furnish a copy of the conveyance deed to the Association.
- (b) Promptly after an encumbrance of a fee simple interest in a Unit or portion thereof, the Owner shall furnish the Association with a copy of the Mortgage creating the encumbrance.

## 10.04 Use of Residential Units.

- (a) Except as otherwise expressly permitted by this Declaration, an Owner may use its Residential Unit only as a permanent or vacation residence for itself and its Guests. No Owner shall conduct any business, profession, occupation or trade from its Unit, including, without limitation, the operation of a so-called "bcd and breakfast" or "chalet."
  - (b) Notwithstanding the restrictions set forth in paragraph 10.04(a) above:

- (i) an Owner may use its Residential Unit as its private office, on the condition that the Owner does not invite others to its Unit to conduct business;
   and
- (ii) the Association and, during the Declarant Control Period, Declarant may use one Unit owned or leased by it as a management office, or a combined management office and residence for a resident manager, for the Condominium:

#### 10.05 Use of Common Elements.

All Owners and their Guests may use the General Common Elements and the Limited Common Elements designed to serve their Units for the purposes for which such Common Elements are intended. Notwithstanding the preceding sentence, neither an Owner nor a Guest may use any Common Element in any manner that unreasonably interferes with the rights of other Owners in and to the Common Elements. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Guests to cause, waste to any Common Element.

#### 10.06 Alterations.

- (a) Except as otherwise expressly provided in this Declaration, an Owner of a Unit may not make any improvement or alteration to a General Common Element or any improvement or alteration to its Unit that affects any General Common Element, Limited Common Element or any other Unit, without the prior written consent of the Association.
- (b) No new Improvement shall be constructed on the Property and no construction, alteration, installation or other work affecting the exterior surface of any existing Improvement shall be made, except as required or approved by the Design Review Board as hereinafter provided in Article XI of this Declaration and then only in strict accordance with the terms and conditions of the Design Review Board.
- (c) Without limiting the generality of paragraphs 10.06(a) through (c) above, an Owner of a Unit may not, without the prior written consent of the Association, install or erect any improvement, mechanical system or fixture that either:
  - (i) protnides beyond the boundaries of the Owner's Unit; or
  - (ii) is located wholly outside the Owner's Unit (even if located within a Limited Common Element that is assigned to solely the Owner's Unit).
- (d) The Association shall perform or make, or cause to be performed or made, any Improvement, construction, alteration, installation or other work on, to or affecting the exterior of any Improvement on the Property which the Resort Owner requires, in writing, be performed or made. If the Association fails to perform its obligation under the preceding sentence, the Resort Owner shall have the right, at its option, to enter the Condominium and perform such obligations on behalf of the Association and the Association

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shall then be liable to the Resort Owner for the funds expended by the Resort Owner for performing such obligations, plus interest thereon at 18% per annum from the date expended by the Resort Owner.

## 10.07 Nuisances, Hazardous Activities and Unsightliness.

- (a) No Person shall conduct any activity on the Property which creates a nuisance. Without limiting the generality of the foregoing:
  - (i) no lights shall be emitted that are unreasonably bright or cause unreasonable glare;
  - (ii) no sound shall be emitted that is unreasonably loud or annoying;
    - (iii) no odor shall be emitted that is unreasonably offensive.

Normal construction or snow making activities shall not be considered to violate the terms and conditions of this Section 10.07. By accepting a deed to a Unit an Owner acknowledges that the Condominium is located within the Snowshoe Mountain Resort and that noises, lights and odors common to resort activities, including, without limitation, noises associated with snow making, snow grooming and construction activities may exist on or near the Property, at any time and from time to time.

- (b) No Person shall conduct any activity on the Property which is or might be hazardous to any Person or property. Without limited the generality of the foregoing:
  - (i) no open fires shall be allowed to exist, unless contained in a customary barbecue grill or in a barbecue pit approved by the Executive Board;
    - (ii) no firearms may be discharged; and
    - (iii) no hunting may be conducted.
- (c) No unsightliness shall be permitted at the Property. Without limiting the generality of the foregoing:
  - (i) all exterior mechanical equipment lines, wires, pipes and other facilities shall either be buried or enclosed within a structure approved by the Executive Board; and
  - (ii) all garbage shall be stored in accordance with the terms and conditions of Section 10.13 below.

(d) The Association shall have the power to grant variances from the terms and conditions of this Section 10.07 from time to time as its deems necessary. Normal construction activities shall not be considered to violate the terms and conditions of this Section 10.07.

## 10.08 Signs.

- (a) No signs whatsoever, other than those which are General Common Elements, shall be erected or maintained on the Property, except:
  - (i) signs required by legal proceedings; and
  - (ii) such other signs as may have been permitted or approved by the Executive Board.
- (b) Without limiting the generality of paragraph 10,08(a) above, no "For Sale" or "For Rent" signs shall be displayed on the exterior or interior of a Unit.

## 10,09 Compliance with Laws.

Nothing shall be done or kept at the Property in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

## 10.10 Compliance with Insurance.

Except as may be approved in writing by the Association, nothing shall be done or kept at the Property that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance. Activities incident to or necessary for the conduct of commercial operations shall not violate the terms of this Section 10.10 even if such activities result in an increase in rates of insurance. Any such increase in the rates of insurance shall be charged to the Owners of the Commercial Units whose uses create such increases as Special Assessments.

## 10.11 Restriction on Subdivision, Zoning and Timesharing.

- (a) No Residential Unit may be subdivided, unless the subdivision has been approved by the Declarant, the Design Review Board and 100 percent of the votes in the Association.
- (b) No application for zoning or rezoning any portion of the Property, and no applications for variances or use permits, shall be filed with any governmental or quasigovernmental authority, unless the proposed zoning or rezoning has been approved by the Declarant, the Design Review Board and 100 percent of the votes in the Association and the uses that would be permitted under the rezoning comply with this Declaration and the other Association Documents.

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- (c) No Owner shall offer or sell any interest in any Unit under a "timesharing" or "interval ownership" plan or similar plan.
- (d) The covenants, conditions and restrictions set forth in paragraphs 10.11(a) through (c) above shall not apply to Declarant's development of the Property or to Declarant's exercise of any Special Declarant Right.

#### 10.12 Vehicles and Parking.

- (a) No motor vehicle classed by manufacturer rating as exceeding three-quarter ton and no mobile home, trailer, detached camper or camper shell, boat or other similar equipment or vehicle may be kept or parked at the Property.
- (b) No motor vehicle shall be constructed, repaired or serviced at the Property.
- (c) The Owners of a Residential Unit and their Guests shall have the right to use on a first come, first serve basis, one parking space in the Garage during any period in which one or more of such Owners or their Guests are staying in the Owners' Unit; provided, that the Association may charge any Guest for the use of such parking space; that at no time will more than one parking space in the Garage be available for all Owners and Guests staying in one Unit, and that the Owners may not park a car in the Garage for more than seven consecutive days when the Owners are not staying in the Owner's Unit. In addition, the Association shall have the right to use one parking space for any service provider to the Condominium or any of the Units and such space shall be so marked.
- (d) To the extent space is not available in the Garage, Declarant hereby grants to the Owners of a Residential Unit and their Guests a temporary license and right to use on a first come first serve basis, one parking space on the surface lot designated on Exhibit B hereto; provided that Declarant reserves the right to charge any Guest for the use of such parking space and the right to provide parking to Owners and Guests at another location if it determines to use the surface lot for another purpose; and that the other restrictions on usage set forth in this Section 10.12 with respect to the Garage shall apply to the surface lot or such other parking location provided by Declarant.
- (e) Declarant hereby reserves for itself and future owners of units in condominiums to be developed by Declarant or any affiliate of Declarant a non-exclusive easement over, across and through the Garage for purposes of obtaining access and constructing a connection to and from such condominiums to be developed in the future and to permit owners of units in condominiums to be developed in the future to use parking spaces in the Garage.
- (f) Owners of the Commercial Units shall have no right to use, and shall not permit their lessees and other Guests to use, any parking space located in the Garage, but shall have an easement through the Garage for purposes of making deliveries of goods and

services to the Commercial Unitsand to remove trash and other items from the Commercial Unit.

