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**TRAVERSE MOUNTAIN COMMERCIAL DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**



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THIS DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 8th day of October, 2004 by Traverse Mountain Commercial Investments, LLC, a Utah limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of certain parcels of real property located in the City of Lehi, Utah County, Utah, more particularly described on Exhibit "A" attached hereto upon which Declarant intends to develop an integrated retail, commercial, entertainment, residential, office and/or community project (the "Project").

B. Declarant plans to develop and plan for the development of the Project as an integrated retail, commercial, entertainment, residential, office and/or community project for the mutual benefit of all real property in the Project and, for such purposes, does hereby fix and establish the "Restrictions" (as hereinafter defined), upon and subject to which the Project, or any part thereof, shall be improved, held, leased, sold and/or conveyed. It is the intent of this Declaration that each and all of the easements, covenants, conditions and restrictions set forth in this Declaration are for the mutual benefit of the "Parcels" (as hereinafter defined) and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration shall run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the rights of way, easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels (except to the extent otherwise stated herein) and constitute covenants running with the land pursuant to applicable law.

**ARTICLE 1
DEFINITIONS**

1.1 "Architectural Guidelines" shall mean the standardized architectural design guidelines developed by Declarant for the Project as described in Section 3.2.

1.2 "Architectural Review Committee" shall mean those individuals (the number and identity of which shall be determined by Declarant in its sole and absolute discretion) appointed by Declarant for purposes of reviewing each Owner's detailed plans and specifications for a Building, sign, landscaping or any other improvement or structure in accordance with Section 3.2 or the alteration of a Building, sign, landscaping or any other structure in accordance with Section 3.3. Any Owner of a Retail Building whose interior Floor Area exceeds 150,000 square feet shall be allowed to designate one (1) member on the Architectural Review Committee; provided, however, that notwithstanding the number of members of the Architectural Review Committee, Declarant shall always maintain full and

complete voting and actual control over all decisions, votes and actions of the Architectural Review Committee.

1.3 "Assessment Lien" shall mean that lien created by reason of the delinquency described in and upon recordation of a Notice of Assessment Lien.

1.4 "Building" shall mean any enclosed structure (excluding parking structures and parking facilities) designated for the exclusive use of an occupant or limited occupant(s), as the case may be, placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any appurtenant supports, service areas and other outward extensions.

1.5 "Building Area" shall mean the limited areas of the Project within which Buildings may be constructed, placed or located.

1.6 "Commercial Marketing Fee" Any Owner of a Retail Building whose interior Floor Area exceeds 150,000 square feet shall not be assessed a Commercial Marketing Fee if said Owner promotes the project and/or the location of the Project in their national, regional and local advertising. The Commercial Marketing Fee shall be used by Declarant for the marketing and promotion of the Project and the sale or leasing of Parcels (or portions thereof) within Project or in any other manner as determined by Declarant in its sole and absolute discretion.

1.7 "Common Areas" shall mean all the areas within the exterior boundaries of the Project which are made available for the general use, convenience and benefit of all Permittees of a particular Parcel (or Parcels) and/or the public. Except as otherwise set forth in this Declaration, Common Areas shall include the following areas within the exterior boundaries of the Parcels: (i) all parking areas, multi-level parking decks and underground parking facilities (it being understood, however, that, pursuant to the terms of this Declaration, certain parking facilities, including those located on a Residential Parking Parcel and/or on a Hotel Parking Parcel, may not be available for the non-exclusive use of all Permittees of the Project); (ii) all roadways and driveways; (iii) all sidewalks and walkways; (iv) all landscaped and planted areas, including areas immediately adjacent to the Project such as, but not limited to, landscaped medians; and (v) all lobby and waiting areas (including office building and hotel lobbies but exclusive of sections exclusively leased to individual tenants). Notwithstanding anything to the contrary contained in this Declaration or elsewhere, any rights granted pursuant to this Declaration relating to any property that is the subject of any past, present or future easement agreement to which Lehi City, Utah County or the State of Utah is a party shall be subject to Declarant's rights, obligations and restrictions, as set forth in such easement agreement(s).

1.8 "Common Area Assessment" shall mean the annual assessment fixed and assessed by Declarant for the Project as described in Section 5.11(a). As part of the Common Area Assessment, the Manager shall be paid a fee comparable to the market price paid to the other managers of similar projects in the State of Utah; provided, however, the fees paid to Manager for his/her/its services shall not exceed six percent (6%) of the actual expenditures made by Declarant and/or Manager for the services provided in accordance with this Declaration, and any calculation of that percentage shall exclude any expenditures made for (i) capital improvements (such as, but not limited to, landscaping, sidewalks or parking lots

in the Common Areas), (ii) insurance premiums, (iii) utilities and (iv) Taxes, but shall include upkeep, maintenance, repair and similar costs..

1.9 "Communication Facilities" shall mean: (1) improvements, equipment and facilities for (i) telecommunications, (ii) transfer of audio, video and data signals, (iii) transfer of any other signals used for transmission of intelligence by electrical, light wave, wireless frequencies or radio frequencies, and (iv) any other methods of communication and information transfer; (2) all associated improvements, equipment and facilities, including but not limited to outside plant ducts, manholes, riser cables, horizontal cabling, communications equipment, protection equipment, communications rooms and closets, antennas, communications outlets (voice, data and video), power outlets, power conditioning and UPS, cross connect hardware, patch panels, racks, cable trays, raised flooring, cable raceways, jumper cables, copper, fiber, and coaxial cables, towers, broadcasting and receiving devices, conduits, junction boxes, wires, cables, fiber optics, and any other necessary or appropriate enclosures and connections; and (3) power generation serving the improvements, equipment and facilities described in subparts (1) and (2) of this sentence. Declarant intends to have the term "Communication Facilities" be interpreted as broadly as possible and to include relocated facilities, expansion of facilities, and/or facilities used for any and all new technology that replaces any Communication Facilities. If there is a doubt as to whether an item fits within the definition of Communication Facilities, the term is to be interpreted to include that item.

1.10 "Communication Services" shall mean Communication Facilities, improvements, and services for cable television, communications, telecommunications, antenna, high-speed data, telephony and all related vertical services, intranet, internet, information transfer (including wireless transfer), transmission, video and other similar services as well as all standard and enhanced voice, video, and data services which shall include, but shall not be limited to telephone, television, and internet services (including world wide web access, email, newsgroups, filtering, and related internet services), pay-per-view video and video-on-demand services, video surveillance and security, enhanced data services, data back-up and restoration, and software and content distribution and streaming, and voice and video over IP services. Declarant may expand this definition in any amendment or supplement to this Declaration.

1.11 "Construction Guidelines" shall mean the standardized construction guidelines developed by Declarant for the Project as described in Section 3.2.

1.12 "Cultural Building Space" shall mean any Parcel (or portion thereof) located within the Project and used for cultural purposes (such as museum, art or other artistically or historically educational purposes), which shall be designated as Cultural Building Space by Declarant at any time and from time to time pursuant to Section 9.3.

1.13 "Declaration" shall mean this Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements.

1.14 "Default Rate" shall mean that annual rate of interest equal to the interest rate per annum published by the Wall Street Journal as the prime rate (or in the event the Wall Street Journal no longer publishes a prime rate, then the, prime rate or reference rate announced by the then largest chartered bank in Utah in terms of deposits) from time to time

plus eight percentage (8%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.15 "Floor Area" shall mean (i) with respect to a Retail Building Parcel, the actual number of square feet of space contained on each floor within each separately demised space within a Retail Building, including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Retail Building and from the center of interior demising walls which separate independently demised premises from other premises; provided, however, that the following areas shall not be included in such calculations (except to the extent the following areas are taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception): incidental office space located on other than the main level of any particular premises used by a Permittee for administrative purposes and which is not open or accessible to the general public; mezzanine space used for projector room purposes in a permitted theatre; emergency exit areas (located outside of theatre auditoriums and waiting and concession areas), exit corridors and adjacent stairwells designated for use by a permitted theatre; and space attributable to any multi-deck, platform or structural level used for the storage of merchandise and located vertically above ground floor; (ii) with respect to an Office Building Parcel, all "Rentable Area" (as defined and determined in accordance with BOMA standards (Building Owners and Managers Association Method for Measuring Floor Area in Office Buildings, ANSI Z65.1-1996)) contained within an Office Building; (iii) with respect to a Residential Building Parcel, the actual number of square feet of space contained on each floor within each Residential Building (as hereinafter defined) located on a Residential Building Parcel, including lobby areas and basement space, as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the co-exclusive use of other occupants of the subject Residential Building and from the center of interior demising walls which separate independently demised premises from other premises; (iv) with respect to a Hotel Building Parcel, the actual number of square feet of space contained on each floor within a Hotel Building, including lobby, restaurant and retail areas (as applicable), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently separated spaces or premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Hotel Building and from the center of interior demising walls which separate independently separated spaces or premises; and (v) with respect to all other Buildings, the actual number of square feet of space contained on each floor within each separately demised space within a Building, including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Building and from the center of interior demising walls which separate independently demised

premises from other premises. Notwithstanding anything to the contrary herein, in no event shall Floor Area for any Building located on a Residential Building Parcel, Office Building Parcel or Hotel Building Parcel include space used for Building utilities or mechanical equipment. Within thirty (30) days of a request, the Owner of a Parcel shall certify to the Declarant or Manager the amount of Floor Area applicable to each Building on its Parcel. If any Parcel Owner causes an as-built survey to be prepared with respect to any portion of the Project, upon request, such Parcel Owner shall furnish a copy of the survey to the Declarant or Manager for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building (or any portion thereof), the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Owner upon whose Parcel such Building is located, shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Owner requesting the same.

1.16 "Force Majeure" shall mean acts of God, earthquake, fire, explosion, war, civil insurrection, acts of public enemy, acts of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornados, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

1.17 "Governmental Restrictions" shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.18 "Hotel Buildings" shall mean any building located on a Hotel Building Parcel, used primarily for temporary housing/hotel purposes and otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Hotel Buildings, as more particularly set forth in Section 2.2 below. A "Hotel Building" shall mean any such Hotel Buildings individually.

1.19 "Hotel Building Parcels" shall mean any Parcels (or portions thereof) which may be designated as "Hotel Building Parcels" by the Declarant at any time or from time to time pursuant to Section 9.3, upon which a Hotel Building is or will be located. A "Hotel Building Parcel" shall mean any of such Parcels (or portions thereof), individually.

1.20 "Hotel Common Area" shall mean all the areas within a Hotel Building and a Hotel Parking Parcel which are made available for the general use, convenience and benefit of all Permittees of the Hotel Building Parcels (or other Parcels) and/or the public, including lobby and waiting areas, landscaped areas and other exterior areas located on the Hotel Building Parcels, except those located around the perimeter of the Project (which such areas shall be included generally in "Common Area" of the Project). Without limitation, Hotel Common Area shall include the following areas: (i) all parking areas, including parking structures, located on the Hotel Parking Parcels adjacent to the Hotel Building Parcels (the "Hotel Parking Facilities"); and (ii) all roadways and driveways leading from public streets to the Hotel Parking Facilities.

1.21 "Hotel Parking Parcels" shall mean any Parcels (or portions thereof) which may be designated as "Hotel Parking Parcels" by Declarant at any time and from time to time pursuant to Section 9.3, upon which the parking facilities for use in connection with the Hotel Building Parcels are or will be located. Notwithstanding anything to the contrary contained in this Declaration, the Hotel Parking Parcels shall be used exclusively for vehicular parking and uses incidental thereto. A "Hotel Parking Parcel" shall mean any of such Parcels, individually.

1.22 "Index" shall mean the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau") "All Items" for All Urban Consumers, U.S. City Average (1982-84=100). Should the Bureau discontinue the publication of the Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as determined by Declarant shall be substituted therefor.

