

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

SONNENSCHN NATH & ROSENTHAL LLP
2398 East Camelback Road, Suite 1060
Phoenix, Arizona 85016
Attn: Richard F. Ross, Esq.

ENTRY NO. 00814179

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE \$ 40.00 BY COALITION TITLE



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND
AGREEMENT REGARDING
OPEN SPACE/TRANSIT MANAGEMENT FEE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND AGREEMENT REGARDING OPEN SPACE/TRANSIT MANAGEMENT FEE (this "**Declaration**") is made effective as of this 17th day of May, 2007, by and between Mountain Developments I, Inc., a Delaware corporation (the "**Declarant**"), and Empire Pass Master Owners Association, Inc., a Utah non-profit corporation (the "**Empire Pass Association**").

RECITALS:

- A. Declarant is the fee owner of that certain tract of land located in Summit County, Utah, and legally described in Exhibit A attached hereto (the "**Resort Land**").
- B. The Resort Land is subject to that certain Amended and Restated Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel and Iron Mountain, by and among United Park City Mines Company, Deer Valley Resort Company and Park City Municipal Corporation, dated as of March 2, 2007 and recorded, in the Office of the Summit County Recorder, on March 2, 2007 as Entry No. 00806100 (the "**City Development Agreement**").
- C. Declarant has recently obtained various entitlements with respect to the Resort Land that contemplate and permit, among other things, that the Resort Land be developed by constructing thereon a resort that includes, among other things, (i) a luxury hotel and related amenities, and (ii) residential condominium units (each, a "**Residential Condominium Unit**") to be offered for sale to the general public.
- E. Section 3.2 of the City Development Agreement provides for and requires (i) with respect to the transfer of any land that is subject to the City Development Agreement, the payment of an "Open Space/Transit Management Fee" (each, an "**Open Space/Transit Management Fee**") in the amount of one percent (1%) of the "gross sales price" for the land transferred; (y) that fifty percent (50%) of each Open Space /Transit Management Fee be paid to the Park City Municipal Corporation, a Utah municipal corporation (the "**City**"), for the purposes described in the City Development Agreement; and (z) that the remaining fifty percent (50%) of such Open

Space/Transit Management Fee be paid to Empire Pass Association, for the purposes described in the City Development Agreement. The Empire Pass Association is the "Flagstaff Mountain Master Resort Association" to which Section 3.2 of the City Development Agreement refers. Empire Pass Association has made arrangements with the City to collect all Open Space/Transit Management Fees, and to forward half of such fees to the City.

F. Section 3.2 of the City Development Agreement also requires that the respective obligations of Declarant and each subsequent seller of the Resort Land or any portion thereof (including without limitation any of the Residential Condominium Units) thereunder run with the Resort Land (and each portion thereof) and be binding upon and inure to the benefit of Declarant, Empire Pass Association and all record holders of legal, beneficial or equitable title to the Resort Land or any portion thereof.

G. Declarant desires to subject the Resort Land to this Declaration for the purpose of complying with the requirement of the City Development Agreement to which Recital F above refers, and to provide a procedure for the payment to Empire Pass Association of all Open Space/Transit Management Fees relating to the Resort Land as required by the City Development Agreement.

H. To cause this Declaration to run with the Resort Land and to be binding upon the Resort Land and all record holders of legal, beneficial or equitable title to the Resort Land or any portion thereof from and after the date this Declaration is recorded, Declarant hereby declares that the Resort Land and all conveyances of fee title to the Resort Land (other than and excluding any conveyance described in the definition of the term "Transfer" as set forth below as being excluded), whether or not so provided in the related conveyance document, shall be, and is hereby made, subject to the provisions of this Declaration, and by acceptance of any document of conveyance, the grantee named therein, for itself and its successors, executors, administrators, trustees and personal representatives, agrees that such grantee shall be bound by this Declaration (except to the extent such grantee is expressly excepted herefrom).

NOW THEREFORE, Declarant hereby declares, and Declarant and Empire Pass Association hereby agree, as follows:

ARTICLE 1

DEFINITIONS

The following words, phrases or terms used in this declaration (including the foregoing Recitals) shall have the following meanings:

"Affordable Housing" shall have the meaning set forth in the Park City Land Management Code.

"City" shall have the meaning stated in Recital E above.