(g) An Owner shall not sell, lease or otherwise convey all or any part of the parking rights it has, if any, by virtue of its ownership of a Unit in the Association.

## 10.13 Trash, Garbage and Other Waste Materials.

All trash, garbage and other waste materials removed from a Unit shall be placed in covered sanitary containers within enclosed structures provided by the Association. Owners shall not, and shall not permit their Guests to litter. No burning of trash, garbage or other waste materials will be permitted at the Property.

#### 10.14 Exterior Storage.

No Owner shall store any materials or items on or in any Common Element, other than those Common Elements designed for that purpose, and then only in strict accordance with the terms and conditions of the Association Documents.

### 10,15 Animals.

No animals of any kind shall be raised, bred or kept on the Property or within any Unit.

#### 10.16 Commercial Units.

- (a) Each Commercial Unit may be used and occupied for commercial purposes only. Any Owner may lease all or any portion of its Commercial Unit for such purpose.
- (b) Owners of Commercial Units shall not use, and shall not permit their Guests to use, any entrance to or exit from the Condominium which is designated on the Map for exclusive use by Owners of Residential Units.
- (c) Owners of Commercial Units shall not use, and shall not permit their Guests to use, any waiting area, library, stairway, elevator, patio, walkway, hallway, pool, hot tub, spa, recreational facility, storage area, restroom or other portion of the Condominium which is designated on the Map for exclusive use by Owners of Residential Units,
- (d) Notwithstanding anything to the contrary contained in this Declaration, an Owner of a Commercial Unit may make Improvements or alterations to its Unit or the Limited Common Elements designed to serve only its Unit, including without limitation, the erection of partitions as permitted under subparagraph 3.01(e) above, without the consent of any Owner, the Association or the Design Review Board referenced in Section 11.01, on the conditions that:

- (i) the Improvement or alteration does not impair any other Unit or any Limited Common Element designed to serve any Residential Unit; and
- (ii) the Owner of the Unit repairs any damage to any General Common Element caused thereby at its cost and expense.

If any such Improvement or alteration will impair any other Unit or any Limited Common Element designed to serve any other Unit, the Owner of the Commercial Unit may not make the Improvement or alteration without the prior written consent of the Owners of the Units, or the Owners of the Units served by the Limited Common Elements that will be impaired thereby, as the case may be.

- (e) Notwithstanding anything to the contrary contained in this Declaration, and in addition to the rights of an Owner of a Commercial Unit under paragraph 10.16(d) above:
  - (i) the Owner of a Commercial Unit shall have the right to install, maintain, repair and replace machinery, equipment, utility lines, wires, circuits, cables and conduits serving such Commercial Unit along, across and through any and all General Common Elements and portions of the Limited Common Elements labeled on the Map as "LCER", without the consent of any Owner or the Association, on the conditions that (A) the Owner of the Commercial Unit, at its sole cost and expense, shall repair, replace and restore any damage caused to the Common Elements, and (B) such installation, maintenance, repair or replacement complies with all applicable requirements of the Design Review Board.
  - (ii) the Owner of a Commercial Unit shall have the right to alter that portion of the Condominium's building facade that serves as the boundary of that Commercial Unit and other General Common Elements located immediately adjacent to that Commercial Unit (including, without limitation, the creation, removal and relocation of entrances, exits, windows, window boxes, signage and other architectural features), without the consent of any Owner or the Association, on the conditions that (Λ) the Owner of the Commercial Unit repairs any damage to any General Common Element caused thereby at its expense and (Β) such alteration complies with all applicable requirements of the Design Review Board.
- (f) Notwithstanding anything to the contrary in this Article X, the Owner of a Commercial Unit may:
  - (i) perform such activities within its Commercial Unit as are common to or necessary for the conduct of commercial operations, including, without limitation, restaurant, nightclub, lounge and retail operations, and any lights, sounds and odors which result from such activities shall not violate the terms of this Article X;

- (ii) erect and attach signs, banners, window boxes, decorations and other similar items on the exterior of the Condominium or projections from the exterior of the Condominium on the condition that such signs, banners, window boxes, decorations and other similar items and their locations are approved by the Design Review Board; and
- (iii) apply for and obtain special use permits and licenses (e.g., liquor licenses) which are necessary or appropriate for the conduct of commercial activities in its Unit in accordance with this Declaration and the other Association Documents, without obtaining the approval otherwise required under paragraph 10.11(b) above, on the condition that such permits and licenses are consistent with the existing zoning and actual uses of the Commercial Unit at the time the permit or license is applied for.

# 10.17 Declarant's Exemption.

Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

- (a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights of Declarant under this Declaration or any other Association Document; or
- (b) the conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within or adjacent to the Condominium.

### ARTICLE XI DESIGN REVIEW

# 11.01 Design Review Board.

Pursuant to the rights reserved to it in the deed of the Land to the Declarant, the Resort Owner shall have a Design Review Board so constituted as, from time to time, it doesns appropriate which shall have the powers as hereinafter provided.

# 11.02 Design Review Board Approval and Control.

- (a) Except as provided in paragraph 10.16 above, neither the Association nor any Owner may:
  - (i) perform any earth movement, vegetation removal, paving or drainage modification;
    - (ii) construct any building, structure or other improvement;

- (iii) make any physical or cosmetic alteration or modification to existing buildings, structures or improvements;
- (iv) install or alter on any building, structure or other improvement any exterior signage or any interior signage that is visible from outside the building, structure or improvement;
- (v) install or alter any landscaping or exterior furniture, fixtures, equipment or art; or
- (vi) change the exterior appearance of any existing building, structures or improvements,

within the Condominium, without the prior written consent of the Design Review Board.

- (b) If the Design Review Board fails to respond to a request for its consent within 60 days after its receipt of such request, the Design Review Board shall be deemed to have granted its consent to the actions described in such request. The decisions of the Design Review Board shall be conclusive and binding on all interested parties.
- (c) Notwithstanding anything to the contrary contained herein, improvements, alterations, modifications, installations, furniture and fixtures that:
  - (i) are completely within a building, structure or improvement;
  - (ii) do not change the exterior appearance of a building, structure or improvement and are not visible from the outside of a building, structure or improvement; and
  - (iii) do not change the number of Units, within the building, structure or other improvement,

may be undertaken without Design Review Board consent, but are subject to all other covenants, conditions and restrictions contained in this Declaration.