1.23 "Manager" shall mean a Person so designated by Declarant to perform the obligations of "Manager" under this Declaration. At any time, without the consent of any Owner or Declarant, Manager shall have the right to assign its rights and obligations as "Manager" under this Declaration to any entity or Person controlling, controlled by or under common control with Traverse Mountain Commercial Investments, LLC, a Utah limited liability company. At any time under this Declaration, Declarant shall have the right, without the consent of any Owner, to: (i) assume any or all of the rights and obligations of "Manager" under this Declaration, and/or (ii) assign any or all of its rights as "Declarant" under this Agreement to Manager.

1.24 "Mortgage" shall mean an indenture of mortgage or deed of trust on a Parcel or, a "Sale and Leaseback" (meaning a transaction whereby an Owner conveys its fee or a leasehold estate in such Parcel and such conveyance is followed immediately by a leaseback or sub-leaseback of the entire interest so conveyed or the improvements thereupon to such Owner, or to a party wholly controlled by such Owner).

1.25 "Mortgagee" shall mean any mortgagee under a Mortgage, or trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any Parcel shall be subordinate to this Declaration.

1.26 "Notice of Assessment Lien" shall mean a notice recorded in the office of the County Recorder, Utah County, Utah, and such other place as may be required by law, by any person to whom is owed any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration stating that said assessment or sum has not been paid and that the applicable grace period for such payment (if any) has expired.

1.27 "Office Building" shall mean any building located on an Office Building Parcel, used primarily for office purposes, and otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Office Buildings, as more particularly set forth in Section 2.4 below. An "Office Building" may be a physical portion of a Building that includes office space, retail space and/or parking facilities; in such event "Office Building" refers only to the portion of the larger Building that is located on or within the Office Building Parcel.

1.28 "Office Building Parcels" shall mean those certain Parcels (or portions thereof) which shall be designated as "Office Building Parcels" by Developer at any time and from time to time in accordance with Section 9.3, upon which an Office Building or Office Buildings are or will be located. An "Office Building Parcel" shall mean any of such Parcels, individually.

1.29 "Office Common Area" shall mean all the areas within an Office Building which are made available for the general use, convenience and benefit of all Permittees of an Office Building Parcel (or other Parcels) and/or the public, including all lobby and waiting areas, landscaped areas and other exterior areas located on an Office Building Parcel, except those located around the perimeter of the Project (which such areas shall be included generally in "Common Area" of the Project).

1.30 "Office Parking Parcels" shall mean those Parcels (or portions thereof) which shall be designated as "Office Parking Parcels" by Developer at any time and from time to time pursuant to Section 9.3, upon which parking facilities for use in connection with Residential Building Parcels, Office Building Parcels, Retail Building Parcels or Hotel Building Parcels are or will be located. An "Office Parking Parcel" shall mean any of such Parcels, individually.

1.31 "Owner" shall mean each Person, who, at any given time, holds fee title to any full Parcel, or a ground lessee of any full Parcel (provided the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the office of the County Recorder, Utah County, Utah). An Owner shall not include tenants and sublessees of less than an entire Parcel. In the event, at any time, that an interest in the same Parcel shall be vested in more than one person, such persons shall designate one of them to act on behalf of all such persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed and acknowledged by each such person and a copy of such designation shall be given to the Declarant or Manager in accordance with the notice provisions of this Declaration. An original of such designation shall be recorded in the office of the County Recorder, Utah County, Utah. A majority of such persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

1.32 "Parcel" or "Parcels" shall mean those several parcels which together comprise the Project and which are designated (either in this Declaration or by future modification of this Declaration) as a Cultural Building Space, a Hotel Parcel, a Hotel Parking Parcel, an Office Parcel, a Residential Building Parcel, a Residential Parking Parcel, a Retail Parking Parcel, a Retail Building Parcel and/or Common Area and such further subdivision of any such Parcel as may be approved by Declarant. Notwithstanding anything to the contrary in this Declaration, in Declarant's sole discretion, Declarant shall be entitled to designate any single Parcel (or any portions thereof) for use as one or more of the following: a Cultural Building Space, a Hotel Parcel, a Hotel Parking Parcel, an Office Parcel, a Residential Building Parcel, a Residential Parking Parcel, a Retail Parking Parcel, a Retail Building Parcel and/or Common Area.

1.33 "Parties" shall mean the Owners.

1.34 "Permittees" shall mean the Owners of any and all portions of the Project and their respective heirs, successors, assigns, grantees, tenants and subtenants and all persons who now hold, or hereafter hold, portions of real property within the Project, or any leasehold estate, or building space thereon; and respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.35 "Person" shall mean any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.36 "Prohibited Uses" shall mean any use or operation which is inconsistent with the development or operation of the Project as a first class retail, commercial, entertainment, residential, office and/or community project, as so operated, as reasonably determined by Declarant. Included among the uses or operations which are objectionable are the following uses or operations, or any uses or operations which produce, are accompanied by or involve the following characteristics, which list is not intended to be all-inclusive:

- a. Any use which constitutes a public or private nuisance.
- b. Any use which produces noise or sound which may be heard outside of any Building and is objectionable due to intermittence, beat, frequency, shrillness or loudness.
- c. Any use which produces any noxious odor which may be smelled outside any Building other than such odors as are typically incidental to first class retail operations, including odors typically incidental to restaurants, fast food restaurants or other food service establishments.
- d. Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers).
- e. Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); provided, however, this restriction shall not prohibit annual or other periodic displays of fireworks in connection with national, regional or other holidays or events of significance in the area of the Project.
- f. Any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture, freight, or mining operation.
- g. Any mobile home or trailer court, mortuary, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first class pet stores shall be permitted within the Project; provided further, however, subject to reasonable restrictions imposed by Declarant on the quantity of vehicles stored or inventoried at any one time on the property, any Owner of a Retail Building whose interior Floor Area exceeds 150,000 square feet shall be allowed to sell new (but not used) boats, trailers, off-road and all-terrain vehicles, RVs

and any other type of vehicle customarily sold by a retailer that specializes in hunting, fishing, camping and outdoor equipment on the condition that the sale of any such vehicles is not the primary line of business of any such Retail Building Owner and that the general parameters of the display and presentation of any such Retail Building Owner shall be reviewed and approved by the Declarant.

- h. Any operation for drilling for and/or removal of subsurface substances.
- i. Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes.
- j. Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital or similar use.
- k. Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions.
- l. Any automobile body and fender repair shop operation.
- m. Any off-track betting facility.
- n. Any pawn shop or "second hand" store.
- o. Any funeral home.
- p. A flea market, auction and craft fair.
- q. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an Owner to determine its own selling prices nor shall it preclude the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).
- r. Except for that certain real property located in Lehi City, Utah County, Utah, as described on Exhibit "B" attached hereto (the "Cabela's Retail Building Parcel"), for a period of twenty (20) years from the date of this Declaration there shall be no other retailers who devote more than fifteen percent (15%) of the retail selling space in their store or in any temporary kiosk or tent sale to any one or any combination of the following conflicting product categories: (1) hunting products including, but not limited to, such items as firearms, handguns, ammunition, optics, hunting apparel, hunting footwear, ATV and SUV accessories and hunting accessories; (2) fishing products including, but not limited to, such items as rods, reels, waders, fishing lures, fishing footwear, marine products, boats, motors, fishing electronics and fishing accessories; and (3) camping products including, but not limited to, such items as tents, sleeping bags, cookware, hiking footwear and related camping accessories. Notwithstanding the fifteen percent (15%) retail selling space requirement set forth above, in no event shall a retailer have more than 5,000 square feet of retail selling space devoted to such items and the following retail stores (using the industry standard in which they are currently engaged) shall automatically be considered Prohibited Uses for purposes of this Declaration without regard to the

percentage of space devoted to conflicting product categories set forth in this Section 1.36(r): Bass Pro, Scheels, Garts, REI, Gander Mountain, Dick's, Galyan's, Academy, Lands End, Eddie Bauer, L.L. Bean, West Marine, Herter's, Dunn's, Sierra Trading Post, Mac's Sporting Goods, Orvis, Columbia Outlet, Woolrich Outlet, Mossy Oak Outlet, Sportsman's Guide, Boater's World, Mills Fleet Farm, Oshman's, Frontiersman, Campmor, The Sports Authority, Sportmart, and Sportsman Warehouse. Notwithstanding the provisions of this Section 1.36(r), the following examples of retail stores (using the industry standard in which they are currently engaged) would not be considered Prohibited Uses for purposes of this Declaration: Outpost, Meijer's, Land's End Outlet, Eddie Bauer Outlet, WalMart (provided that the hunting, fishing and camping departments are not any larger than that which exists in a typical WalMart), MC Sports (provided that the store has no outdoor center and sells "team sports" merchandise only), BIG 5 and Dunham's (provided that any such Dunham's store has no outdoor center and sells "team sports" merchandise only).

The restrictions set forth in Section 1.36(r) above shall terminate and be of no further force or effect upon the earlier of: (1) the failure of the Owner of the Cabela's Retail Building Parcel to continuously operate, use and occupy the improvements on the Cabela's Retail Building Parcel for a period of ninety (90) consecutive days, unless the failure to continuously operate, use or occupy said Parcel is due to a Force Majeure event or extensive remodeling, in which event the Owner of the Cabela's Retail Building Parcel shall begin to operate, use and occupy the improvements on the Cabela's Retail Building Parcel as soon as reasonably practical, (2) the mutual written consent to such termination (or a waiver granted to any particular Parcel) by Declarant and the Owner of the Cabela's Retail Building Parcel, or (3) twenty (20) years from the date of this Declaration. Notwithstanding anything herein to the contrary, the restrictions set forth in Section 1.36(r) above shall not apply to merchandise in retail stores that are not primarily or regularly involved in the sale of sporting goods.

1.37 "Residential Building" shall mean any residential dwelling, apartment building, town home or condominium complex building located on a Residential Building Parcel and otherwise used in accordance with the terms and provisions of this Declaration applicable to the use of Residential Buildings, as more particularly set forth in Section 2.5 below. A "Residential Building" may be a physical portion of a Building that includes office space, retail space and/or parking facilities; in such event "Residential Building" refers only to the portion of the larger Building that is located on or within a Residential Building Parcel or a Residential Parking Parcel.

1.38 "Residential Building Parcels" shall mean those Parcels (or portions thereof) which shall be designated as "Residential Building Parcels" by Declarant at any time and from time to time pursuant to Section 9.3. A "Residential Building Parcel" shall mean any of such Residential Building Parcels, individually.

1.39 "Residential Common Area" shall mean all the areas within the exterior boundaries of a Residential Building Parcel and Residential Parking Parcel which are made available for the general use, convenience and benefit of all Permittees of a Residential Building Parcel (or other Parcels) and/or the public. Without limitation, Residential Common Area shall include the following areas within the exterior boundaries of a Residential Parcel: (i)

all parking areas, including underground parking facilities located within a Residential Parking Parcel (each a "Residential Parking Facilities"); (ii) all roadways and driveways leading from public streets to a Residential Parking Facilities; (iii) all sidewalks and walkways; and (iv) all landscaped and planted areas, except those located around the perimeter of the Project (which such areas shall be included generally in "Common Area" of the Project).

1.40 "Residential Parking Parcels" shall mean those Parcels (or portions thereof) which shall be designated as "Residential Parking Parcels" by Declarant at any time and from time to time pursuant to Section 9.3. Notwithstanding anything to the contrary contained in this Declaration, the Residential Parking Parcels shall be used exclusively for vehicular parking and uses incidental thereto. A "Residential Parking Parcel" shall mean any of such Parcels, individually.

1.41 "Restrictions" shall mean those easements, covenants, restrictions, liens and charges fixed and established upon the Project pursuant to this Declaration.