"City Development Agreement" shall have the meaning stated in Recital B above.

“Consideration” shall mean the total money or the value of any other form of consideration paid or provided by the Transferee to the Transferor in exchange for the Transfer by the Transferor to the Transferee of fee title to all or any portion of the Resort Land, and includes the amount of any note or contract indebtedness given by such Transferee to such Transferor in connection with such Transfer, whether or not secured by a lien, deed of trust or other encumbrance given to secure such note, contract or indebtedness, or any part thereof, or remaining unpaid with respect to the portion of the Resort Land so Transferred at the time of such Transfer, whether or not assumed by such Transferee. The term “Consideration” shall not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements in favor of the United States, the State of Utah or any Governmental Authority.

“Declarant” shall have the meaning stated in the first paragraph of this Declaration.

“Declaration” shall have the meaning stated in the first paragraph of this Declaration.

“Empire Pass Association” shall have the meaning stated in Recital E above.

“First Mortgage” shall mean any mortgage, deed of trust or other document pledging any portion of the Resort Land or any interest therein as security for the payment of a debt or other monetary obligation, which mortgage, deed of trust or other document is not subject and subordinate to any other mortgage, deed of trust or other lien securing repayment of a debt or other monetary obligation other than liens for taxes, any ground lease demising all or any portion of the Resort Land (and any mortgage of the leasehold interest thereunder) or other liens which are granted priority by statute.

“First Mortgagee” shall mean any person or entity named as a mortgagee or beneficiary in or under any First Mortgage.

“Gross Sales Price” shall mean, (x) in the case of a Transfer that is in all respects an arms-length bona fide sale to a third-party, the Consideration given for such Transfer, less the customary expenses of such sale, or (y) with respect to a Transfer that is not in all respects an arms-length bona fide sale to a third-party, the Consideration, less the customary expenses related thereto, which would have been received by the Transferor had the transaction been an arms-length bona fide cash sale to a third-party. Notwithstanding the immediately preceding sentence, (x) the Gross Sales Price of any Residential Condominium Unit shall not include any value attributable to any intangible property and rights associated with any club, membership or other rights to use any amenity or facility other than the Residential Condominium Unit that are transferred in connection with the related Transfer; and (y) the Gross Sales Price of any timeshare or vacation club ownership interest or estate shall be determined by valuing the real property interest associated with such timeshare or vacation club ownership interest or estate, exclusive of the value of any intangible property and rights associated with the acquisition, operation, ownership and use of the timeshare or vacation club ownership interest or estate, including (i) the fees and costs associated with the sale of such interest or estate that exceed those normally incurred in the sale of other similar properties; (ii) the fees and costs associated

with the operation, ownership and use of such interest or estate; (iii) vacation exchange rights; and (iv) benefits available to a timeshare or vacation club interest owner.

“**Lien**” shall have the meaning stated in Section 4.2 below.

“**Mortgagee**” shall mean, with respect to any deed of trust, mortgage or other instrument pledging as security and encumbering any portion of the Resort Land (or any interest therein), the trustee or mortgagee under such deed of trust, mortgage or other instrument.

“**Open Space/Transit Management Fee**” shall have the meaning stated in Recital E above.

“**Owner**” shall mean, with respect to any portion of the Resort Land, the record holder(s) of beneficial or equitable title to such portion of the Resort Land, including without limitation a Person who is purchasing such portion of the Resort Land under a recorded contract or a recorded notice of such contract, but excluding any Person who holds an interest in such portion of the Resort Land merely as security.

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

“**Residential Condominium Unit**” shall have the meaning stated in Recital D above.

“**Resort Land**” shall have the meaning stated in Recital A above.

“**Transfer**” shall mean, with respect to a portion of the Resort Land and whether or not in a series of related transactions, the sale, conveyance or other transfer (other than by any lease or other rental agreement) of the beneficial interest of the Owner thereof in such portion of the Resort Land, including but not limited to (i) the conveyance of fee simple title to such portion of the Resort Land, (ii) the transfer of any ownership interest in any timeshare or fractional interest or vacation club interest in such portion of the Resort Land, or (iii) the transfer of more than fifty percent (50%) of the outstanding voting power and/or profits of any entity that directly or indirectly holds the fee title to such portion of the Resort Land, provided, however, that “Transfer” shall not mean or include and shall exclude any of the following, except to the extent used for the purpose of avoiding any Open Space/Transit Management Fee:

(a) Any sale, conveyance or transfer to the United States or any agency or instrumentality thereof; the State of Utah; or any city, county, municipality, district or other political subdivision of the State of Utah.