- (d) Each Owner shall comply with the rules and regulations of the Design Review Board, as the same may be amended from time to time by the Design Review Board.
- (e) The Design Review Board or its designated representative may monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved plans and construction procedures. The Design Review Board or its designated representatives may enter upon any Unit at any reasonable time or times to inspect the progress, work status or completion of any project. The Design Review Board may withdraw approval of any project and require all activity at such project

to be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled within twenty-four hours after written notification to the Owner specifying such deviations.

(f) The Design Review Board may, as a condition to any consent or approval, require an Owner to enter into a written agreement with the Declarant containing such covenants, conditions and restrictions as the Design Review Board deems necessary or appropriate, including penalties for failures to comply.

### 11.03 Enforcement of Restrictions.

- (a) If an Owner violates any term or condition set forth in this Article XI or in the rules and regulations of the Design Review Board, the Resort Owner shall have the following rights and remedies:
  - (i) The Resort Owner may, by written notice to the Owner, revoke any approval previously granted to the Owner by the Design Review Board, in which event the Owner shall, upon receipt of such notice, immediately cease any construction, alteration or landscaping covered by the approval so revoked.
  - Owner's Unit and cure such violation at the Owner's sole cost and expense. If the Resort Owner cures any such violation, the Owner shall pay the Resort Owner the amount of all costs and expenses incurred by the Declarant in connection therewith within thirty days after the Owner receives an invoice therefor from the Resort Owner. The Resort Owner shall have a lien against the Owner's Unit for the amount of any costs and expenses incurred by the Resort Owner under this paragraph 11.03(a)(ii). This lien may be perfected by recording a notice in the Pocahonta's County Records.
    - (iii) The Resort Owner may sue the Owner to enjoin such violation.
  - (iv) The Resort Owner shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies of the Resort Owner shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.
- (b) The Resort Owner may delegate any of its rights under paragraph 11.03(a) above to the Design Review Board.

#### 11.04 Fees.

The Design Review Board may establish reasonable processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted. The Design Review Board may also establish

a requirement for the escrowing of funds in an amount sufficient to guarantee completion of proposed alterations or improvements, landscaping or other finish work included as a part of construction plans which have been presented to or approved by the Design Review Board, if such requirement is not imposed by a governmental or quasi-governmental authority for that purpose.

# 11.05 Lapse of Approval.

Any approval issued by the Design Review Board shall lapse and become void in accordance with the terms and conditions of the rules and regulations adopted by the Design Review Board and the terms and conditions of any consents, approvals or permits issued by the Design Review Board. In addition, an approval issued by the Design Review Board for a project will lapse and become void if any building permit or approval issued by a governmental or quasi-governmental entity for the same project lapses or is revoked or suspended.

### 11,06 Liability.

Neither the Resort Owner, the Design Review Board nor any of their respective officers, directors, employees or agents shall be responsible or liable for any defects, errors or omissions in any plans or specifications submitted, reviewed or approved under this Article XI, nor for any defects, errors or omissions in construction pursuant to such plans and specifications. A consent or approval issued by the Design Review Board means only that the Design Review Board believes that the construction, alteration, installation or other work for which the consent or approval was requested complies with the rules and regulations adopted by the Design Review Board and the Resort Owner. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby (a) complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, (b) is free from defects, errors or omissions or (c) lies within the boundaries of the Property. No consent, approval or permit issued by the Design Review Board shall relieve Owners or others of their obligations to comply with laws, rules, regulations, ordinances and other requirements of governmental or quasi-governmental authorities.

### ARTICLE XII EASEMENTS, RESERVATIONS AND SNOWSHOE SERVICE ASSESSMENT

# 12.01 Declarant's Egsements Over Common Elements.

(a) Declarant hereby reserves for itself, the Resort Owner and their respective successors and assigns a general easement over, across, through and under the entire Condominium to:

- (i) discharge Declarant's obligations under this Declaration;
- (ii) exercise any of Declarant's or Resort Owner's rights under this
   Declaration; and
- (iii) make improvements at the Property or any other real estate owned by Declarant or the Resort Owner, including, without limitation, the right to connect the garage to underground parking facilities located in other projects constructed on adjacent properties.
  - (b) Declarant hereby reserves for itself, its successors and assigns, the right
- (i) establish from time to time utility, access, drainage and other easements, permits or licenses over, across, through and under the Condominium to serve any property owned by Declarant, the Resort Owner or Intrawest Snowshoe Development, Inc. or any other property within the Resort; and
- (ii) create other reservations, exceptions and exclusions for the best interests of the Declarant, Resort Owner, Intrawest Snowshoe Development, Inc. or other Persons, on the conditions that (A) the parties benefitted by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit, reservation, exception or exclusion to minimize interference with the use of the Condominium by the Owners, to the extent practicable, and (B) if the party benefitted by the easement, license, permit, reservation, exception or exclusion constructs or installs any improvement, the benefitted party shall promptly repair any damage to the Condominium at its cost and expense.

# 12.02 Utility Easement.

- Association Documents, Declarant hereby creates a general easement over, across, through and under the Property for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable communication that service the Property or any portion thereof or any adjacent properties owned by Declarant or Resort Owner.
- (b) Pursuant to this easement, a 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 Improvements to provide service to the Condominium and any adjacent properties owned by Declarant or Resort Owner. Notwithstanding anything to the contrary contained in this Section 12.02, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Property, except in accordance with terms and conditions of Article XI of

to:

this Declaration. Any utility or service company using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners, the Association, Declarant and other utility and service companies. In addition, such utility or service company shall keep all utility and service lines owned by it on the Property in good order and condition and shall repair and replace any damage done by it or its contractor to the Property.

- (c) If any utility or service company furnishing utilities or services to the Property, any portion thereof or any adjacent property owned by Declarant or Resort Owner requests a specific easement by separate recordable document, the Association shall grant such easement over, across, through and under any portion of the Property if requested to do so by Declarant or Resort Owner.
- (d) Declarant hereby reserves the casements across the Land to provide a means of bringing utility lines of every kind and nature, including but not limited to, water, sewer, electric, gas, telephone and cable TV through the Property to serve other lands at the Snowshoe Mountain Resort.

#### 12.03 Association's and Owners' Easements.

- (a) The Association shall have a general easement over, across, through and under each Residential Unit and each Common Element to:
  - (i) exercise any right held by the Association under this Declaration or any other Association Document; and
  - (ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.
- (b) Notwithstanding the foregoing, the Association shall not enter any Unit under the easements described in paragraph 12.03 (a) above without reasonable prior notice to the Owner thereof, except in cases of emergency.
- (c) The Owners shall have the licenses and rights with respect to the Garage described in paragraphs 10.12 and 10.16 above.

#### 12.04 Easements for Encroachments.

To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, an easement shall exist for that encroachment, but such easement shall not relieve an Owner of liability in the case of willful misconduct.

agreement, however, shall relieve the individual Owners of liability for the payment of the Snowshoe Service Assessment nor relieve any Unit of the lien herein created for assessments which are not paid as herein required.