1.42 "Retail Building" shall mean any building located on a Retail Building Parcel, used primarily for retail selling, service commercial (as described in Section 2.7 below), restaurant, theatre, and/or other commercial purposes and/or otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Retail Buildings, as more particularly set forth in Section 2.7 below. A "Retail Building" may be a physical portion of a Building that includes office space, retail space and/or parking facilities; in such event "Retail Building" refers only to the portion of the larger Building that is located on or within a Retail Building Parcel or a Retail Parking Parcel.

1.43 "Retail Building Parcels" shall mean those Parcels (or portions thereof) which shall be designated as "Retail Building Parcels" by the Declarant at any time and from time to time pursuant to Section 9.3, upon which Retail Buildings are or will be located. A "Retail Building Parcel" shall mean any of such Parcels, individually.

1.44 "Retail Common Area" shall mean all the areas within the exterior boundaries of a Retail Building Parcel and Retail Parking Parcel which are made available for the general use, convenience and benefit of all Permittees of a Retail Building Parcel (or other Parcels) and/or the public. Without limitation, Retail Common Area shall include the following areas within the exterior boundaries of a Retail Parcel: (i) all parking areas located within a Retail Parking Parcel (each a "Retail Parking Facility"); (ii) all roadways and driveways leading from public streets to a Retail Parking Facility; (iii) all sidewalks and walkways; and (iv) all landscaped and planted areas, except those located around the perimeter of the Project (which such areas shall be included generally in "Common Area" of the Project)

1.45 "Retail Parking Parcels" shall mean those Parcels (or portions thereof) which shall be designated as "Retail Parking Parcels" by Developer at any time and from time to time pursuant to Section 9.3, upon which parking facilities for use in connection with Retail Building Parcels, Office Building Parcels or Hotel Building Parcels are or will be located. A "Retail Parking Parcel" shall mean any of such Parcels, individually.

ARTICLE 2 USE IN GENERAL

2.1 Lawful Use. Except as otherwise limited pursuant to this Declaration, the Project may be used for any lawful retail, residential, commercial, entertainment, office, cultural and/or community purpose which has been designated and approved in writing by Declarant as provided herein (as this Declaration is amended from time to time) and which is not specifically prohibited herein. No portion of the Project shall be used for a Prohibited Use. Notwithstanding anything to the contrary in this Declaration, in Declarant's sole discretion, Declarant shall be entitled to designate any single Parcel (or any portions thereof) for use as one or more of the following: a Cultural Building Space, a Hotel Parcel, a Hotel Parking Parcel, an Office Parcel, a Residential Building Parcel, a Residential Parking Parcel, a Retail Parking Parcel, a Retail Building Parcel and/or Common Area.

2.2 Use of Hotel Building Parcels. Hotel Building Parcels shall be used only for first class hotel purposes, and ancillary interior administrative office and meeting/ballroom purposes. In addition, the ground floor level of any Hotel Building, may be used, on an incidental basis, for retail and restaurant uses (as limited pursuant to the further provisions of this Section below) comparable to those typically operated at other first class hotel facilities in Salt Lake City, Utah. Notwithstanding anything herein to the contrary, retail uses operated in a Hotel Building shall be limited to the operation of newsstands, gift shops and shops primarily selling sundry items. Hotel Buildings shall contain not more than one (1) sit-down, full service restaurant and one (1) coffee shop or quick service restaurant. Hotel Building Parcels shall be used for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld; provided, however, Declarant shall have the right, in its sole discretion, to refuse to consent to a change in use of the Hotel Building Parcels to a primarily retail, commercial, permanent residential, industrial, primarily office or entertainment use or any other use which is inconsistent with the zoning for the Hotel Building Parcels. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, all window treatments, roof materials and exterior colors and materials utilized on the Hotel Building Parcels shall be subject to the prior written approval of Declarant, in order to maintain aesthetic harmony within the Project. In addition, any and all balcony areas located on the Hotel Building Parcels shall be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.3 Use of Hotel Parking Parcels. The Hotel Parking Parcels shall be used only for the operation of the Hotel Parking Facilities (and uses incidental thereto) and for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld. Notwithstanding anything in this Declaration to the contrary, the Hotel Parking Facilities may be subject to the exclusive use of patrons, occupants and users of the Hotel Building Parcels and shall only consist of surface parking.

2.4 Use of Office Building Parcels. The Office Building Parcels shall be used only for first class office purposes; provided, however, the main floor level (meaning the level on which the main building lobby through which pedestrian access to the remainder of the Project is located) of any Office Building may be used, on an incidental basis, for retail uses typical in other first class office buildings in Salt Lake City such as (but not limited to) newsstand, gift shop, sundry and/or coffee shop (it being understood that no Office Building shall contain more than one (1) coffee shop). The Office Building Parcels shall be used for no other purposes without the prior written consent of Declarant, which shall not be unreasonably withheld; provided, however, Declarant shall have the right, in its sole discretion, to refuse to

consent to a change in use of any Office Building Parcel to a retail, commercial, residential, industrial or entertainment use or any other use which is inconsistent with the zoning for the Office Parcels. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, each Owner of an Office Building Parcel shall cause the tenants, occupants and users of its respective Office Buildings to utilize only those window treatments, roof materials, and exterior colors and materials approved in writing by Declarant for use in the Project, it being the intent of Declarant that all Office Building Parcels located within the Project use substantially the same interior window treatments, roof materials, and exterior colors and materials for aesthetic harmony. In addition, any and all balcony areas located within an Office Building Parcel shall be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.5 Use of Residential Building Parcels. The Residential Building Parcels shall be used only for multi-family apartment and condominium purposes and for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld; provided, however, Declarant shall have the right, in its sole discretion, to refuse to consent to a change in use of any Residential Building Parcel to a retail, commercial, office, industrial or entertainment use or any other use which is inconsistent with the zoning for the Residential Building Parcels. No business operation shall be performed or carried out on any Residential Building Parcel without the prior written consent of Declarant, which consent may be withheld in Declarant's sole but good faith discretion; provided, however this restriction shall not prohibit the incidental use of individual residential units on Residential Building Parcels for the operation of home offices or businesses so long as any such offices and businesses are not open or available to the general public. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, each Owner of a Residential Building Parcel shall cause the tenants, occupants and users of its respective Residential Buildings to utilize only those window treatments approved by Declarant for use in the Project, it being the intent of Declarant that all Residential Building Parcels located within the Project use substantially the same interior window treatments for aesthetic harmony. In addition, any and all balcony areas located within a Residential Building Parcel shall be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.6 Use of Residential Parking Parcels. The Residential Parking Parcels shall be used only for the operation of the Residential Parking Facilities (and uses incidental thereto) and for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld. Notwithstanding anything in this Declaration to the contrary, the Residential Parking Facilities may be subject to the exclusive use of patrons, occupants and users of the Residential Buildings to which they correspond.

2.7 Use of Retail Building Parcels. The Retail Building Parcels shall be used for any retail (including entertainment and restaurant), service commercial and any other purposes permitted under applicable zoning and other laws, which have been approved, in advance and in writing, by the Declarant and not otherwise prohibited under this Declaration.

2.8 Use of Retail Parking Parcels. The Retail Parking Parcels shall be used only for the operation of Retail Parking Facilities (and uses incidental thereto) and for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld. The Retail Parking Facilities shall be available for use by all Permittees of the Project, on a non-

exclusive (except as may otherwise be permitted pursuant to this Declaration) basis (subject to the other provisions of this Declaration, including Section 4.5 below and the "Parking Guidelines" referenced therein).

2.9 Use of Cabela's Retail Building Parcel. Except as otherwise approved (which approval shall not be unreasonably withheld) by Declarant in writing, the Cabela's Retail Building Parcel shall be used only for a single approximately 150,000 sq. ft. retail sporting goods store selling hunting products, fishing products, camping products and other outdoor gear as further described in Section 1.36(r), and may also include a single food service and refreshment establishment inside of the Building, as well as certain food vendors offering refreshments outside of the Building as approved in writing by Declarant which approval shall not be unreasonably withheld. The Cabela's Retail Building Parcel may include a museum and may be subdivided into a condominium structure (but only for the purpose of separating the museum from the retail store through use of a condominium structure) with Declarant's prior written approval which shall not be unreasonably withheld. Unless the prior written approval of Declarant, which may be granted or withheld in Declarant's sole discretion), all uses for the Cabela's Retail Building Parcel other than those expressly described above shall be a Prohibited Use hereunder. Unless otherwise agreed to by the Owner of the Cabela's Retail Building Parcel, there shall be no Common Areas or Retail Common Area located on the Cabela's Retail Building Parcel. However, notwithstanding the lack of Retail Common Area or Common Area on the Cabela's Retail Building Parcel, the Owner of the Cabela's Retail Building Parcel shall maintain such Parcel and all improvements, landscaping, signs and the like in first class condition and in so doing shall perform each and every obligation set forth in Section 5.8(a-i) hereof. If the Owner of the Cabela's Retail building Parcel fails to so maintain said Parcel and all improvements, landscaping, signs and the like thereon, Declarant and/or Manager shall have the right to take over maintenance of said Parcel and/or all improvements, landscaping, signs and the like thereon to the extent and on the terms set forth in Section 5.10 hereof. The Building and landscaping located on the Cabela's Retail Building Parcel and any material alteration thereto shall be approved in advance by the Declarant before construction and/or alteration of the same, which approval shall not be unreasonably withheld. Unless otherwise agreed to by the Owner of the Cabela's Retail Parcel, no portion of the Cabela's Retail Building Parcel shall be deemed a "Retail Parking Parcel" and shall not be subject to the Parking Guidelines or the Parking Program described in Section 4.5; provided, however, the Owner of the Cabela's Retail Building Parcel shall maintain its parking facilities in a first-class manner and in accordance with the customary standards for parking facilities in retail complexes. Notwithstanding anything herein to the contrary, without Declarant's prior written permission (which may be granted or withheld in Declarant's sole discretion), the Cabela's Retail Building Parcel shall only have surface level parking.

2.10 Use of Cabela's Excess Parcels. The Owner of certain real property located in the City of Lehi, Utah County, Utah as more particularly described on Exhibit "C" attached hereto (the "Cabela's Excess Parcels"), shall have the right to utilize said Parcels as Hotel Building Parcels or Retail Building Parcels. Except as otherwise approved (which approval shall not be unreasonably withheld) by Declarant in writing, the Owner of the Cabela's Excess Parcels shall be allowed to sell said Parcels to any Person(s) for purposes of developing said Parcels for use for a single Hotel Building, up to three first class, sit down, full service restaurants and/or a single candy store, all in accordance with the construction requirement set forth in Article 3 of this Declaration. Declarant shall not unreasonably withhold its approval

to allow the Owner of the Cabela's Excess Parcels to subdivide said Parcels for the uses described herein or for any other use allowed under this Declaration.

2.11 Zoning. This Declaration shall be subject to the approved area plan for the Project (as the same may be amended from time to time at Declarant's sole discretion) and applicable zoning laws.

ARTICLE 3 CONSTRUCTION

3.1 Buildings and Improvements Only in Designated Areas. No Building or other structure of any kind (including parking facilities and any Building or other improvement on the Cabela's Retail Building Parcel or Cabela's Excess Parcels) shall be erected, placed or maintained on any portion of the Project except upon those portions designated by Declarant as Building Areas or areas for the location of such parking facilities. Notwithstanding anything to the contrary contained in this Declaration, following Declarant's prior written approval (which may be granted or withheld in Declarant's sole discretion), any areas used for parking may, pursuant to plans and specifications approved by Declarant, be demolished and replaced with a Building or other improvements in furtherance of the further development of the Project and the property adjacent thereto. In such event, any and all easements and other rights granted to Owners pursuant to this Declaration to use such area shall be deemed to be withdrawn, except to the extent of Common Areas remaining on such property following completion of construction thereon.