(b) Any sale, conveyance or transfer made;

(1) by a majority-owned subsidiary to its parent entity or by a parent entity to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent entity, in each case for no Consideration other than the issuance, cancellation or surrender of stock;

(2) by a partner, member or a joint venturer to a partnership, limited liability company or a joint venture in which such partner, member or joint venturer has not less than a fifty percent (50%) interest, or by a partnership, limited liability company or joint venture, in each case for no Consideration other than the issuance, cancellation or surrender of partnership, limited liability company or joint venture interests, as appropriate;

(3) by a corporation to its shareholders in connection with the liquidation of such corporation or other distribution of property or dividend in kind to its shareholders and for no Consideration other than the cancellation of such corporation's stock;

(4) by a partnership, limited liability company or a joint venture to its partners, members or joint venturers in connection with the liquidation of such partnership, limited liability company or joint venture or other distribution of property to the partners, members or joint venturers if the portion of the Resort Land so sold, conveyed or transferred is transferred generally pro rata to its partners, members or joint venturers and for no Consideration other than the cancellation of such partners', members' or joint venturers' interests in such partnership, limited liability company or joint venture;

(5) to a corporation, partnership, limited liability company, joint venture or other association or organization where such entity is owned in its entirety by the Persons transferring such portion of the Resort Land, and such Persons have the same relative interest in the transferee entity as they had in such portion of the Resort Land immediately prior to such sale, conveyance or transfer;

(6) by any Person(s) to any other Person(s), whether in a single transaction or a series of transactions, where the transferor(s) and the transferee(s) are and remain under common ownership and control; provided, however, that such sale, conveyance or transfer (x) is made for no Consideration other than the issuance, cancellation or surrender of stock or any other ownership interest in the transferor or transferee, as appropriate; (y) is not inconsistent with the intent and meaning of this definition; and (z) is for a valid business purpose and is not for the purpose of avoiding any obligation to pay an Open Space/Transit Management Fee.

For the purpose of this clause (b), a sale, conveyance or other transfer shall be deemed to have been made for no Consideration (x) if the only consideration is a book entry made in connection with an inter-company transaction in accordance with generally accepted accounting principles, or (y) if no Person which does not own a direct or indirect equity interest in the portion of the Resort Land sold, conveyed or transferred immediately prior to such sale, conveyance or transfer becomes the owner of a direct or indirect interest in such portion of the Resort Land by virtue of such conveyance or transfer, and the aggregate interest immediately prior to such conveyance or transfer of all owners of a direct or indirect interest in such portion of the Resort Land whose equity interest is increased on account of such sale, conveyance or transfer does not increase by

more than twenty percent (20%) (out of the total one hundred percent (100%) equity interest in such portion of the Resort Land), and no individual person is entitled to receive directly or indirectly any Consideration in connection with such sale, conveyance or transfer. The City and/or the Empire Pass Association may require that any person claiming an exemption under this clause (b) submit to the City and/or the Empire Pass Association, as applicable, true and accurate copies of all relevant documents relating to the conveyance or transfer for which such exemption is claimed, together with an opinion of counsel (such opinion and counsel to be reasonably acceptable to the City and/or the Empire Pass Association, as applicable) setting forth all of the relevant facts regarding such conveyance or transfer, stating an opinion that such conveyance or transfer is exempt from the definition of "Transfer" under this clause (b), and setting forth the basis for such opinion.

(c) Any sale, conveyance or transfer, whether outright or in trust, that is for the benefit of the transferor or the transferee's relatives (including without limitation the transferor's spouse), but only if there is no more than nominal Consideration for such sale, conveyance or transfer. For the purposes of this clause (c), (i) the relatives of a transferor shall include all lineal descendants of any grandparent of such transferor, and the spouses of all such descendants; (ii) any Person's stepchildren and adopted children shall be deemed descendants of that Person; and (iii) a distribution from a trust shall be treated as a transfer made by the grantors of the trust, in proportions of their respective total contributions to the trust.