- (d) Liability for and Lien of Assessment. All sums assessed against a Unit by the Resort Owner in accordance herewith shall constitute the personal liability of the Owner and shall, from the 30th day following the due date of the Snowshoe Service Assessment, constitute a lien against such Unit. Such personal liability and lien, or either of them, may be enforceable by appropriate legal proceedings against the Owner and the Unit. The Resort Owner upon written request shall furnish any Owner or his Mortgagee a statement setting forth the amount of unpaid Snowshoe Service Assessment against his Unit. The statement must be furnished within ten business days after the receipt of the request.
- (e) Priority of Lien. The lien and the annual assessment authorized herein with respect to any Unit shall be prior to all other liens and encumbrances on a Unit but only to the same extent and subject to the same limitations as the lien for assessments as provided in § 3-116 of the Act. No sale or transfer of a Unit to the mortgagee or beneficiary or to any person pursuant to foreclosure, or pursuant to any proceedings executed upon the Unit, shall release the former Owner from the liability for any such assessment or release any subsequent Unit Owner from liability for any assessment coming due after such sale or transfer.

### ARTICLE XIII INSURANCE

# 13.01 Insurance Required To Bc Obtained By the Association.

The Association shall obtain and maintain all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Executive Board dooms necessary.

# 13.02 Casualty Insurance for Improvements.

- (a) The Association shall obtain and maintain casualty insurance for all Improvements located on or forming a part of the Common Elements, including, without limitation, the structural and mechanical components serving the Units, in accordance with the requirements set forth in Section 13.01 above.
- (b) Owners shall be responsible for obtaining and maintaining any casualty insurance that they desire for Improvements located in or forming a part of their Units, and for any fixtures, furnishings and equipment, other than fixtures and equipment that are part of the Common Elements, located within their Units.

#### 13.03 Adjustments.

Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act.

#### ARTICLE XIV CASUALTY

### 14.01 Casualty to Common Elements.

The Association shall respond to any damage to, or destruction of, any Common Elements in accordance with the terms and conditions of the Act.

### 14.02 Casualty to a Unit.

To the extent that the Association is not obligated to make any such repairs or replacements, each Owner of a Unit shall repair or replace any damage to or destruction to the interior of his Unit, as soon as is reasonably practical after such damage or destruction occurs.

# ARTICLE XV CONDEMNATION

#### 15.01 Condemnation of all Units.

If the entire Condominium is taken by condemnation or similar proceeding, the Condominium shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association in accordance with the terms and conditions of the Act.

# 15.02 Condemnation of Fewer Than All Units.

If one or more Units, but less than the entire Condominium, is taken by condemnation or similar proceeding:

- (a) any condemnation award payable in connection therewith shall be paid;
- (b) the Interest in General Common Elements appurtenant to those Units shall be reallocated; and

(c) the Shares of Common Expenses allocated to those Units shall be reallocated, in accordance with the terms and conditions of the Act.

#### 15.03 Condemnation of Common Elements.

- (a) If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Association and used by the Association:
  - (i) first, to repair any damage to Common Elements resulting from the condemnation or similar taking; and
    - (ii) second, for any other Common Expenses.
- (b) The Association shall not be required to pay all or any portion of the condemnation award received for the condemnation or similar taking of a Limited Common Element to the Owners of the Units served by such Limited Common Element, unless the Association deems it necessary or appropriate to do so.

#### ARTICLE XVI SPECIAL DECLARANT RIGHTS

### 16.01 <u>Improvements</u>.

Declarant hereby reserves for itself, its successors and assigns the right, but is not obligated, to construct:

- (a) any improvements shown on the Map, as the same may be amended from time to time; and
- (b) any other buildings, structures or improvements that Declarant desires to construct on the Property or on any other real estate owned by Declarant, whether or not the same ever become part of the Condominium, including, without limitation, an underground connection connecting the Garage to underground parking facilities located in other projects constructed on adjacent properties.

# 16.02 Development Rights.

- (a) Declarant hereby reserves for itself, its successors and assigns:
- (i) the right to amend this Declaration to create up to 20 additional Commercial Units.

  (ii) the right to subdivide any Unit owned by Declarant;

- (iii) the right to combine any Units owned by Declarant;
- (iv) the right to convert any Unit owned by Declarant into Common Elements;
- (v) the right to withdraw from the Condominium any real estate owned by Declarant and located within the Property prior to the conveyance of a Unit located within the Property to a Purchaser.
  - (vi) all rights granted to Declarant in § 2-122 of the Act.
- (b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements of the Act.

### 16.03 Sales Offices and Model Homes.

Declarant hereby reserves for itself, its successors and assigns the right to maintain sales offices, management offices and models within any Unit(s) owned or leased by Declarant. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Condominium on any and all Common Elements.

### 16.04 Merger.

Declarant hereby reserves for itself and its successors and assigns the right to merge or consolidate the Condominium with any other condominium.

#### 16.05 Master Association.

Declarant reserves the right to subject the Condominium to a master declaration creating a master planned community for the village area of the Snowshoe Mountain Resort and to create a master association to provide basic fire protection and security services, transportation services, maintenance and repair services, and entertainment, information and other functions for the village area and to adopt and amend budgets for revenues, expenditures and reserves and the right to collect assessments for common expenses of the village area from Owners. Allocations for such common expenses will be established in accordance with the Act.

# 16.06 Exercising Special Declarant Rights.

Declarant may exercise its Special Declarant Rights at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date that is fifty years after the date on which this Declaration is recorded in the Pocahontas County Records. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant

exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property. Notwithstanding anything else to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XVI and any other right reserved to Declarant in this Declaration, without the consent of the Association or of any of the Owners.

# 16.07 Interference with Special Declarant Rights.

Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Special Declarant Right, without Declarant's prior written consent. Any action taken in violation of this Section 16.06 shall be null and void and have no force or effect.

# 16.08 Rights Transferable.

Declarant may transfer any Special Declarant Right reserved to it under this Article XVI or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

### ARTICLE XVII MORTGAGEE PROTECTIONS

### 17,01 Benefit of Mortgagees.

This Article establishes certain standards and covenants which are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

### 17.02 Notice of Actions.

If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty days by an Owner whose Unit is encumbered by a First Mortgage held by such First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

- (d) any proposed action which would require the consent of First Mortgagees as set forth in this Article; and
  - (e) any judgment rendered against the Association.

### 17.03 Consent Required.

Notwithstanding anything to the contrary contained in this Declaration, and unless otherwise provided by the Act, the Association and the Owners may not take any of the following actions without the consent of 67 percent of the First Mortgagees (based on one vote for each Unit covered by a First Mortgage held):

- (a) by act or omission seek to abandon or terminate the Condominium, except after condemnation or substantial casualty;
- (b) except as provided herein for condemnation, casualty, and the exercise of Special Declarant Rights, change the Interests in General Common Elements, Shares of Common Expenses or votes in the Association of any Unit;
- (c) subdivide, partition, or relocate the boundaries of any Unit, except as permitted with respect to Special Declarant Rights;
- (d) abandon, subdivide, partition, encumber, sell, or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers);
- (e) use hazard insurance proceeds for losses to any portion of the Common Elements for other than repair, replacement, or reconstruction of the Common Elements, except as provided by the Act; or
- (f) merge the Condominium with any other common interest community, except as permitted with respect to Special Declarant Rights.