3.2 Initial Building Approval. No Owner shall commence or permit the commencement of construction of any sign (which shall include but not be limited to free standing signs, monuments and/or signs affixed to a building), Building or other structure, or landscaping within the Project unless the design, architecture, exterior elevations, rooflines, configuration, height, dimensions, landscape design, location, parking lots and/or structures, exterior finishes, materials, uses, hours and days of operation, purposes, exterior music and lighting, colors and other attributes thereof shall have first been approved in writing by the Declarant in its sole and absolute discretion, which such approval (if applicable) shall be in the form of written approval of such Owner's detailed plans and specifications for such improvements which shall be submitted in advance to Declarant. All improvements shall be constructed and used in strict accordance with any such plans, specifications and uses approved by Declarant in writing. Notwithstanding anything in this Declaration to the contrary, and without limitation, Declarant shall be entitled to withhold such approval if such uses or improvements are not architecturally, functionally and/or aesthetically harmonious with the other Buildings, improvements then existing, located or approved for construction within the Project or with the Declarant's master plan for the development of the Project. Failure by the Declarant to respond in writing to a written request for the above described approval within thirty (30) days of its receipt shall constitute disapproval of such request. No Owner shall make any material alterations to any of the foregoing matters without first obtaining a similar written approval from Declarant as to such alteration. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to establish standardized construction guidelines for the Project ("Construction Guidelines"), which such Construction Guidelines may, as determined by Declarant, include detailed design, engineering and specification requirements, construction rules and designated staging areas. Declarant shall have the right to change the Construction Guidelines from time to time, in Declarant's sole and absolute but

good faith discretion. Any and all construction or other work performed by an Owner pursuant to this Declaration shall be subject to and performed in accordance with the Construction Guidelines. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to establish standardized architectural design guidelines for the Project ("Architectural Guidelines"), which such Architectural Guidelines may, as determined by Declarant, include detailed design, architectural, materials and aesthetic requirements. Declarant shall have the right to change the Architectural Guidelines from time to time, in Declarant's sole and absolute but good faith discretion. Unless otherwise approved by Declarant in writing, any and all designs, construction or other work performed by an Owner pursuant to this Declaration shall be subject to and performed in accordance with the Architectural Guidelines. Owners shall not object to the adoption, establishment, amendment or modification of Architectural Guidelines and/or Construction Guidelines by the Declarant.

3.3 Alteration Approval. In order to maintain the architectural and functional harmony and master plan of the Project, no Building, sign, improvement, landscaping or structure (or actual use thereof) within the Project shall be reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character or motif or functional purpose or actual use of such item, unless such alteration is first approved in writing by the Declarant in its sole and absolute discretion and such alteration is made in accordance with the Construction Guidelines and Architectural Guidelines, if any. Furthermore, the actual use or purpose of any Parcel, Building, sign or other structure within the Project may not be changed, altered, abandoned or otherwise modified without the prior written approval of the Declarant, which may be granted or withheld in the sole and absolute discretion of Declarant. Such approval shall be given or withheld in writing within thirty (30) days after receipt of written request and receipt by Declarant of detailed plans, specifications and description therefore and thereof. Failure to respond in writing to a written request for such approval within thirty (30) days of its receipt shall constitute disapproval of such construction, reconstruction, alteration or modification. All alterations, improvements, modifications or changes shall be implemented, conducted and/or constructed (as applicable) in strict accordance with the plans, specifications and descriptions approved by Declarant and the Construction Guidelines (as applicable). No material deviation shall be made from such plans, specifications and approved uses without Declarant's prior written approval.

3.4 Construction Procedures.

a. All construction activities within the Project shall be performed in a good and workmanlike manner, using first class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Project.

b. All construction activities within the Parcels shall be performed in accordance with the following provisions:

i. so as not to unreasonably interfere with any construction work being performed on the remainder of the Parcels, or part thereof; and

ii. so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or part thereof or the business conducted by any other Owner or Permittees.

c. When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such Owner shall establish a staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas (i) shall not unreasonably interfere with access between the other areas of the Project, with the use of any other Parcel, or with the operation of any business or permitted activity on any other Parcel by the Permittees thereof (such Permittees to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits), and (ii) shall be subject to the approval of Declarant, in its reasonable discretion or located in a permitted staging or storage area identified in the Construction Guidelines. If substantial work is to be performed, such Owner, at the request of Declarant or any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work. Correspondingly, no staging and storage areas shall be established and maintained within the Project during such restricted months.

d. Each Owner shall diligently complete all construction activities within its Parcel as quickly as possible, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

e. Each Owner shall indemnify, defend and hold harmless Declarant and each other Owner from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants or employees.

ARTICLE 4 PROJECT EASEMENTS

4.1 Grant of Easements. The Declarant hereby establishes and grants to, and each other person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, be deemed to have established and granted to all other Owners and all tenants, occupants of the Project, their guests, employees, invitees, permittees, licensees, patrons and customers, irrevocable, non-exclusive easements over, across, upon and beneath the Common Area held or owned by such Owner for the purposes set forth in Section 4.2, including, with respect to the Owners of the Retail Building and Parking Parcels, Office Building Parcels, Residential Building and Parking Parcels and Hotel Building and Parking Parcels, Office Common Area, Residential Common Area, Retail Common Area, Hotel

Common Area and other Common Areas located respectively, on each such Parcel (except to the extent otherwise provided in this Declaration). Notwithstanding the foregoing or any other contrary provision in this Declaration, except as may otherwise be agreed by the Owners of the Residential Parking Parcels and Hotel Parking Parcel, the Residential Parking Facilities and the Hotel Parking Facilities, respectively, shall be subject to the exclusive use of the patrons, occupants and users of the particular Buildings to which they relate. In addition, in Declarant's sole but good faith discretion, Declarant shall have the right to designate certain portions of the parking facilities located on the Retail Parking Parcels as "reserved" parking spaces for use by certain tenants or occupants of the Retail and/or Office Buildings; provided, however, in no event shall Declarant or Manager be responsible or in any way liable for the unauthorized use of such parking spaces. Nothing in this Section or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

4.2 Permitted Common Area Uses. The Common Area shall be used for the purposes set forth in this Section:

a. The parking of passenger vehicles and the pedestrian and vehicular traffic of Permittees in areas approved in writing by the Declarant for such uses.

b. The ingress and egress of any Permittees and the vehicles thereof to and from any portion of the Common Area and the public streets adjacent to the Common Area.

c. The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, pipes, gutters and lines, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, Communications Facilities, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, power and emergency fire protection lines, and related utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area or within Common Area walls or as otherwise directed by Declarant. All Owners shall cooperate in the granting of appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. The original location of the facilities set forth above shall be subject to the approval of the Declarant. Each Owner shall have the right to enter upon any portion of the Common Area as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, each Owner does not unreasonably interfere with the use of the Common Area by Permittees and that no relocation or removal of any such facilities shall be made without the prior written consent of the Declarant.

d. Pedestrian and vehicular movement by Permittees to and from adjacent streets and between businesses and occupants located or to be located within the Project.

- e. The construction, replacement and reconstruction of parking sites or stalls, flag poles, sidewalks, ramps (excluding loading ramps), driveways, lanes, curbs, directional and other signs, gutters, traffic control areas, traffic islands, traffic and parking lighting facilities, perimeter walls, pedestrian walkway or landscaped areas, including planters, planting boxes, edgers, fountains, valves and customer conveniences, such as mail boxes, public telephones and benches for the comfort and convenience of Permittees; provided, however, that the Declarant shall first approve of all such facilities in writing and that such facilities do not materially affect the value, access, visibility or parking of the property or Building of any Owner.
- f. The maintenance and repair of any of the items referred to in Section 4.2(e) above.
- g. Recycling centers for cans, bottles or other materials.
- h. The ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and the public streets adjacent to the Project, for the delivery of goods, wares, merchandise and the rendering of services to all persons or other entities who may lease portions of the Building Areas. Each tenant or other occupant of the Project shall use commercially reasonable efforts to have deliveries made within the areas designated for such purposes by Declarant. In the event it is necessary that deliveries be made other than in the areas designated by Declarant, such deliveries shall be made so as to cause the least amount of interference with the use of adjacent portions of the Common Area.
- i. Trash, refuse and garbage container storage areas if indicated as Common Area and areas for the parking of the automobiles of employees of an Owner or occupant of any Building and other incidental and related facilities.
- j. Subject to the prior written approval of Declarant, which will not be unreasonably withheld, the temporary use (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the condition, however, that all construction, remodeling or repair of buildings, other improvements and appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.
- k. The installation, construction, maintenance, repair, replacement and reconstruction of sign pylons and/or monument signs (with appropriate underground electrical connections in locations reasonably designated by Declarant); provided, however the drawings, plans, location, construction, design, style, colors, size, replacement, modification and alteration of any such signage shall be subject to the prior written approval of Declarant, which approval may be given or withheld in Declarant's sole discretion. The costs of designing, constructing, maintaining, repairing, replacing or reconstructing sign pylons and/or monument signs which serve the Project shall be paid for pro rata by the Owners or occupants of the Buildings

whose names or logos appear on such signs in the ratio of their square footage usage of such sign pylons. Participation on such signage shall be as determined by Declarant, in Declarant's sole and absolute discretion, or as set forth in the "Sign Program" (as hereinafter defined), if any, implemented pursuant to the following provisions of this Paragraph. No changes shall be made to such signage, including the locations of same, without the prior written approval of the Declarant. Notwithstanding anything to the contrary contained in this Declaration or elsewhere, Declarant shall have the right, in Declarant's sole discretion (using prudent business judgment) to install, erect and/or construct signage, including but not limited to tenant, promotional, marketing, directional and informational signage, at locations reasonably designated by Declarant within and on the Project. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to establish a sign program for the Project ("Sign Program"), which such Sign Program may, as determined by Declarant, include, among other things, detailed design, engineering and specification requirements relating to signage. Declarant shall have the right to change the Sign Program from time to time, in Declarant's sole and absolute but good faith discretion. In addition to the other requirements in this Declaration, any and all signage installed at the Project shall be subject to and erected in accordance with the Sign Program.

4.3 Common Area Alteration. No Owner or other person shall alter any parking areas, landscaping, sign, monument or other improvements located upon the Common Area, without the prior written consent of the Declarant. Notwithstanding the foregoing: (i) an Owner (or the Manager or Declarant) shall have the right to excavate or conduct construction activities upon the Common Area, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any utility or service facilities, subject, however, to the provisions of Section 4.2(c), so long as such excavation or construction activities shall be prosecuted diligently to completion; and further provided that the consent of the Owner on whose Parcel such activity is to take place shall also be obtained, which consent shall not be unreasonably withheld. The person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area affected thereby to the same or better condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used; and (ii) Declarant may make alterations in the Common Area as it shall deem appropriate or necessary without obtaining the consent of any Owner. Any work performed in the Project pursuant to this subparagraph shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project.

4.4 Encroachment Easement. Should any Building or improvement constructed within the Project inadvertently encroach on any adjacent property and said encroachment does not exceed twenty-four (24) inches and/or otherwise materially, adversely effect the use of the property being encroached upon, the Owner of the adjacent property shall be deemed to have granted an easement effective as of the recording date hereof for such encroachment for so long as such encroachment shall exist, and shall execute such instruments as may reasonably be required by the encroaching party, or its assignees, title insurer or Mortgagees confirming such easement.