(d) Any conveyance or transfer arising solely from the termination of any joint tenancy or any partition of property held under common ownership, or in connection with any divorce, except to the extent that additional Consideration is paid in connection therewith.

(e) Any conveyance, transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution.

(f) Any conveyance or transfer made solely for the purpose of confirming, correcting, modifying or supplementing a sale, conveyance or transfer previously recorded, making minor boundary adjustments, curing title defects or granting easements, rights-of-way or licenses.

(g) Any conveyance or transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second transfer in a series of transactions that includes only one effective Transfer of a portion of the Resort Land.

(h) Any conveyance or transfer solely of water or water rights, or minerals or interests in minerals.

(i) Any conveyance or transfer to secure a debt or other obligation or to release property that is security for a debt or other obligation, including conveyances and transfers in connection with the foreclosure of a deed of trust or mortgage or transfers in connection with a conveyance given in lieu of foreclosure.

(j) Any subsequent conveyance or transfer of a portion of the Resort Land involved in a "tax free" or "tax deferred" exchange under the Internal Revenue Code wherein the interim owner acquires such portion of the Resort Land for the sole purpose of reconveying such portion of the Resort Land in connection with the related exchange. In such an event, the first conveyance or transfer shall be a Transfer, and subsequent conveyances or transfers shall not be Transfers so long as the appropriate Open Space/Transit Management Fee has been paid with respect to the first conveyance or transfer in such exchange.

(k) Any conveyance or transfer to an entity that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (or any successor provision).

(l) Any conveyance or transfer made by a corporation or other entity for Consideration, (x) to any other corporation or entity that holds one hundred percent (100%) of the equity interest of the transferor, or (y) to a corporation or other entity whose stock or other equity interests are owned, directly or indirectly, one hundred percent (100%) by any other corporation or entity that holds one hundred percent (100%) of the equity interest of the transferor.

(m) Any transfer of any portion of the Resort Land by a Mortgagee or an affiliate of such Mortgagee to an affiliate of such Mortgagee or to a third party, where the intent of such transferee is not to make personal use of such portion of the Resort Land, but rather is to resell the same.

(n) Any transfer or conveyance from a partially-owned direct or indirect subsidiary entity to its direct or indirect parent entity where Consideration is paid for, or in connection with, such conveyance or transfer; however, unless such conveyance or transfer is otherwise exempt from being a Transfer, such conveyance or transfer shall be a Transfer only to the extent of the direct or indirect beneficial interest of the transferee in the transferor immediately prior to such conveyance or transfer. For example, if corporation A owns sixty percent (60%) of corporation B, and corporation B owns one hundred percent (100%) of corporation C and corporation C conveys a portion of the Resort Land to corporation A for Two million Dollars (\$2,000,000), then sixty percent (60%) of such conveyance would not be a Transfer, and the Open Space/Transit Management Fee for such conveyance would be payable only on Eight Hundred Thousand Dollars (i.e., forty percent (40%) of the Two Million Dollars (\$2,000,000) Consideration paid by corporation A).

(o) Any conveyance or transfer of a portion of the Resort Land pursuant to which the transferee acquires such portion of the Resort Land for the sole purpose of immediately reconveying such portion of the Resort Land, but only to the extent there is no

Consideration to such transferee for such reconveyance and such transferee receives no right to use or enjoyment of such portion of the Resort Land. To the extent Consideration is paid to, or for the benefit of, such transferee with respect to the reconveyance, the reconveyance shall be a Transfer.

(p) Any sale, conveyance or transfer of Affordable Housing.

“**Transferee**” shall, with respect to a given Transfer, mean each transferee in such Transfer, with each such transferee having joint and several liability for the related Open Space/Transit Management Fee.

“**Transferor**” shall, with respect to a given Transfer, mean each transferor in such Transfer.

“**Trustee**” shall have the meaning stated in Section 4.3 below.

ARTICLE 2

PROPERTY AND PARTIES SUBJECT TO DECLARATION

2.1 General Declaration. Declarant hereby declares that the Resort Land shall be held, conveyed, hypothecated, pledged, encumbered, leased and otherwise transferred, in whole or in part, subject to this Declaration, as amended from time to time. The provisions of this Declaration shall run with the Resort Land and shall be binding upon and inure to the benefit of Declarant and its successors in interest and the third-party beneficiary named in Section 2.2.