# 17.04 Notice of Objection.

Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

# 17,05 First Mortgagees' Rights.

(a) First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common

Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. First Mortgagees making such payment shall be owed immediate reimbursement from the Association.

(b) First Mortgagees shall be entitled to cure any delinquency of the Owner encumbered by a First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

#### 17.06 Limitations on First Mortgagee's Rights.

No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

- (a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Executive Board;
- (b) prevent the Association or the Executive Board from commencing, intervening and/or settling any legal proceeding; or
- (c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of the Article XIII above.

### 17.07 Declarant Rights.

No provision or requirement of this Article XVII shall apply to any Special Declarant Rights or other rights reserved to Declarant in this Declaration.

# ARTICLE XVIII ENFORCEMENT AND REMEDIES

#### 18.01 Enforcement.

- (a) Each provision of this Declaration with respect to the Association or the Common Elements shall be enforceable by Declarant, the Resort Owner or by any Owner by a proceeding for injunctive relief.
- (b) Each provision of this Declaration with respect to an Owner or a Unit shall be enforceable by Declarant, the Resort Owner or the Association by:
  - (i) a proceeding for injunctive relief;
  - (ii) a suit or action to recover damages; or

- (iii) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the use of any Common Elements and from participation in any Association affairs.
- (c) In addition to the rights and remedies described in paragraph 18.01(b) above, if an Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration or any other Association Document, the Association or the Resort Owner shall have the following rights and remedies:
  - (i) The Association or the Resort Owner may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association or the Resort Owner cures any such failure to comply, the Owner shall pay to the Association or the Resort Owner the amount of all costs incurred by the Association in connection therewith plus interest thereon at 18% per annum from the date expended by the Association or the Resort Owner within thirty days after the Owner receives a written invoice therefor from the Association.
  - (ii) The Association may, after notice and an opportunity to be heard, fine the Owner, as a Default Assessment, an amount not to exceed \$100 for each violation. The Owner shall pay any such fine to the Association within thirty days after the Owner receives written invoice therefor from the Association.
  - (iii) With respect to an Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.
  - (iv) The Association or the Resort Owner shall have all other rights and remedies available to it under this Declaration, at law or in equity.
- (d) All rights and remedies of the Association or the Resort Owner shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

# 18.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbutsements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

#### 18.03 Interest.

If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of 18 percent per annum from the due date of such unpaid amount until the date paid.

### 18.04 Right to Notice and Hearing.

Whenever an Association document requires that an action be taken after "notice and hearing," the following procedure shall be observed. The party proposing to take the action (e.g., the Executive Board or a committee or officer of the Association) shall give notice of the proposed action to all Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be delivered personally, sent by overnight courier or mailed not less than three days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing to be held before the Executive Board or a committee or an officer of the Association. At the hearing, the representative, may give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Owner shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Executive Board from a decision of a proposing party other than the Executive Board by filing a written notice of appeal with the Executive Board within ten days after being notified of the decision. The Executive Board shall conduct a hearing within forty-five days thereafter, giving the same notice and observing the same procedures as were required for the original hearing.

#### 18.05 Nonwaiver.

Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or in any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

# ARTICLE XIX TERM AND AMENDMENTS

#### 19.01 Term.

The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until the Declaration is terminated pursuant to Section 19.02 below.

### 19,02 Termination.

Subject to the rights of Mortgagees under Article XVII above, the Owners may terminate the Condominium and this Declaration, by the vote of 80 percent of the votes allocated to all Units. If the necessary votes are obtained, the agreement of the Owners to terminate the Condominium and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act. Upon recordation of the termination agreement in the Pocahontas County Records, the Condominium shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved. Notwithstanding the foregoing, the Owners may not terminate the Condominium during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

#### 19.03 Amendments.

- (a) Except for provisions of this Declaration regarding the rights and obligations of Declarant and the Resort Owner, which may not be amended without Declarant or Resort Owner's prior written consent as the case may be, Owners may amend any provision of this Declaration at any time by a vote of at least 67 percent of the votes allocated to all Units. If the necessary votes and consent are obtained, the Association shall cause an amendment to the Declaration to be recorded in the Pocahontas County Records in accordance with the terms and conditions of the Act. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.
- (b) In addition to Declarant's other rights to amend this Declaration and the Map as set forth in this Declaration and the Act, Declarant may:
- (i) amend this Declaration and the Map to correct clerical, typographical, technical or other errors; and
- (ii) amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the government National Mortgage Association or the Federal National Mortgage Association.
- (c) Notwithstanding the terms and conditions of paragraph 19.03(a) above, Declarant may amend this Declaration as expressly provided herein, without the approval of the Owners.

#### ARTICLE XX MISCELLANEOUS

### 20.01 Interpretation of the Declaration.

Except for judicial construction, the Association, by its Executive Board and where applicable, the Declarant and Resort Owner, 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 Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and the provisions hereof.

### 20.02 Severability.

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

### 20.03 Disclaimer of Representations.

Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Condominium can or will be carried out or that any land now owned or hereafter acquired by Declarant 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 use, or that if such land is once used for a particular use, that such use will continue in effect.

#### 20.04 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Unit or any other part of the Condominium may contain the provisions set forth herein 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, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his or her heirs, executors, administrators, successors and assigns.

### 20.05 Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

### 20.06 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience 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.

#### 20.07 Exhibits.

All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

#### 20.08 Governing Law.

This Declaration shall be governed by and construed in accordance with the laws of the State of West Virginia.

#### 20.09 Notices.

All Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Unit shall furnish such registered address to the secretary of the Association within ten days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed their registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Unit. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owner(s):

Rimfire Lodge Condominium Association #1 Silver Creek Parkway Snowshoe, West Virginia 26209 IN WITNESS WHEREOF, Declarant has caused its name to be signed by the signature of its duly authorized official as of the day and year first written above.



# EXHIBIT A

# LEGAL DESCRIPTION OF THE PROPERTY

SEE PLAT BOOK INDEX FOR MAP

# EXHIBIT B

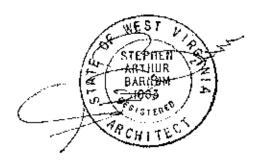
# CONDOMINIUM DECLARATION PLAN

SEE PLAT BOOK INDEX FOR MAP



#### CERTIFICATE

I, Stephen A. Barnum, AIA, registered professional architect, certify that the maps, plats, and plans attached hereto as Exhibits B and C, collectively, contain all of the information required by the West Virginia Code § 36B-2-109.