4.5 Parking. The Residential Parking Facilities shall be operated in a first class manner, in accordance with the customary standards for parking facilities in residential complexes similar to the Residential Buildings located within the Traverse Mountain Master Planned Community. The Hotel Parking Facilities shall be operated in a first class manner, in accordance with the customary standards for parking facilities in hotel projects similar to the Hotel Buildings located within the Traverse Mountain Master Planned Community. Subject to the reasonable prior approval of Declarant, the Owners of the Residential Parking Parcels and Hotel Parking Parcels may establish reasonable parking programs and charge reasonable, competitive parking rates for the use of the Residential Parking Facilities and Hotel Parking Facilities, respectively. As set forth in this Declaration above, and notwithstanding anything to the contrary contained herein, except to the extent otherwise agreed by an Owner of a Residential Parking Parcel and/or Hotel Parking Parcel, the respective Residential Parking Facilities and Hotel Parking Facilities shall be available only for the exclusive use of patrons, occupants or other users of the Residential Buildings and Hotel Buildings to which they correspond. With respect to the remainder of the parking areas within the Common Area, Declarant shall have the right, in Declarant's sole and absolute discretion, to establish a parking program for the Project ("Parking Program"), which such Parking Program may, as determined by Declarant, provide for, among other things, parking rules and regulations, parking charges, valet and validation programs or systems, Declarant's authority for the reservation or designation of particular parking spaces and other items as Declarant shall determine in Declarant's sole and absolute but good faith discretion. Declarant shall have the right to change the Parking Program from time to time, in Declarant's sole and absolute but good faith discretion. Subject to the foregoing, Permittees shall not be prohibited or prevented from parking within the facilities located on the Retail Parking Parcels so long as space is available therein and so long as they do not violate the rules and regulations covering the use of such areas, promulgated from time to time by Declarant or Manager. No Permittee shall use or permit the use of the parking area portions of the Common Area for any purpose other than parking, loading/unloading (in the areas designated for same by Declarant or Manager) and passage of pedestrians and motor vehicles unless specifically provided otherwise in this Declaration. Each Owner agrees to use reasonable efforts to enforce the provisions hereof. Each Owner shall require its Permittees to park their vehicles only in the parking areas from time to time designated for that purpose by Declarant or Manager. Without limiting the generality of the foregoing, if Declarant or Manager implements any program related to parking, light rail transportation, stations or access, parking facilities or transportation facilities including, but not limited to, any program for off-site parking, parking validation, employee or customer shuttle transportation during peak traffic periods or other program to limit, control, enhance, regulate or assist parking by customers or Permittees of the Project, each Owner shall participate in the program and pay its proportionate share of the costs of the program (based on the proportionate share of Floor Area owned by such Owner in the Project) under reasonable and nondiscriminatory rules and regulations from time to time established by Declarant or Manager.

4.6 Underground Supports. In order to accommodate the construction, reconstruction or repair of any Building or other improvement which may be constructed or reconstructed immediately adjacent to the common boundary lines of any of the Parcels, each Owner, as to its respective Parcel, hereby grants, establishes and creates for the benefit of, and as appurtenances to, each other Parcel and for the benefit of the Owner of each of the other Parcels from time to time and their respective Permittees, with respect to, and as a burden upon, such granting Owner's Parcel, non-exclusive easements for lateral support for

improvements constructed on or near such common boundary lines, together with the right and easement to install, maintain, repair, and replace footings and underground supports for such improvements in space not theretofore occupied by any then existing structure, provided that the location of such footings shall be subject to the consent and approval of the Owner of the Parcel encumbered by such easement, such approval not to be unreasonably withheld, and provided that such footings shall in no event extend more than five (5) feet onto the servient Parcel from the applicable common boundary line. This easement shall continue in effect for the term of this Declaration and thereafter so long as the improvements utilizing the easement exists, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements, and shall include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the Buildings or other improvements located on the Parcel encumbered by such easement or the operation of business thereon. Each Owner of a Parcel using a common footing shall construct its wall upon its Parcel, and no load, force or pressure shall be exerted by the wall of one Owner upon the wall of the other Owner. When an Owner of a Parcel constructs its improvements along a common boundary line, it shall do so in a manner that does not result in damage or injury to the Buildings or other improvements previously placed by another Owner of a Parcel along such common boundary line. If a common footing is used by two (2) Owners, each shall assume and pay their reasonable share of the cost and expense of the initial construction and, so long as both Owners are benefiting therefrom, any subsequent maintenance, repair, and replacement thereof. In the event any Building or structure utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any improvements utilizing the same located on the adjoining Parcel. Nothing herein shall be deemed to require any Owner to use or to consent to the use of common subterranean construction elements, but if such consent is granted then the foregoing provisions of this Section shall apply.

4.7 Communications Easements. Declarant reserves the right to reserve exclusive or nonexclusive easements ("Communication Easements") within the Project and any Parcel(s) for purposes of constructing, installing, operating, maintaining, altering, inspecting, removing, or enhancing equipment, facilities and structures necessary for, or used in the provision of Communication Facilities and Communications Services ("Communication Purposes"), for the benefit of Declarant and its subsidiaries, transferees, successors and assigns. All Communication Facilities shall be owned, leased or licensed by Declarant, its subsidiaries, affiliates (including but not limited to Mountain Home Development Corporation) successors, transferees and assigns, all as determined by Declarant, in its sole discretion and business judgment. Such easements are freely transferable by Declarant to any other Person and their successive owners. Transfer of all or any portion of the Properties does not imply the transfer of any Communication Easements or Communication Facilities. Exercise of Communication Easements shall not be unreasonably withheld and said easements will not interfere with the reasonable use and enjoyment of the Parcels in the Project by the Owners thereof.

ARTICLE 5 OPERATION AND MAINTENANCE OF BUILDING AREA AND COMMON AREA

5.1 Taxes and Assessments.

a. Declarant shall have the right, in its sole and absolute discretion, to petition all applicable governmental authorities for the creation of separate tax parcels for the Project (or any portion thereof), resulting in separate assessments (which such assessments shall include an equitable division (as approved by Declarant, in Declarant's sole and absolute discretion) of any and all Taxes (as hereinafter defined) attributable to the Common Areas and other portions of the Project which do not contain Floor Area (including the Parcels containing Parking Facilities)) against only those Parcels within the Project which contain Floor Area; provided, however, Declarant shall remain responsible for paying Taxes on the Parcels it owns and shall pay a pro-rated share of the Taxes attributable to the Common Areas and other portions of the Project which do not contain Floor Area in the same manner as any other Owner. In the event Declarant obtains such separate assessments, all Owners shall pay directly to the taxing authority(ies), prior to delinquency, the Taxes attributable to their respective Parcels. For purposes of this Declaration, "Taxes" shall mean any and all taxes, assessments, impositions or levies of any kind (in all cases, whether general or special, anticipated or unanticipated) imposed by any governmental authority upon the land within the Project and/or any improvements therein or thereon.

b. Notwithstanding anything to the contrary contained herein, in lieu of Owners separately paying Taxes to the applicable taxing authority(ies) pursuant to Section 5.1(a) above, at Declarant's election, which election shall be made in Declarant's sole and absolute discretion, Declarant (or Manager, on behalf of at Declarant) shall collect from each Owner a share (as described below) of Taxes, after the actual amount of taxes and assessments are ascertained or in advance, monthly or quarterly, based upon estimates, plus an administrative fee equal to fifteen percent (15%) of all such Taxes; provided, however any Owner of a Retail Building whose interior Floor Area exceeds 150,000 square feet shall be responsible for paying its own Taxes directly to all applicable governmental authorities. If Declarant or Manager collects from each Owner a share of Taxes based upon estimates, such share (as estimated by Declarant) shall be paid by each such Owner on the first (1st) day of each month or quarter throughout the Term of this Declaration (as determined by Declarant). Declarant may periodically adjust the estimated amount. If the Taxes are collected based upon estimated amounts, then following the end of each calendar year, Manager shall furnish each Owner with a statement covering the year just expired showing the total Taxes for the Project for such year, the total Taxes payable by such Owner for such year, and the payments previously made by such Owner with respect to such year, as set forth above. If the actual Taxes payable for such year exceed such Owner's prior payments, such Owner shall pay to Manager the deficiency within ten (10) days after its receipt of the statement. If such Owner's payments exceed the actual Taxes payable for that year, such Owner shall be entitled to offset the excess against the next payment(s) of Taxes that become due under this Declaration. Notwithstanding anything to the contrary contained herein, an Owner's share of Taxes shall be determined by multiplying all of the Taxes attributable to the Project by a fraction, the numerator of which shall be the Floor Area contained on such Owner's Parcel and the denominator of which is the number of square feet of Floor Area in the Project from time to time; provided, however, Declarant shall remain responsible for paying Taxes on the Parcels it owns which do not contain Floor Area in the same manner as any other Owner.

c. If any Owner shall fail to pay its share of Taxes prior to delinquency, Declarant or Manager may pay such Taxes and Declarant or Manager (as the case may be) may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, the Declarant or Manager (as applicable) shall have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount shall bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by Declarant or Manager (as applicable) as provided in Article 7 below.

d. With the consent of the Declarant, which consent may be withheld in the Declarant's sole and absolute discretion, an Owner (or the tenant or occupant of an Owner if such tenant or occupant has the right under its lease or occupancy agreement to contest Taxes) shall have the right, in good faith, to contest the amount of Taxes owing with respect to its property; provided that such Owner (or tenant or occupant) shall take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within the Project, including, immediately following the request of Declarant, recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien. Notwithstanding anything to the contrary contained herein, the Owner of a Retail Building whose interior Floor Area exceeds 150,000 square feet shall not be required to obtain the consent of Declarant prior to contesting the amount of Taxes owed by said Owner.

5.2 Building and Improvement Maintenance. Except as may otherwise be provided pursuant to other matters of record affecting the Project (or portions thereof), each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and tenantable condition, all Buildings, Parking Facilities and other improvements located upon its Parcel or Parcels, including screening from view the garbage receptacle areas.

5.3 Utilities and CE&F. Each Owner shall be solely responsible for obtaining and paying for all utilities and services required and used on its Parcel. Notwithstanding the foregoing, any such costs which are attributable to the Common Areas shall be paid by the various Owners in accordance with their obligations set forth in other matters of record affecting the Project; provided, however, all such costs attributable to the Residential Common Areas, Retail Common Areas, Hotel Common Areas and Office Common Areas shall be paid by the Owner of the Parcel containing same. Notwithstanding the foregoing or any contrary provision in this Declaration, the Declarant shall have the power to enter into on behalf of, accept an assignment on behalf of, or otherwise cause all of the Parcels and/or Owners in the Project to enter into, be bound by and comply with contracts with Communication Service providers and Communication Facilities owners (both, a "Communication Provider") selected by the Declarant in its sole and absolute discretion, pursuant to which the Communication Provider serves as the exclusive provider of Communication Services and/or Communication Facilities to each Building, Parcel and/or Owner (but only as to the Owner's Buildings, Parcels, structures, business and the like within the Project); provided, however, Declarant shall not select a Communication Provider for any Owner of a Retail Building whose interior Floor Area exceeds 150,000 square feet without first obtaining said Owner's consent.

5.4 Rules and Regulations. The Declarant may promulgate reasonable rules and regulations of general application for the supervision, control and use of the Common Area, in

which event, the Manager shall make and use its reasonable efforts to enforce the same or cause the same to be enforced uniformly. Each Owner shall cooperate with the Manager and Declarant in the enforcement of such rules and regulations.