2.2 City as Third-Party Beneficiary. The City shall have the benefit of, and be a third-party beneficiary with respect to, the provisions of this Declaration.

ARTICLE 3

PAYMENT OF OPEN SPACE/TRANSIT MANAGEMENT FEE

3.1 Covenant to Pay. Declarant hereby covenants and agrees on behalf of each Transferee, and each other Owner by acceptance of a conveyance of fee title to any portion of the Resort Land (including without limitation any Residential Condominium Unit), whether or not expressed in the instrument of conveyance, shall be deemed to be a Transferee thereof and to covenant and agree, to pay to Empire Pass Association, upon the Transfer of such portion of the Resort Land, the Open Space/Transit Management Fee in the amount of one percent (1%) of the Gross Sales Price of the portion of the Resort Land so Transferred. Empire Pass Association hereby agrees to, upon receipt of such payment, forward one-half of such fee to the City, and Empire Pass Association shall be entitled to retain and use the remaining half of such fee for the purposes described in the City Development Agreement..

In addition:

3.1.1. Upon the occurrence of a Transfer, the related Transferee shall promptly cause the related Open Space/Transit Management Fee to be paid to the Empire Pass Association.

3.1.2 The Transferor in a proposed Transfer shall provide written notice of such Transfer to Empire Pass Association at least ten (10) days prior to the Scheduled closing of such Transfer. Such notice shall include the name and address of the related Transferee, the Gross Sales Price to be paid by the Transferee, the scheduled closing date for such Transfer, and such other information as may from time to time be reasonably requested by Empire Pass Association to calculate the amount of the Open Space/Transit Management Fee.

3.1.3. Each Open Space/Transit Management Fee shall be due and payable on closing of the related Transfer, and each portion of the Open Space/Transit Management Fee not paid to Empire Pass Association within ten (10) days after the date of such closing shall accrue interest until fully paid at the rate of five percent (5%) per annum over the rate of interest from time-to-time announced by Zions First National Bank, a national banking association, (or its successor) as its "prime rate" for commercial loans; such interest shall be payable on demand, computed monthly, and if unpaid, compounded monthly, not in advance, at the rate so calculated as of ten (10) days after the closing of such Transfer, and all such interest shall become due and owing to Empire Pass Association.

3.1.4 The obligation of a Transferee to pay an Open Space/Transit Management Fee shall be deemed to be a separate and independent covenant on the part of such Transferee. An Open Space/Transit Management Fee relating to a Transfer of the Resort Land (or any portion thereof including without limitation any Residential Condominium Unit) shall be the personal obligation of the related Transferee at the time such Open Space/Transit Management Fee first became due and payable.

ARTICLE 4

ENFORCEMENT OF PAYMENT OF OPEN SPACE/TRANSIT MANAGEMENT FEE/REMEDIES/LIEN

4.1. Empire Pass Association as Enforcing Body. Empire Pass Association shall have the exclusive right to enforce each and every provision of this Declaration relating to Open Space/Transit Management Fees and the payment thereof.

4.2 Creation of Lien; Personal Obligation. Each Open Space/Transit Management Fee due hereunder with respect to a portion of the Resort Land, together with related costs and expenses as described herein, shall be a charge, continuing servitude and lien (each a "Lien") upon such portion (and upon no other portion) of the Resort Land, and shall also be the personal obligation of the person or entity obligated to pay such Open Space/Transit Management Fee hereunder.

4.3 Empire Pass Association's Enforcement Remedies. If any person or entity fails to pay any Open Space/Transit Management Fee or other amount due hereunder when due hereunder,

Empire Pass Association may enforce payment of such fee or other amount by taking any one or more of the following remedies, concurrently or separately (and by exercising any of the remedies hereinafter set forth, Empire Pass Association shall not be deemed to prejudice or waive its right to exercise any other remedy):