# EXHIBIT C

# CONDOMINIUM FLOOR PLAN AND UNIT TYPES

# SEE PLAT BOOK INDEX FOR MAP

EXHIBIT D

# Rimfire Lodge Percentage Interest and Vote of Unit Owners

Unlt	<u>.</u>	Interest in general common		Shares of residential
#	Unit type	elements	Vote	expenses
101	D Studio	0,005544	1.00	0.005544
102	D Studio	0.005544	1.00	0.005544
103	A One Bedroom	0.006365	1.00	0,006365
104	A One Bedroom	0.006365	1.00	0.006365
106		0,010898	1,00	0.010898
107	B Two Bedroom	0,010636	1.00	0.010636
141	E Junior Studio	0.004069	1.00	0.004069
142	A1 One Bedroom	0.006389	1,00	0.006389
143	A2 One Bedroom	0.006496	1.00	0.006496
144		0.004069	1.00	0.004069
145	A One Bedroom	0,006365	1.00	0.006365
146	A One Bedroom	<b>0.0063</b> 65	1,00	<b>0,00636</b> 5
147	A One Bedroom	0.006365	1.00	0.006365
148		0.004069	1.00	0,004069
150	B Two Bedroom (Alternate)	0,010636	1.00	0.010636
152	, ,	0.010624	1,00	0.010624
153		0,005544	1.00	0,005544
	C2 Two Bedroom	0,010624	1.00	0.010624
156	A One Bedroom	0.006365	1.00	0.006365
157		0.004069	1.00	0.004069
158	E Junior Studio	0.004069	1,00	0.004069
159	A One Bedroom	0.006365	1.00	0.006365
160		0.006365	1.00	0.006365
161	A One Bedroom	0.006365	1.00	0.006365
162	D Studio	0,005544	1.00	0.005544
201	E Junior Studio	0.004069	1.00	0.004069
202	A1 One Bedroom	0.006389	1.00	0.006389
	A1 One Bedroom	0.006389	1.00	0.006389
	E Junior Studio	0.004069	1,00	0.004069
205	A One Bedroom	0.006365	1,00	0.006365
206		0.005544	1.00	0.005544
	D Studio	0.005544	1.00	0.005544
	A One Bedroom	0,006365	1.00	0.006365
	A One Bedroom	0.006365	1.00	0.006365
211	C1 Two Bedroom	0.010898	1,00	0.010898
	B Two Bedroom	0.010636	1,00	0.010636
215	C Two Bedroom	0.010624	1.00	0.010624

# Percentage Interest and Vote of Unit Owners

Unit	Interest in general common		Shares of residential
# Unit type	elements	Vote	expenses
216 D1 Studio	0.005544	1,00	0.005544
217 C Two Bedroom	0.010624	1.00	0.010624
219 A One Bedroom	0.006365	1.00	0.006365
220 E Junior Studio	0.004069	1.00	0,004069
221 E1 Junior Studio	0,004557	1.00	0,004557
222 A One Bedroom	0,006365	1.00	0,006365
223 A One Bedroom	0.006365	1.00	0,006365
224 E Junior Studio	0.004069	1.00	0.004069
225 A One Bedroom	0.006365	1.00	0,006365
226 E Junior Studio	0.004069	1.00	0,004069
227 E Junior Studio	0.004069	1.00	0,004069
228 A One Bedroom	0,006365	1.00	0,006365
241 E Junior Studio	0.004069	1.00	0.004069
242 A1 One Bedroom	0,006389	1.00	0,006389
243 A1 One Bedroom	0.006389	1.00	0,006389
244 E2 Junior Studio	0.004069	1.00	0,004069
245 A One Bedroom	0.006365	1.00	0.006365
246 A One Bedroom	0.006365	1.00	0.006365
247 A One Bedroom	0.006365	1.00	0.006365
248 E Junior Studio	0.004069	1,00	0.004069
250 B Two Bedroom	0.010636	1.00	0.010636
252 C2 Two Bedroom	0.010624	1.00	0,010624
253 D1 Studio	0.005544	1.00	0.005544
254 C2 Two Bedroom	0.010624	1.00	0,010624
256 A One Bedroom	0.006365	1.00	0.006365
257 E Junior Studio	0.004069	1.00	0.004069
258 E Junior Studio	0.004069	1.00	0.004069
259 A One Bedroom	0,006365	1.00	0.006365
260 A One Bedroom	0.006365	1,00	0.006365
261 A One Bedroom	0.006365	1.00	0.006365
262 D Studio	0.005544	1,00	0,005544
301 E Junior Studio	0.004069	1.00	0.004069
302 A1 One Bedroom	0,006389	1.00	0.006389
303 A1 One Bedroom	0.006389	1.00	0,006389
304 E Junior Studio	0.004069	1.00	0.004069
305 A One Bedroom	0.006365	1.00	0,006365
306 D Studio	0,005544	1.00	0,005544
307 D Studio	0.005544	1,00	0.005544

# Percentage Interest and Vote of Unit Owners

	Interest in		Shares of
Unit	general common		residential
# Unit type	elements	Vote	expenses
308 A One Bedroom	0.006365	1.00	0,006365
309 A One Bedroom	0.006365	1.00	0,006365
311 C1 Two Bedroom	0.010898	1.00	0.010898
313 B Two Bedroom	0.010636	1.00	0.010636
315 C Two Bedroom	0.010624	1.00	0.010624
316 D1 Studlo	0.005544	1.00	0.005544
317 C Two Bedroom	0.010624	1.00	0.010624
319 A One Bedroom	0.006365	1.00	0.006365
320 E Junior Studio	0.004069	1.00	0,004069
321 E1 Junior Studio	0.004557	1.00	0,004557
322 A One Bedroom	0.006365	1.00	0.006365
323 A One Bedroom	0.006365	1.00	0.006365
324 E Junior Studio	0.004069	1.00	0.004069
325 A One Bedroom	0.006365	1.00	0.006365
326 E Junior Studio	0.004069	1.00	0.004069
327 E Junior Studio	0.004069	1.00	0.004069
328 A One Bedroom	0.006365	1.00	0.006365
341 E Junior Studio	0.004069	1.00	0.004069
342 A1 One Bedroom	0.006389	1.00	0.006389
343 A1 One Bedroom	0.006389	1.00	0.006389
344 E Junior Studio	0,004069	1.00	0.004069
345 A One Bedroom	0,006365	1.00	0.006365
346 A One Bedroom	0.006365	1.00	0.006365
347 A One Bedroom	0.006365	1.00	0.006365
348 E Junior Studio	0.004069	1,00	0.004069
350 B Two Bedroom	0.010636	1.00	0.010636
352 C2 Two Bedroom	0.010624	1.00	0.010624
353 D1 Studio	0.005544	1.00	0.005544
354 C2 Two Bedroom	0.010624	1,00	0.010624
356 A One Bedroom	0.006365	1,00	0.006365
357 E Junior Studio	0.004069	1,00	0.004069
358 E Junior Studio	0.004069	1.00	0.004069
359 A One Bedroom	0.006365	1.00	0.006365
360 A One Bedroom	0.006365	1.00	0,006365
361 A One Bedroom	0.006365	1.00	0.006365
362 D Studio	0.005544	1.00	0.005544
405 A One Bedroom	0.006365	1,00	0.006365
406 D Studio	0.005544	1.00	0.005544