5.5 Maintenance of Residential Common Areas. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, each Owner of a Residential Building Parcel shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Residential Common Areas located on its Residential Building Parcel and on any Residential Parking Parcel owned by such Owner (provided, however, to the extent the Residential Parking Parcel below a Residential Building is owned by a party different than the Owner of the corresponding Residential Building Parcel, then the Owner of such Residential Parking Parcel shall have the obligations set forth in this Section with respect to its Residential Parking Parcel) in first class condition, all at such Owner's sole cost and expense. Such obligations shall include (but shall not be limited to) the following:

- a. Resurfacing of walks, drives and parking areas;
- b. Keeping the surface of the Residential Common Areas within the subject Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;
- c. Cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Residential Common Area drainage facilities and all other tasks necessary to maintain the Residential Common Areas of such Parcel in a clean, safe and orderly condition;
- d. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;
- e. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;
- f. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;
- g. Patrol service, to the extent Declarant or Manager (without any liability therefore) reasonably deem the same to be necessary or advisable. Notwithstanding the foregoing or any contrary provision in this Declaration, the Declarant shall have the power to enter into on behalf of, accept an assignment on behalf of, or otherwise cause all of the Parcels and/or Owners in the Project to enter into, be bound by and comply with contracts with patrol service and monitoring providers selected by the Declarant in its sole and absolute discretion, pursuant to which the such patrol service and monitoring providers shall serve as the exclusive provider of such services to each

Building, Parcel and/or Owner (but only as to the Owner's Buildings, Parcels, structures, business and the like within the Project);

h. Illumination of the subject Residential Common Areas until such time as the Manager or Declarant reasonably determines; and

i. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the subject Residential Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.6 Maintenance of Office Common Areas. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, each Owner of an Office Building Parcel shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Office Common Areas located on its Office Building Parcel in first class condition, all at such Owner's sole cost and expense. Such obligations shall include (but shall not be limited to) the following:

a. Resurfacing of walks, drives and parking areas;

b. Keeping the surface of the Office Common Areas within the subject Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;

c. Cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Office Common Area drainage facilities and all other tasks necessary to maintain the Office Common Areas of such Parcel in a clean, safe and orderly condition;

d. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

e. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;

f. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

g. Patrol service, to the extent Declarant or Manager (without any liability therefore) reasonably deem the same to be necessary or advisable. Notwithstanding the foregoing or any contrary provision in this Declaration, the Declarant shall have the power to enter into on behalf of, accept an assignment on behalf of, or otherwise cause all of the Parcels and/or Owners in the Project to enter into, be bound by and comply with contracts with patrol service and monitoring providers selected by the

Declarant in its sole and absolute discretion, pursuant to which the such patrol service and monitoring providers shall serve as the exclusive provider of such services to each Building, Parcel and/or Owner (but only as to the Owner's Buildings, Parcels, structures, business and the like within the Project);

h. Illumination of the subject Office Common Areas until such time as the Manager or Declarant reasonably determines; and

i. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the subject Office Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.7 Maintenance of Hotel Common Areas. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, such Owner shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Hotel Common Areas located on its Hotel Building Parcel and on the Hotel Parking Parcel owned or used by such Owner (provided, however, to the extent the Hotel Parking Parcel is owned by a party different than the Owner of the Hotel Building Parcel, then the Owner of the Hotel Parking Parcel shall have the obligations set forth in this Section with respect to the Hotel Parking Parcel) in first class condition, all at such Owner's sole cost and expense. Such obligations shall include (but shall not be limited to) the following:

a. Resurfacing of walks, drives and parking areas;

b. Keeping the surface of the Hotel Common Areas within its Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;

c. Cleaning, sweeping, snow and debris removal, trash removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Hotel Common Area drainage facilities and all other tasks necessary to maintain the Hotel Common Areas in a clean, safe and orderly condition;

d. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

e. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;

f. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

g. Patrol service, to the extent Declarant or Manager (without any liability therefore) reasonably deem the same to be necessary or advisable. Notwithstanding the foregoing or any contrary provision in this Declaration, the Declarant shall have the power to enter into on behalf of, accept an assignment on behalf of, or otherwise cause all of the Parcels and/or Owners in the Project to enter into, be bound by and comply with contracts with patrol service and monitoring providers selected by the Declarant in its sole and absolute discretion, pursuant to which the such patrol service and monitoring providers shall serve as the exclusive provider of such services to each Building, Parcel and/or Owner (but only as to the Owner's Buildings, Parcels, structures, business and the like within the Project);

h. Illumination of the Hotel Common Areas until such time as the Manager or Declarant reasonably determines; and

i. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the Hotel Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.8 Maintenance of Retail Common Areas. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, each Owner of a Retail Building Parcel shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Retail Common Areas located on its Retail Building Parcel in first class condition, all at such Owner's sole cost and expense. Such obligations shall include (but shall not be limited to) the following:

a. Resurfacing of walks, drives and parking areas;

b. Keeping the surface of the Retail Common Areas within the subject Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;

c. Cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Office Common Area drainage facilities and all other tasks necessary to maintain the Retail Common Areas of such Parcel in a clean, safe and orderly condition;

d. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

e. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;

f. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

g. Patrol service, to the extent Declarant or Manager (without any liability therefore) reasonably deem the same to be necessary or advisable. Notwithstanding the foregoing or any contrary provision in this Declaration, the Declarant shall have the power to enter into on behalf of, accept an assignment on behalf of, or otherwise cause all of the Parcels and/or Owners in the Project to enter into, be bound by and comply with contracts with patrol service and monitoring providers selected by the Declarant in its sole and absolute discretion, pursuant to which the such patrol service and monitoring providers shall serve as the exclusive provider of such services to each Building, Parcel and/or Owner (but only as to the Owner's Buildings, Parcels, structures, business and the like within the Project); provided, however, Declarant or Manager shall not hire any such patrol service for the Owner of a Parcel which contains a Retail Building whose interior Floor Area exceeds 150,000 square feet without first obtaining the prior consent of said Owner;

h. Illumination of the subject Retail Common Areas until such time as the Manager or Declarant reasonably determines; and

i. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the subject Retail Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.9 Commercial Marketing Fee.

a. During the month of January in each calendar year, beginning in January of 2005, the Declarant may (if Declarant so elects) fix and assess a Commercial Marketing Fee for the Project. Except as otherwise set forth in this Declaration, the Commercial Marketing Fee shall be paid for pro rata by the Owners through an annual assessment fixed and assessed by Declarant. Each Owner's pro rata share of the Commercial Marketing Fee shall be calculated based on total property owned, leased, possessed or otherwise held by such Owner within the Project in relation to the total amount of property within the Project. Each Owner's respective portion of the Commercial Marketing Fee shall be assessed by Declarant or Manager by sending a written bill therefore to each Owner. The Commercial Marketing Fee, if any, assessed by Declarant shall be due and payable by each Owner on or before February 28th of each calendar year in which Declarant assesses a Commercial Marketing Fee.

b. If any Owner shall fail to pay its Commercial Marketing Fee prior to delinquency, Declarant or Manager may pay such Commercial Marketing Fee and the Declarant or Manager (as the case may be) may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, Declarant or Manager (as applicable) shall have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount shall bear

interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by the Declarant or Manager (as applicable) as provided in Article 7 below.

5.10 Takeover of Maintenance. If an Owner of a Residential Building or Parking Parcel, Office Building or Parking Parcel, Hotel Building or Parking Parcel or Retail Building or Parking Parcel shall fail to operate, manage, equip, light, repair, replace and/or maintain the Residential, Office, Retail or Hotel Common Areas, as the case may be, within its Parcel as required by Sections 5.5, 5.6, 5.7 or 5.8 as applicable, or otherwise fail to operate such Residential, Office, Retail or Hotel Common Areas, as the case may be (including any relevant parking facility located on its Parcel, as applicable) pursuant to the other requirements and standards set forth in this Declaration (including Section 4.5 above), then Manager or Declarant shall have the right (but not the obligation), by giving such Owner at least thirty (30) days' prior written notice, to assume, or cause to be assumed, responsibility for the operation, maintenance, repair and replacement of such Residential, Office, Hotel or Retail Common Areas (or portions thereof), as the case may be; provided, however, in the event such Owner performs such remedial actions or cures the relevant breach (or, if such remedial actions cannot be cured within such thirty (30) day period, such Owner promptly undertakes such remedial actions and diligently pursues such remedial actions to completion), Manager or Declarant (as the case may be) shall not have the right to take over, or cause to be taken over, the operation, maintenance, repair and replacement of the subject Common Areas on account of such breach. The thirty (30) day notice period described in the foregoing sentence shall not be applicable, and no notice shall be required if the Owner of a Parcel shall fail to maintain any part of the storm water drainage facilities or lines located on its Parcel or any of the power or fire emergency protection lines located on its Parcel; in any such event, Declarant or Manager may immediately enter the Parcel and commence any repairs or maintenance. If Manager or Declarant so exercises such option to assume, or causes to be assumed, the responsibilities for the operation, maintenance, repair and replacement of the relevant Residential, Office, Hotel or Retail Common Areas (or portions thereof), Manager, Declarant or a designee appointed by either such party, shall thereafter so operate, maintain, repair, replace and otherwise perform such Owner's obligations with respect to the subject Common Areas (or relevant portions thereof) in the same manner and subject to the same standards as required of such Owner under this Declaration. In such event, such Owner shall be responsible for any and all reasonable costs incurred by Manager, Declarant or such designee (as the case may be) with respect to such operation, maintenance, repair, replacement and satisfaction of other obligations of such Owner with respect to such Common Areas, which costs shall be paid by such Owner to Manager, Declarant or such designee (as the case may be) periodically, as billed by such party, within thirty (30) days following such billing. If such Owner shall not pay such bill within such thirty (30) days, then Manager or Declarant (as the case may be) shall have a lien on the property of such Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

5.11 Common Area Design, Construction and Maintenance.

a. Except for Residential Common Areas, Retail Common Areas, Hotel Common Areas and Office Common Areas, Declarant, Manager or their designee shall design, construct, landscape and maintain Common Areas within the Project. The timing of and control over the design, construction, landscaping and maintenance obligations of Declarant hereunder shall be determined in the sole discretion of

Declarant. The costs of designing, constructing, maintaining, repairing, replacing or reconstructing any Common Areas or landscaping or improvements thereon which would otherwise be incurred by Declarant, Manager or their designee shall be paid for pro rata by the Owners through an annual assessment fixed and assessed by Declarant (the "Common Area Assessment"). Each Owner's pro rata share of the Common Area Assessment shall be calculated based on total property owned, leased, possessed or otherwise held by such Owner within the Project in relation to the total amount of property within the Project.

b. During the month of January in each calendar year, beginning in January of 2005, the Declarant may (if Declarant so elects) fix and assess a Common Area Assessment for the Project. Each Owner's respective portion of the Common Area Assessment shall be assessed by Declarant or Manager by sending a written bill therefore to each Owner. The Common Area Assessment, if any, assessed by Declarant shall be due and payable by each Owner on or before February 28th of each calendar year in which Declarant assesses a Common Area Assessment.

c. If any Owner shall fail to pay its Common Area Assessment prior to delinquency, Declarant or Manager may pay such Common Area Assessment and the Declarant or Manager (as the case may be) may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, Declarant or Manager (as applicable) shall have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount shall bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by the Declarant or Manager (as applicable) as provided in Article 7 below.

ARTICLE 6 INSURANCE

6.1 Liability Insurance. Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with a solvent insurance company authorized to do business in the State of Utah and having a rating by A.M. Best of not less than A/X, on all entities operating within the Project, a Commercial General Liability policy, covering all bodily injury, personal injury and property damage with aggregate limits of at least Two Million Dollars (\$2,000,000) (which such limit may be increased on January 1, 2009, and on every fifth (5th) anniversary of such date (each an "Adjustment Date") throughout the duration of this Declaration, by an amount deemed reasonably necessary by Declarant to maintain insurance coverage in a manner consistent with industry standards).

6.2 Property Insurance/Course of Construction (Builder's Risk). Each Owner shall also maintain Property Insurance coverage on all Buildings and improvements (excluding Common Area improvements, except as set forth below) with a solvent insurance company authorized to do business in the State of Utah and having a rating by A.M. Best of not less than A/X, located upon that portion of the Project leased or owned by such Owner. This Property Policy will cover not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements. In addition, and notwithstanding anything to the contrary contained herein, the Owner(s) of the Residential Common Areas shall maintain such Property Insurance on such Residential Common Areas (exclusive of the Residential Parking

Facilities), the Owner(s) of the Hotel Common Areas shall maintain such Property Insurance on such Hotel Common Areas (exclusive of the Hotel Parking Facilities) and the Owner(s) of the Office Common Areas shall maintain such Property Insurance on the Office Common Areas). Manager and Declarant shall be named as loss payees on all Property Insurance policies. (this last sentence is not necessary unless Declarant is carrying "paper" or has a direct financial interest in Owner's building)

6.3 Worker's Compensation Insurance. Each Owner shall maintain Workers' Compensation Insurance as required by the Labor Code of the State of Utah with Employers Liability limits of \$1,000,000 per accident for bodily injury or disease, for all entities and companies with operations on the Project, with a solvent insurance company authorized to do business in the State of Utah and having a rating by A.M. Best of not less than A/X.