4.3.1 Bring an action at law and recover judgment against such person or entity; or

4.3.2 Foreclose the Lien against the portion of the Resort Land (but against only the portion of the Resort Land) that was the subject of the Transfer for which such Open Space/Transit Management Fee is due, such foreclosure to be in accordance with the then existing Utah law relating to foreclosure of real estate mortgages or deeds of trust (including the right to recover any deficiency); the then existing method recognized under Utah law for the enforcement of a mechanic's lien that has been established in accordance with Chapter 1, Title 38, Utah Code Annotated, as amended from time-to-time; or any other means then permitted by applicable law, and such portion of the Resort Land may be redeemed from such foreclosure to the extent, and in the manner, then provided by applicable law. To facilitate the foreclosure of any such lien in the manner provided by applicable law, Declarant hereby designates Coalition Title Agency, Inc., a Utah corporation having an office in Park City, Utah as trustee ("Trustee"), and hereby grants and conveys the Resort Land, IN TRUST, to Trustee, as trustee with full power of sale to foreclose any such Lien as directed by Empire Pass Association. Empire Pass Association may, at any time, designate one or more successor trustees, in the place of the then designated Trustee, in accordance with the provisions of Utah law for the substitution of trustees under deeds of trust, in which case the designated successor trustee(s) shall be the "Trustee" under this Declaration. Trustee, and any successors, shall not have any right, title or interest in the Resort Land beyond those rights and interest necessary and appropriate to foreclose such Lien against such portion (and only against such portion) of the Resort Land. In any such foreclosure, the person or entity having the obligation to pay the related Open Space/Transit Management Fee shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the Lien being foreclosed. Empire Pass Association shall have the right to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey the portion of the Resort Land purchased at such sale.

4.4 Priority of Lien. The Lien shall be subject and subordinate to any lien for any tax or other public charge which by applicable law is expressly made superior to such Lien. Furthermore, (a) the Lien for any transfer fee payable with respect to any transfer by a landlord under any ground lease of all or any portion of its fee interest (excluding any fee transfers of residential units (whether whole owned condominium units, time shares, condo hotel units, fractional ownership units) made at any tenant's request) shall be subordinate to both the such tenant's ground leasehold interest and the lien of such tenant's leasehold mortgagee and (b) the Lien for any transfer fee payable with respect to any transfer by any Person of residential units (whether whole owned condominium units, time shares, condo hotel units, fractional ownership units) will be subordinate to the lien of tenant's leasehold mortgagee but not to the interest so transferred. The Lien shall also be subordinate to the First Mortgage affecting any portion of the Resort Land, and the First Mortgagee thereunder which comes into possession of or which obtains title to such portion of the Resort Land shall take the same free of such Lien and any

claim for unpaid Open Space/Transit Management Fees, but only to the extent such fees accrue prior to foreclosure of such First Mortgage, exercise of a power of sale thereunder, or taking of a deed or assignment in lieu of foreclosure of such First Mortgage. No Lien that is described in the preceding sentences as being subordinate to a ground lease or a First Mortgage (as applicable) or as not to burden a ground lease tenant or a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by Empire Pass Association from or against a ground lease tenant or a First Mortgagee, a successor in interest to such ground lease tenant or First Mortgagee, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, of the portion of the Resort Land affected or previously affected by the related First Mortgage.

4.5 Personal Liability. Notwithstanding the subordination of any Lien pursuant to Section 4.4 above, any person or entity who is liable for an Open Space/Transit Management Fee pursuant to this Declaration shall remain personally liable for such fee (and related collection costs) to the extent unpaid after the interest of such person or entity in the related portion of the Resort Land is terminated by mortgage foreclosure or deed of trust sale.

ARTICLE 5

TERM; AMENDMENTS; TERMINATION

5.1 Term; Method of Termination. This Declaration shall be effective on the date of recording hereof and shall continue in full force and effect, as amended from time to time, for a term of fifty (50) years from the date this Declaration is recorded. The term of this Declaration shall thereafter be automatically extended for successive periods of ten (10) years each, unless and until such time (which may be during any extension period) as this Declaration is terminated by a recorded certificate of or other document evidencing termination of this Declaration executed by the then owner of the fee title to and any lessee of the Resort Land or any portion thereof (other than and specifically excluding the fee owner and any lessee of any Residential Condominium Unit), the City and the Empire Pass Association.

5.2 Amendments. This Declaration may be amended by the recording of a certificate or other document evidencing such amendment that states the full text of such amendment and is executed by the then owner of the fee title to and any lessee of the Resort Land or any portion thereof (other than and specifically excluding any lessee of any Residential Condominium Unit), all of the other Owners that will be bound by such amendment, the City and the Empire Pass Association.