# Percentage Interest and Vote of Unit Owners

Unit	it to man	Interest in general common	V.1-	Shares of residential
	it type	elements	Vote	expenses
	Studio	0.005544	1,00	0.005544
	One Bedroom	0.006365	1.00	0.006365
	One Bedroom	0.006365	1.00	0.006365
	Two Bedroom	0.010898	1.00	0.010898
	Two Bedroom	0.010636	1.00	0.010636
	Studio	0,005544	1.00	0.005544
	One Bedroom	0.006365	1.00	0.006365
	lunior Studio	0,004069	1.00	0.004069
	Junior Studio	0.004557	1.00	0.004557
	One Bedroom	0.006365	1.00	0.006365
423 A C	One Bedroom	0.006365	1.00	0,006365
	lunior Studio	0.004069	1.00	0.004069
425 A C	One Bedroom	0.006365	1.00	0,006365
426 EJ	unior Studio	0.004069	1,00	0.004069
427 E J	unior Studio	0.004069	1.00	0.004069
428 A C	One Bedroom	0.006365	1.00	0.006365
445 A C	One Bedroom	0.006365	1.00	0.006365
446 A C	One Bedroom	0.006365	1,00	0.006365
447 A C	Эле Bedroom	0.006365	1.00	0.006365
448 E J	unior Studio	0.004069	1,00	0.004069
450 B T	wo Bedroom	0.010636	1.00	0,010636
453 D1	Studio	0.005544	1.00	0.005544
456 A+	E Two Bedroom	0.010434	1.00	0.010434
458 E J	unlor Studio	0,004069	1,00	0.004069
459 A C	ne Bedroom	0,006365	1.00	0.006365
460 A C	ne Bedroom	0,006365	1.00	0,006365
<b>4</b> 61 A C	ne Bedroom	0.006365	1.00	0.006365
462 DS	studio	0.005544	1.00	0.005544
Sul	ototal condominiums	0.900000	141.00	0.900000
Con	mmercial Unlt 1	0.034867	27,89	0.034867
Con	nmercial Unit 2	0.046746	37.40	0.046746
Con	nmercial Unit 3	0.018386	14,71	0.018386
Sub	ototal commercial	0.100000	80,00	0.100000
Мог	nthly total	1.000000	221,00	1,000000

### EXHIBIT E

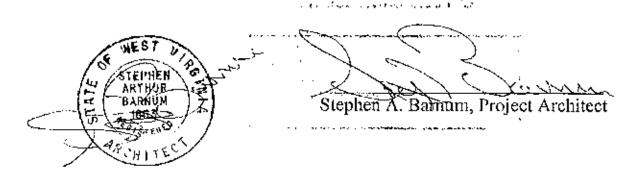
#### EASEMENTS AFFECTING THE PROPERTY

- (i) The nonexclusive easement granted to Owners over and across that portion of Snowshoc Mountain Drive which is not owned by the State of West Virginia for the purposes of access to and from State Route 9/3 and the Land, as more fully described in the deed from the Resort Owner to Declarant dated July 18, 1998 and recorded in the Pocahontas County Records at Deed Book 255 at page 151.
- (ii) Rights granted to Declarant for the extension of electrical, telephone and propane services to the Condominium, all as more fully described in the Electric, Telephone and Propane Agreement dated May 13, 1999, of record in the Pocahontas County Records.
- (iii) A non-exclusive boardwalk easement granted by Declarant to the Resort Owner, to permit the Resort Owner, its independent contractors, tenants, customers of tenants, licenses, invitees and guests access to and from the Property, and to and from other properties owned by the Resort Owner, all as more fully described in the Deed of Boardwalk Easement dated May 13, 1999, of record in the Pocahontas County Records.
- (iv) Any utility easements and all other easements granted and reserved in the Declaration, including without limitation, those described in Article XII of the Declaration.
- (v) A road drainage easement granted by Declarant to the Resort Owner as more fully described in the Road Drainage Easement dated May 13, 1999, of record in the Pocahontas County Records.

### EXHIBIT F

#### CERTIFICATE OF COMPLETION

The undersigned hereby certifies, pursuant to the provisions of W. Va. Code §36B-2-101(b), that all structural components and mechanical systems of the building containing the Units (as defined in the Declaration Establishing Rimfire Lodge Condominium at Snowshoe Mountain Resort, Pocahontas County, West Virginia) are substantially completed in accordance with the condominium plans dated May 10, 1999 for such building and Units.

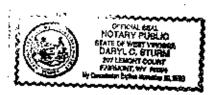


State of West Virginia

County of Marion, to-wit:

The foregoing instrument was acknowledged before me this 12<sup>th</sup>day of May, 1999, by Stephen A. Barnum.

My commission expires November 28, 2000.



Notary Public

22,56

FILED

'99 MAY 13 PM 4 89

POCAHONTAS CO. GLERK MARLINTON, WEST VA.

> WEST VIRGINIA, CLERKS OFFICE OF THE COUNTY COMMISSION OF POCAHONTAS COUNTY

this instrument was this day presented to me in my office and thereupon the same together with the certificate of acknowledgement thereunder written, is admitted to record therein.

Testa faturia D. Dunhane Clerk
By Tanny & Broce (Cignos)

the Office of the CL Commission of Pocahon Deed Book No.

#### FIRST AMENDMENT TO

53 -

o Established Marka Liebert Sessal (See 1925)

### DECLARATION ESTABLISHING RIMFIRE LODGE CONDOMINIUM AT SNOWSHOE MOUNTAIN RESORT, POCAHONTAS COUNTY, WEST VIRGINIA

THIS FIRST AMENDMENT TO DECLARATION ESTABLISHING RIMFIRE LODGE CONDOMINIUM AT SNOWSHOE MOUNTAIN RESORT, POCAHONTAS COUNTY, WEST VIRGINIA (this "Amendment") is executed to be effective as of November 17, 2004, by INTRAWEST RESORTS, INC., a Delaware corporation.

#### RECITALS:

- A. Intrawest Resorts, Inc. recorded the Declaration Establishing Rimfire Lodge Condominium at Snowshoe Mountain Resort, Pocahontas County, West Virginia on May 13, 1999, in the Pocahontas County Records in Deed Book 260, at page 52 (the "Declaration").
- B. Pursuant to Section 16.02(a)(i) of the Declaration, Declarant has the right to subdivide any Unit owned by the Declarant and to create up to 20 additional Commercial Units,
- C. Pursuant to W.Va. Code § 36B-2-108(b), limited common elements may be reallocated by an amendment to a declaration executed by the unit owners between or among whose units the reallocation is made.
- D. Declarant, as owner of Commercial Unit 3, desires to (i) subdivide Commercial Unit No. 3 into two units and (ii) reallocate part of the limited common elements appurtenant to Commercial Unit No. 3 to the new commercial unit to be created by the subdivision.

#### **AMENDMENT**

In consideration of the foregoing, Declarant hereby amends the Declaration as follows:

- 1. Additional Units. The Declaration is hereby amended to create one additional Commercial Unit within the Condominium to be known as Commercial Unit No. 4 by subdividing Commercial Unit No. 3 into two Commercial Units as shown on the "Rimfire Amended Condo Documents Partial Main Floor Plan" attached hereto as Exhibit A.
- 2. <u>Limited Common Elements</u>. All Limited Common Elements allocated to Commercial Unit No. 3 prior to this subdivision shall remain Limited Common Elements allocated to Commercial Unit No. 3 as it exists after the subdivision except for the area shown between P17 and P18 at the top of sheet CD-2 to the Maps of Rimfire Lodge Condominium, which is referenced as Exhibit C to the Declaration and separately recorded in the Hanging Plat Files in the Pocahontas County Records, which area shall be a Limited Common Element

allocated to Commercial Unit 4, all as shown on the "Rimfire Amended Condo Documents Partial Parking Level Plan attached hereto as Exhibit B.