6.4 Commercial Automobile Insurance. Each Owner shall maintain Commercial Automobile Insurance with a combined single limit of at least \$1,000,000 per accident for bodily injury and property damage, for all entities and companies with owned and/or non-owned automobiles on the Project, with a solvent insurance company authorized to do business in the State of Utah and having a rating by A.M. Best of not less than A/X.

6.5 Excess Liability Insurance. Each Owner shall maintain Follow Form Excess Liability Insurance, over General Liability, Employer's Liability and Automobile Liability with a limit of \$4,000,000 aggregate (which such limit may be increased on January 1, 2009, and on every fifth (5th) anniversary of such date (each an "Adjustment Date") throughout the duration of this Declaration, by an amount deemed reasonably necessary by Declarant to maintain insurance coverage in a manner consistent with industry standards).

6.6 Certificates of Insurance. Each Owner shall provide the Manager or Declarant certificates of insurance evidencing the existence of the Liability, Property, Worker's Compensation, Automobile and Excess Insurance, required to be carried pursuant to this Article.

6.7 Insurance Endorsements for General Liability. Owner shall provide an Additional Insured Endorsement which provides "ongoing operations" as well as "products and completed operations" wording for Manager and/or Declarant. The Additional Insured on the Endorsement shall read as follows:

Traverse Mountain Commercial Investments, LLC
 Mountain Home Development Corporation
 Fox Ridge Investments, LLC
 Traverse Mountain Project, Et. Al.
 3940 N. Traverse Mountain Blvd. Suite 200
 Lehi, UT 84043
 Attn: Lori Newton, Certificate Compliance Dept.

6.8 Failure to Procure Insurance. If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then Manager or Declarant shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure

such default within said ten (10) day period, the Manager or Declarant giving the notice of default may do so and the Manager or Declarant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within ten (10) days, then the Manager or Declarant shall have a lien on the property of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

6.9 Indemnification. Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless Manager and/or Declarant and each other Owner ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on a Parcel as a result of operations related to the Parcel owned or leased by each Indemnitor. Similarly, each Indemnitee covenants and agrees to defend, protect, indemnify and hold harmless each Indemnitor from and against all claims, including any action or proceeding brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on a Parcel as a result of the Indemnitee's actions related to the Parcel owned or leased by each Indemnitor.

ARTICLE 7 ASSESSMENT LIEN

7.1 Assessment Lien Procedure. In the event any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration to any person is not paid when due and after expiration of any applicable grace period set forth herein, then the person to whom such sums are owing shall have the right to record, in the office of the County Recorder, Utah County, Utah, a Notice of Assessment Lien which shall set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Project owned or leased by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, shall constitute an Assessment Lien upon the property within the Project described in the Notice of Assessment Lien. In the event the amount secured by such Assessment Lien is not paid in full within thirty (30) days after such Notice of Assessment Lien has been recorded, the person to whom such amounts are owing may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property and interest of the delinquent Owner by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, such person shall not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under its lease or under applicable law):

a. Bringing an action at law against the Owner personally obligated to pay the assessment or other sum of money;

b. Foreclosing the Assessment Lien against the property of the Owner in accordance with the then prevailing applicable law relating to the foreclosure of Mortgages (including the right to recover any deficiency); or

- c. Pursuing any other remedy at law or in equity.

7.2 Personal Obligation. Each assessment or amount due pursuant to any provision of this Declaration by an Owner, together with interest at the Default Rate, costs and attorneys' fees, shall be the personal obligation of such defaulting Owner, but such personal obligation of such Owner shall not be deemed to discharge or limit the charge on the land of any Assessment Lien encumbering the property of such Owner within the Project, regardless of a subsequent conveyance of that property. No Owner shall escape liability for payment of any amount due hereunder which fell due while he was the Owner by nonuse of the Common Area or by transfer or abandonment of such Owner's property. In the event any property within the Project as to which a Notice of Assessment Lien has been recorded, pursuant to Section 7.1 above, is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

7.3 Priority. The Assessment Lien provided for above shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon any portion of the Project; provided, however, that such Assessment Lien shall be subject and subordinate to:

- a. Liens for taxes and other public charges which by applicable law are expressly made superior;
- b. Any Mortgages recorded in the office of the County Recorder, Utah County, Utah (and such other place as may be required or permitted by law), prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Liens shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien; and
- c. The rights of any and all tenants occupying any portion of the Project under written leases.

In the event an Owner shall be delinquent in paying any amounts due hereunder and, as a result thereof, a Notice of Assessment Lien shall be recorded as provided herein, the person recording such Notice of Assessment Lien may record subsequent Notices of Assessment Lien as to any amounts owing by such Owner to such person which become delinquent after the recordation of the first such Notice of Assessment Lien, and the priority of the Assessment Lien as to any such amounts thereafter becoming delinquent shall be fixed as of the date of recordation of the first such Notice of Assessment Lien. A person may prosecute a single Assessment Lien foreclosure action as to amounts delinquent at the time a Notice of Assessment Lien is recorded and as to amounts thereafter becoming delinquent, up to and including the time a final judgment is rendered in such action.

7.4 Cure. Upon the curing of any default for which a Notice of Assessment Lien was recorded, the person recording such Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by such person, to cover the costs of preparing and

recording such release, together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or fees, as such person shall have incurred.

7.5 Contest. Any provision contained herein to the contrary notwithstanding, any Owner shall have the right to contest, in a court of competent jurisdiction, the recordation of any Notice of Assessment Lien against the property within the Project owned or leased by such Owner on the basis that the recordation of such Notice of Assessment Lien or the amounts claimed to be delinquent therein is or are incorrect or improper under the provisions of this Declaration. The prevailing party in such action shall be entitled to recover from the other party or parties its reasonable attorneys' fees incurred in connection with such action.

ARTICLE 8 CASUALTY

8.1 Damage to Buildings and Other Improvements. In the event any Building or other improvement (including Hotel Common Area improvements (exclusive of the Hotel Parking Facilities), Residential Common Area improvements (exclusive of the Residential Parking Facilities) and Office Common Area improvements, but excluding other Common Area improvements, which improvements (together with the Hotel and Residential Parking Facilities) shall be governed by the immediately succeeding Section) on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located shall promptly (i) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this Declaration, or (ii) remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon.

8.2 Damage to Common Areas and Parking Facilities. Upon any damage or destruction to the Common Area on a Parcel or any Hotel Common Area improvements, Retail Common Area improvements, Residential Common Area improvements and Office Common Area improvements during the term of this Declaration, the Owner upon whose Parcel such damage or destruction occurred, at its sole cost and expense, shall promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Area. If Owner shall fail to promptly restore, repair or rebuild such damaged or destroyed Common Area (or any portion thereof), Declarant shall have the right, at Declarant's sole election (which election shall be made in writing and delivered to said Owner within sixty (60) days following the subject casualty), to restore, repair or rebuild such damaged or destroyed Common Area (or any portion thereof). In the event Declarant does not elect to so restore, repair or rebuild such damaged or destroyed Common Area, and if the damaged or destroyed Common Area includes or affects any entrances to the Project, access ways within the Project, or common utilities or signs, then any other Owner shall have the right, by written notice to the Owner upon whose Parcel such damage or destruction occurred, to elect to effect restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Area, in which event the electing Owner or Owners shall effect such restoration, repair or rebuilding in accordance with the applicable provisions of this Declaration. In the event that Declarant or any other Owner restores, repairs or rebuilds such damaged or destroyed Common Area for another Owner as described in this Section 8.2, the Owner whose Common Area was restored, repaired or rebuilt by Declarant or any other Owner shall pay all costs attributed to said restoration and repairs, as billed by Declarant or

any other Owner, within thirty (30) days following such billing. If such Owner shall not pay such bill within such thirty (30) days, then Declarant or any other Owner (as the case may be) shall have a lien on the property of such Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7. In the event that Owner maintains insurance which could be utilized to pay for the cost of such repairs, said Owner shall be responsible for submitting any such claims. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Area, the plans or specifications for such work shall be subject to the prior written approval of Declarant as otherwise required pursuant to this Declaration. Each affected Owner shall use all due diligence to complete such restoration and repair of the Common Area as expeditiously as possible so that the same may be available for use as part of the Project with as little delay and as little disruption as circumstances permit.

ARTICLE 9 GENERAL PROVISIONS

9.1 Successors and Assigns. Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Project and shall be a burden thereon, for the benefit of all portions of the Project, and shall run with the land. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant, Manager, Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of sale.

9.2 Run With the Land. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon each and all of the parties (and upon all persons claiming under them) for a period of ninety-nine (99) years, and shall thereafter renew automatically for successive ten (10) year periods, unless Declarant (if Declarant is still Traverse Mountain Commercial Investments, LLC) otherwise elects in a writing recorded with the County Recorder, Utah County, Utah, and if Declarant is any party other than Traverse Mountain Commercial Investments, LLC, unless Owner's owning at least fifty-one percent (51%) of the land area within the Project otherwise elect in a writing recorded with the County Recorder, Utah County, Utah.

9.3 Modification.

a. This Declaration may be modified in any respect whatsoever with the consent of the Declarant and without the necessity of obtaining the consent of any other Owner; provided, however if such a modification:

i. directly and materially affects the access to, visibility of, use of, or parking on a Parcel; or

ii. would result in a material increase in financial obligations for an Owner;

then the Owner of any such affected Parcel must also consent to such modification. For purposes of Section 9.3, the phrase "material increase in" shall mean any change which results in an Owner paying Common Area Assessment fees in excess of ten percent (10%) more than said Owner paid prior to said modification by Declarant.

b. If this Declaration is rescinded, all Owners of any portion of the Project must consent to such rescission.

c. Any modification or rescission of this Declaration shall be accomplished by a written instrument duly executed and acknowledged by the requisite parties, and duly recorded in the office of the County Recorder of Utah County, Utah. Declarant shall provide each Owner with a recorded copy of the document recorded in the office of the County Recorder which modifies or rescinds this Declaration within thirty (30) days after receipt of a recorded copy of said modification or rescission by Declarant.

d. Without limiting the foregoing and notwithstanding any other provision of this Declaration, Declarant may modify this Declaration at any time or from time to time without the consent or agreement of any person including, without limitation, the Owner of any Residential Building Parcel or Residential Parking Parcel to:

i. Add additional tracts of real property to the Project on such terms and conditions as the Declarant, at its sole discretion, may determine; provided, however, the addition of any real property to the Project shall not result in a material increase in financial obligations for the Owners, without the written consent of the Owners so affected.

ii. Release any tracts of real property from the Project on which no building improvements are then located (or which are planned to be demolished), and thus from the terms, covenants and restrictions of this Declaration.

iii. Designate or redesignate any Parcel to be a Cultural Building Space, a Hotel Building Parcel, a Hotel Parking Parcel, an Office Building Parcel, a Residential Building Parcel, a Residential Parking Parcel, a Retail Building Parcel, or a Retail Parking Parcel; provided, however, any change in designation shall not impact the current use of a Parcel without the prior written consent of the Owner of said Parcel.

9.4 No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

9.5 No Cancellation. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

9.6 **Survival.** If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

9.7 **No Merger.** The ownership of the entire Project by the same party shall not effect the termination of this Declaration.