ARTICLE 6

MISCELLANEOUS

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

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

6.3 References to Declaration in Instruments of Conveyance. Any instrument that hereafter conveys any portion of the Resort Land may incorporate the covenants and agreements set forth in this Declaration by reference to this Declaration; but regardless of whether any such reference is made in any such instrument, each and all of the covenants and agreements set forth in this Declaration shall be binding upon any Person claiming any interest in such portion of the Resort Land by and through such instrument.

6.4 Successors and Assigns. The provisions of this Declaration shall be binding upon Declarant, and each other Owner and their respective successors and assigns with respect to the Resort Land (or any portion thereof).

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

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

6.7 Notices. All notices, disclosures, demands, acknowledgements, consents, approvals, statements, requests, responses and invoices to be given under this Declaration shall be in writing, signed by or on behalf of the Person giving such notice, disclosure, demand, acknowledgement, consent, approval, statement, request, response and/or invoice, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To Declarant: Mountain Developments I, Inc.
890 Main Street
P.O. Box 5109
Park City, Utah 84060
Attn: David J. Smith

with copy to: Paul Hastings, Janofsky & Walker
75 East 55th Street
New York, New York 10022
Attn: Bruce DePaola, Esq.

To Empire Pass Association: Empire Pass Master Owners Association, Inc.

890 Main Street
P.O. Box 5109
Park City, Utah 84060
Attn: David J. Smith

with copy to:

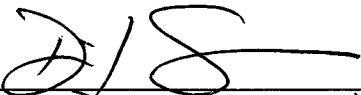
Paul Hastings, Janofsky & Walker
75 East 55th Street
New York, New York 10022
Attn: Bruce DePaola, Esq.

Any such Person may from time to time, by notice given to the other Person listed above pursuant to the terms of this Section 6.7, change the address to which notices, disclosures, demands, acknowledgements, consents, approvals, statements, requests, responses and invoices to such party are to be sent or designate one or more additional persons to whom notices, disclosures, demands, acknowledgements, consents, approvals, statements, requests, responses and invoices are to be sent.

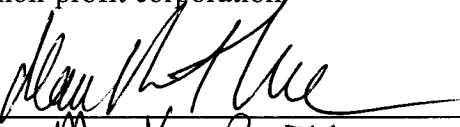
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IN WITNESS WHEREOF, the Declarant and Empire Pass Association have executed this Declaration as of the day first above written.

MOUNTAIN DEVELOPMENTS I, INC.,
a Delaware corporation

By: 
Name: David J. Smith
Title: Authorized Signing Officer

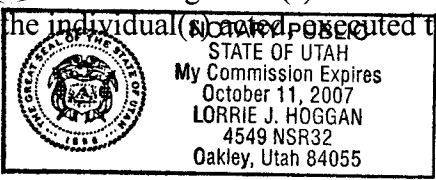
**EMPIRE PASS MASTER OWNERS
ASSOCIATION, INC.,**
a Utah non-profit corporation

By: 
Name: Mark R. Thorne
Title: President

STATE OF)
Utah

) ss.:
COUNTY OF)
Summit

On the 17th day of May, 2007 before me, the undersigned, personally appeared David Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) (is) subscribed to the within instrument and acknowledged to me that (he) executed the same in (his) capacity(ies), and that by (his) signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

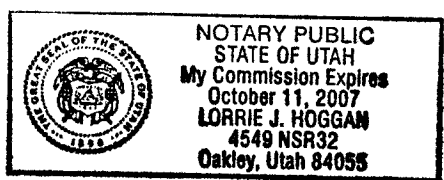


Lorrie Hoggan, Notary Public
(Signature and Office of Individual taking Acknowledgment.)

STATE OF)
Utah

) ss.:
COUNTY OF)
Summit

On the 17th day of May, 2007 before me, the undersigned, personally appeared Mark R. Thorne, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) (is) subscribed to the within instrument and acknowledged to me that (he) executed the same in (his) capacity(ies), and that by (his) signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Lorrie Hoggan, Notary Public
(Signature and Office of Individual taking Acknowledgment.)

EXHIBIT A

Legal Description of Demised Premises

Lot C of Parcel B-2 Empire Village Subdivision, according to the official plat thereof as filed in the records of Summit County, Utah.