### 3. <u>Interest in General Common Elements.</u>

- (a) The Interests in General Common Elements appurtenant to Commercial Units 3 and 4 are hereby reallocated in accordance with Section 3.02 of the Declaration.
- (b) The Interests in General Common Elements appurtenant to Commercial Units 3 and 4 are set forth on <u>Schedule I</u> attached hereto and made a part hereof.
- 4. <u>Votes</u>. The votes appurtenant to Commercial Units 3 and 4 are set forth on <u>Schedule I</u> attached hereto and made a part hereof.

### Shares of Common Expenses.

- (a) The Shares of Common Expenses attributable to Commercial Units 3 and 4 are hereby reallocated in accordance with section 7.02 of the Declaration.
- (b) The Shares of Common Expenses attributable to Commorcial Units 3 and 4 are set forth on <u>Schedule I</u> attached hereto and made a part hereof.
- 6. <u>Map Amendment</u>. Sheet Nos. CD-2 and CD-5 of the Maps of Rimfire Lodge Condominium referenced as Exhibit C to the Declaration and separately recorded in the Hanging Plat Files in the Pocahontas County Records are hereby amended by <u>Exhibit A</u> and <u>Exhibit B</u> hereto, respectively.
- 7. <u>Exhibit D</u>. The table of Allocated Interests attached to the Declaration as <u>Exhibit D</u> is hereby amended with respect to Commercial Units 3 and 4 by the table attached as Schedule I hereto.
- 8. <u>Effect of Amendment</u>. Except as amended hereby, the Declaration shall continue in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Declaration, the provisions of this Amendment shall control.

[The remainder of this page intentionally left blank]

EXECUTED on the date set forth below to be effective as of the date first set forth above.

#### INTRAWEST RESORTS, INC.

By: See Sees West S

Date: November 17, 2004

STATE OF WEST VIRGINIA
COUNTY OF POCAHONTAS

The foregoing instrument was acknowledged before me this 17th day of November, 2004, by Bruce Pittet , Vice President of INTRAWEST RESORTS, INC., a Delaware corporation, on behalf of such corporation.

My commission expires: 02/19/06

(Notarial Seal)

(Notarial Seal)

(Notarial Seal)

(Notarial Seal)

Notary Public

This document prepared by Ellen S. Cappellanti, 1600 Laidley Tower, P. O. Box 553, Charleston, West Virginia 25322-0553.

# SCHEDULE 1

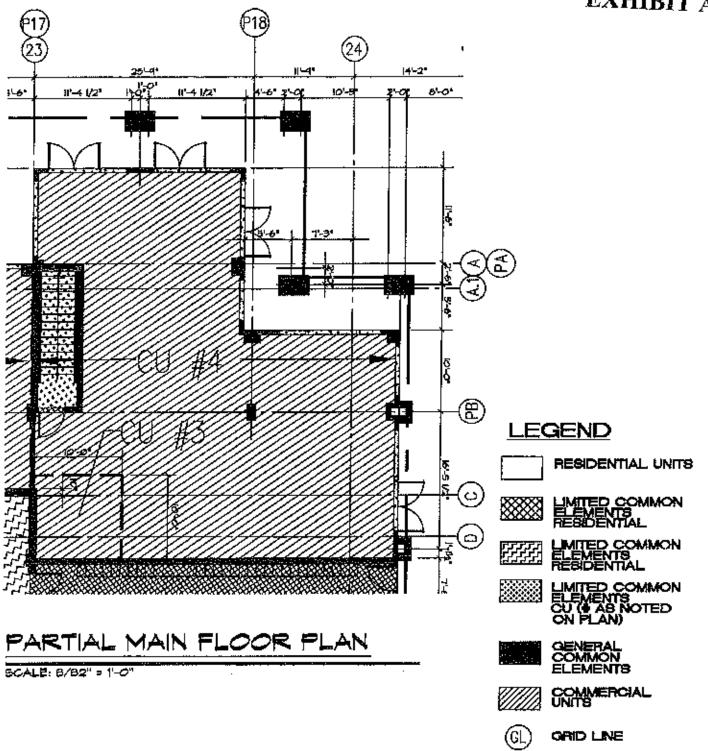
(Attached to and forming a part of the First Amendment to Declaration Establishing Rimfire Lodge Condominium at Snowshee Mountain Resort, Pocahontas County, West Virginia)

### ALLOCATED INTERESTS

# (THIS SCHEDULE AMENDS EXHIBIT D TO THE DECLARATION WITH RESPECT TO COMMERCIAL UNITS 3 AND 4)

UNIT NO.	INTEREST IN GENERAL COMMON ELEMENTS	<u>votes</u>	SHARES OF COMMON EXPENSES
Commercial Unit 3	0.001148	0.918168	.001148
Commercial Unit 4	0.017239	13.790887	.017239

# EXHIBIT A

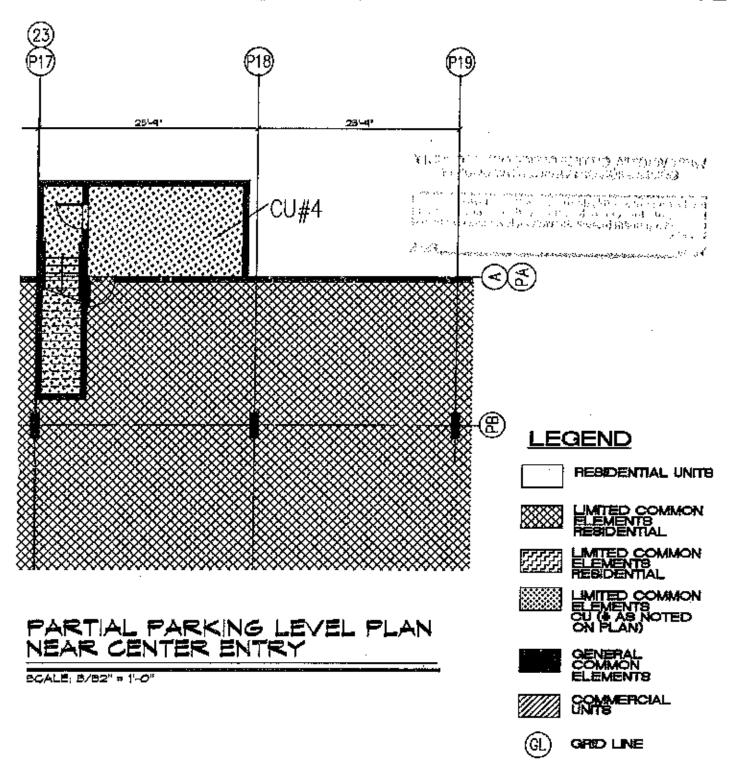




RIMFIRE
AMENDED CONDO DOCUMENTS
PARTIAL MAIN FLOOR PLAN

DWG # CD-5

DATE: 12/3/04 DRAWN BY: KMT CAD # 20443-2





RIMFIRE AMENDED CONDO DOCUMENTS PARTIAL PARKING LEVEL PLAN DWQ. + CD-2

DATE: 12/8/04 DRAWN BY: KMT CAD # 20443-2 100 20056

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