9.8 **Mortgagee Protection.** Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Project or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

9.9 **Remedies.** Any Owner, any tenant of any portion of the Project, the Declarant and/or the Manager may prosecute any proceedings at law or in equity against any person or entity violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it, him, her or them from so doing and/or to recover damages from or on account of such violation. All costs and expenses of any such suit or proceedings, including attorneys' fees, as well as any judgment thereof, shall be assessed against the losing party and shall constitute a lien against the real property or the interest therein in the Project belonging to such party as provided in Article 7 above, which the prevailing party may foreclose in the manner provided in such Article 7. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

9.10 **No Third Party Beneficiary.** Except as herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

9.11 **Condemnation.** In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of the Project, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner of any part of the Project; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim shall reduce the award to the Owner of the condemned Parcel; provided further, however, that the Owner of any portion of the Project to be taken shall, unless otherwise directed by Declarant (in Declarant's sole and absolute discretion), properly repair and restore the remaining portion of the Parcel owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner. In the event that any Owner does not repair or restore the remaining portion of its Parcel within sixty (60) days following the taking, Declarant shall have the right, at Declarant's sole election (which election shall be made in writing and delivered to the subject Owner whose property was taken within sixty (60) days following the subject taking), to restore or repair affected Common Area improvements (or any portion thereof), in which event, the affected Owner shall immediately assign or pay to Declarant any award received on account of the taken Common Area property or on account of the subject restoration or repair.

9.12 Captions. The captions heading the various Articles of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

9.13 Consent. Unless otherwise set forth herein, any approval or consent required or requested of the Declarant or Manager may be withheld in its sole and absolute discretion; provided, however, that Declarant or Manager may not unreasonably withhold consent when reviewing the site plans or granting subdivision approvals for the Cabela's Retail Building Parcel or the Cabela's Excess Parcels. Unless otherwise specified herein, any approval or consent required to be obtained hereunder by any Owner, other than the Declarant or Manager, shall not be unreasonably withheld and shall be given or withheld within thirty (30) days after delivery of the request therefor. In the event an Owner whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner shall be deemed to have approved of, or consented to, the matter in question. Any approval or consent required to be obtained by any Owner of the Cabela's Retail Building Parcel or the Cabela's Excess Parcels shall not be unreasonably withheld by Declarant or Manager and, in the event Declarant or Manager fails to respond within thirty (30) days after the delivery of the request for approval or consent, Declarant or Manager shall be deemed to have approved of or consented to, the matter in question; provided, however, said Owner's requests must have otherwise fulfilled the requirements set forth in this Declaration.

9.14 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Declaration except in connection with a transfer or conveyance by such Owner of its interest in property within the Project which has been first approved in writing by Declarant (and any conveyance made by deed of trust, Mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing). Declarant shall not unreasonably withhold its consent for an Owner to assign all or any portion of its rights, benefits, duties or obligations to another Person (including the sale or lease of a Parcel) as long as the Person receiving the assignment of such rights, benefits, duties or obligations continues to utilize the Parcel for a purpose substantially similar to the transferring Owner's previously approved use and can reasonably demonstrate to Declarant that it is in the same or better financial position as the assigning Owner and that such Person is capable of satisfying the obligations (financial and otherwise) imposed by this Declaration.

9.15 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Project to another Owner, occupant or tenant hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express) or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Declarant: Traverse Mountain Commercial Investments, LLC
3940 North Traverse Mountain Blvd; Suite 200
Lehi, UT 84043

Attention: James M. Christensen

Manager:

Traverse Mountain Commercial Investments, LLC
3940 North Traverse Mountain Blvd; Suite 200
Lehi, UT 84043
Attention: James M. Christensen

To any other Owner:

At such address as such Owner shall designate in writing to the Manager, or at such Owner's address in the Project if such Owner shall fail to designate in writing another address to the Manager.

The Manager shall make all addresses furnished by any Owner pursuant to this Section 9.15 available to any Owner, occupant or tenant of the Project who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to the Declarant and Manager in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

9.16 Estoppel Certificates. Each Owner shall deliver to Declarant or Manager, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), and that, to such Owner's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s). Declarant or Manager shall deliver to any Owner, without charge, within fifteen (15) days after request, written statements setting forth that, to the best of Declarant's or Manager's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), and that, to Declarant's or Manager's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s).

9.17 Subdivision. Declarant shall have the right to subdivide any Parcel. Upon such subdivision, each portion of such subdivided Parcel shall be a separate Parcel. Except for the Owner of the Cabela's Excess Parcels, no other Owner shall have the right to subdivide or in any way seek, petition, request or obtain any alteration, amendment, change or other modification of the zoning classification or approved use(s) of any property or Parcel within the Project.

9.18 Rights. Declarant has the following rights with regard to any portion of the Project owned or leased by Declarant or an affiliate of Declarant or any Common Areas within the Project; provided, however, the rights are subject to compliance with state and local ordinances and standards:

- a. To sell, resell, rent or re-rent any portion of the Project.
- b. To complete excavation, grading, construction of improvements and other development activities on the Project. Such activities may include, at Declarant's election, installing energy projects.
- c. Subject to approval of any applicable governmental agency, to alter construction plans and designs, to modify improvements and to construct such additional improvements as Declarant (subject to Declarant's approval) deems advisable.
- d. To erect, construct and maintain on the Project such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of property and Parcels in the Project.
- e. At any time prior to acquisition of title to a Parcel, lot or condominium by a purchaser from Declarant, to establish on that Parcel, lot or condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of property in the Project.

9.19 Zoning Changes & Subdivision. Without the prior written consent of Declarant, which consent may be granted or withheld in the sole discretion of Declarant, no Owner may seek, petition, request or obtain any alteration, amendment, rezone, change or other modification of the zoning classification or approved use(s) of any property, Parcel or Common Area within the Project. Furthermore, except as otherwise provided in Section 9.17, without the prior written consent of Declarant, which consent may be granted or withheld in the sole discretion of Declarant, no Owner may seek, petition, request or obtain a subdivision of any Parcel or property within the Project. Notwithstanding anything to the contrary in this Section, Declarant and its affiliates shall not be restricted from: (a) seeking, requesting and obtaining an modification of the zoning classification or approved use(s) of the property in the Project owned by Declarant, or (2) seeking, petitioning, requesting and obtaining a subdivision of property in the Project owned by Declarant, an amendment of the area plan for the Project or an amendment of any the development agreement between Declarant (or its affiliates) and Lehi City relating to the Project. Each Owner waives any and all rights to object to any petition, request or effort by Declarant or its, subsidiaries, affiliates (including but not limited to Fox Ridge Investments, LLC or Mountain Home Development Corporation), successors or assigns to obtain any alteration, amendment, change or other modification of the zoning classification, area plan or approved use(s) of any property within the Project or any other portion of the Traverse Mountain Master Planned Community or the annexation and development agreement for the Project or any other portion of the Traverse Mountain Master Planned Community; provided, however, Declarant shall cooperate with any Owner of a Retail Building whose interior Floor Area exceeds 150,000 square feet if Declarant or its affiliates seeks to change any Parcel previously designated as a Hotel Building Parcel, Office Building Parcel, or Retail Building Parcel to a Residential Building Parcel within the Project.

9.20 Jurisdiction. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Utah.

9.21 Other Agreements. Nothing contained in this Declaration shall be construed as a limitation on Declarant's right to enter into any supplemental agreement with the grantee or lessee of any Parcel (or portion thereof) on terms and conditions more favorable to Declarant or otherwise different than those contained herein; provided, however, in all events, any such agreement shall be subordinate to this Declaration.

9.22 Non-Discrimination. There shall be no discrimination against or segregation of any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land of the Parcels, nor shall the transferee of any interest in the Parcels or any person claiming under or through such transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land of the Parcels.

9.23 Declarant. So long as Traverse Mountain Commercial Investments, LLC, a Utah limited liability company, or an entity or Person controlling, controlled by or under common control with Traverse Mountain Commercial Investments, LLC, a Utah limited liability company (a "TM Affiliate"), owns any Parcel within the Project, Traverse Mountain Commercial Investments, LLC, a Utah limited liability company (or, in the absence of such entity, a TM Affiliate (if such party owns a Parcel)) shall be the "Declarant" for purposes of this Declaration, unless otherwise elected. At any such time that Traverse Mountain Commercial Investments, LLC (or a TM Affiliate) no longer owns a Parcel within the Project or otherwise elects to no longer be the Declarant hereunder, the Owner of all of the Retail Building Parcels shall be the "Declarant" for purposes of this Declaration, unless otherwise elected. At any such time that Traverse Mountain Commercial Investments, LLC (or a TM Affiliate) no longer owns a Parcel within the Project or otherwise elects to no longer be the Declarant hereunder, or there is no single Owner of all of the Retail Building Parcels, Owner's owning a majority of the Floor Area of the Retail Building Parcels shall then elect another Owner to be the Declarant hereunder. At any such time that Traverse Mountain Commercial Investments, LLC (or a TM Affiliate) no longer owns a Parcel within the Project or otherwise elects to no longer be the Declarant hereunder, or the Owner of all of the Retail Building Parcels elects to no longer be the Declarant hereunder, Owner's owning a majority of the buildable area (meaning the area upon which may be built Buildings, parking areas or other improvements) of the Project shall then elect another Owner to be the Declarant hereunder. Notwithstanding anything herein to the contrary, at any such time that the subject Owners are unable to elect a Declarant pursuant to the foregoing provisions, or the elected Declarant elects to no longer be the Declarant hereunder and another Declarant is not appointed pursuant to the foregoing provisions, then the Owner of the Retail Building Parcels shall be the Declarant hereunder. If more than one person owns the Retail Building Parcels, each such Owner shall constitute Declarant.

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

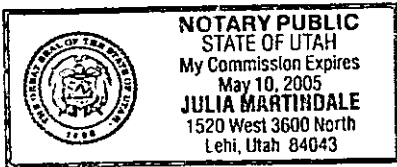
DECLARANT

TRAVERSE MOUNTAIN COMMERCIAL INVESTMENTS, LLC, a Utah limited liability company

By: [Signature]
Name: JAMES M CHRISTENSEN
Its: MANAGER

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

On the 6th day of October, 2004, personally appeared before me James M. Christensen, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Manager of Traverse Mountain Commercial Investments, LLC, and that said document was signed by him in behalf of said entity.



[Signature]
NOTARY PUBLIC
Residing at: 1520 W. 3600 N.
Lehi, UT 84043

EXHIBIT "A"

PROJECT

Legal Description

That certain real property located in Utah County, State of Utah, more particularly described as follow:

Lots I-12-B, I-12B-2, I-12C, I-12D, I-12E, I-12F, I-12F-2, I-12G and Open Space, TRAVERSE MOUNTAIN COMMERCIAL PLAT "A", according to the official plat thereof as recorded in the Office of the Utah County Recorder.

FOR REFERENCE PURPOSES ONLY

Tax Parcel / Sidwell Numbers:

EXHIBIT "B"

CABELA'S RETAIL BUILDING PARCEL

Legal Description

That certain real property located in Utah County, State of Utah, more particularly described as follow:

Lot I-12B, TRAVERSE MOUNTAIN COMMERCIAL PLAT "A", according to the official plat thereof as recorded in the Office of the Utah County Recorder.

FOR REFERENCE PURPOSES ONLY

Tax Parcel / Sidwell Numbers:

EXHIBIT "C"

CABELA'S EXCESS PARCELS

Legal Description

That certain real property located in Utah County, State of Utah, more particularly described as follow:

Lots I-12B-2 and I-12F-2, TRAVERSE MOUNTAIN COMMERCIAL PLAT "A", according to the official plat thereof as recorded in the Office of the Utah County Recorder.

FOR REFERENCE PURPOSES ONLY

Tax Parcel / Sidwell Number: