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IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION,
a West Virginia unincorporated non-profit association

Plaintiff/Counterclaim Defendant,

v.

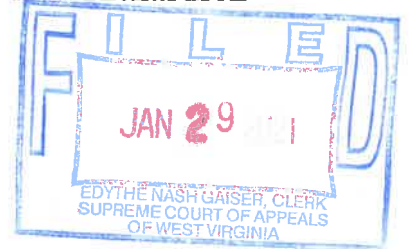
Civil Action No.: 20-C-24

The Honorable Robert A. Richardson

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SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant/Counterclaim Plaintiff.



MOTION TO REFER TO THE BUSINESS COURT DIVISION

Now comes The Mountain Lodge Association (“Plaintiff” or “Mountain Lodge Association”), by and through the undersigned counsel, Mark A. Sadd, Ramonda C. Marling, and Andrew W. Holbrook of Lewis Glasser PLLC, and moves the Circuit Court of Pocahontas County, West Virginia to refer the underlying case to the Business Court Division (“BCD”) and to enter an order transferring it to the BCD pursuant to *West Virginia Code* § 51-2-15 and Rule 29.06 of the *West Virginia Trial Court Rules*. In support thereof, Mountain Lodge Association states as follows:

Prefatory Statement

The claims and counterclaim in this matter are centered on the parties’ respective obligations to fund the costs of operating, maintaining, and repairing the Snowshoe Mountain Lodge Building (the “Mountain Lodge Building”) containing the Conference Center on its first floor and the Mountain Lodge Condominium on its second, third and fourth floors. Mountain Lodge Association is a West Virginia non-profit unincorporated association that exists solely to serve the mutual interests of persons who or that own Units (“Unit Owners”) within Mountain

Lodge, a condominium common interest community. Membership in Mountain Lodge Association is required of and exclusive to Unit Owners within Mountain Lodge.

Defendant Snowshoe Mountain, Inc. is a West Virginia for-profit corporation (“Defendant” or “Snowshoe”). Snowshoe operates a facility known as the Conference Center located within the Mountain Lodge Building that is physically integrated with the structural and mechanical elements or components of the Mountain Lodge Building. Snowshoe has shared the structural and mechanical elements or components of the Mountain Lodge Building without contributing its share of the costs to operate, maintain, repair, or replace them.

As set forth more fully in the *Second Amended Complaint*, Plaintiff initiated this civil action largely to seek an adjudication or declaration of its rights under the condominium and related documents governing the creation, operation, maintenance, repair, and replacement of the elements of the Mountain Lodge Building, including its right to be paid or reimbursed for Defendant’s fair share of the costs to operate, maintain, repair, and replace them. Since the construction of the Mountain Lodge Building — an integrated, mixed residential and commercial use building on a single parcel of land — Defendant and its predecessors for 38 years have contributed almost no money toward those costs. Plaintiff bears the entire burden of the costs of the relationship between Plaintiff and Defendant while Defendant claims all benefits of use of the Mountain Lodge Building and denies, despite its contract obligations and state law, liability for its fair share of those costs.

In the alternative to money damages, Mountain Lodge Association seeks reformation or rescission of the financial and legal relationships between Plaintiff and Defendant based on the unconscionability of the arrangement.

In sum, the current financial and legal relationships are violative of West Virginia law, unfair, unconscionable, and unjust.

Statement of Operative Facts

The Commonwealth Group, a South Carolina general partnership (“Commonwealth” or the “Declarant”), was the Declarant of the Mountain Lodge Condominium. The Declarant submitted a tract of land containing 5.01 acres, more or less, to that certain “Declaration Establishing a Plan for Condominium Ownership *etc.* Pursuant to Chapter 36B of the Code of West Virginia of 1931, as amended” dated November 10, 1982 and recorded in the office of the Clerk of the County Commission of Pocahontas County, West Virginia in Deed Book 169, at page 1. *See* the Declaration (the “Declaration”) attached hereto as *Exhibit 1*.

2. The Declarant submitted “[t]he Land together with a portion of the building erected thereon and all easements, rights-of-way and other rights and obligations appurtenant thereto,” to the provisions of Chapter 36B of the Code of West Virginia of 1931, as amended, known as the Uniform Condominium Act (the “UCA”). *See* Section I of *Exhibit 1*.

3. The Declaration provides that “[t]here is constructed upon the 5.01 acres a four-story building at a location and in the configuration as shown on Exhibit 3 attached hereto. That portion of the building which is hereby submitted to the provisions of the Act consists of the upper three floors, all sites on the ground for footers and pillars for the structural supports necessary to support the upper three floors of the building together with the footers, pillars, beams, and walls (except walls or portions thereof designated on Exhibit A attached to the Conference Center Deed as being part of the Conference Center) situate thereon, all as hereinafter described. The Conference Center, which is not a part of the condominium, but which has been deeded to

Snowshoe Company and will be owned and operated by it and its successors, grantees and assigns is excluded from the submission.” *See* Section I, Subsection B of *Exhibit 1*.

4. Mountain Lodge Association is responsible for the maintenance, repair, and replacement of the common elements and each unit owner is responsible for the maintenance, repair, and replacement of his unit. W. Va. Code § 36B-3-107(a).¹

5. By that certain Deed and Agreement, dated November 10, 1982, and recorded in the Clerk’s office in Deed Book 168, at page 674, the Declarant conveyed to Snowshoe Company what is identified therein as the Conference Center (the “Conference Center Deed”). *See* Conference Center Deed attached hereto as *Exhibit 2*.

6. Snowshoe is successor in title and interest in and to the Conference Center.

7. By the Conference Center Deed, Commonwealth purported to grant and convey to Snowshoe Company a quantum of space described therein in part as “a horizontal plane, the elevation of which is 4,708.89 feet as measured vertically above sea level as established by the United States Coast and Geodetic Survey and which is bounded by 26 vertical planes which are respectively formed by projecting vertically downward and the boundaries of that certain plot or polyhedron” and as further described in the Conference Center Deed. *Id.*

8. From its purported conveyance of the space known as the Conference Center by the Conference Center Deed, the Declarant also purported to except, reserve, and exclude “therefrom the parcels, footers, pillars, beams, walls, and other areas as shown shaded or cross-hatched on Exhibit A and hereinafter described”. *See* Conference Center Deed, pp. 677 - 678.

9. The Conference Center also is a defined term under Article III of the Declaration and is further described on plats recorded in the Clerk’s office. The Conference Center comprises

¹ Similar provisions under both the UCA and the Uniform Common Interest Ownership Act (“UCIOA”).

approximately 33,000 square feet, more or less, making up most of the first floor or “basement” under the east or downhill facing wing of the building together with certain walls and portions thereof. *Id.*, p. 6.

10. The four-story integrated, mixed-use building situated upon the 5.01 acres that the developer, The Commonwealth Group, submitted to the Declaration is referred to as the “Mountain Lodge Building” comprising the first floor, the Conference Center, and second, third and fourth floors (the “Residential Floors”).

10. The Conference Center shares with the Residential Floors the structural and most mechanical elements and components of the Mountain Lodge Building, but Defendant does not share in the costs of operating, maintaining, repairing, and replacing the shared elements and components.

11. Defendant has never paid its fair share of the costs of the operation, maintenance, repair and replacement of the shared elements and components of the Mountain Lodge Building.

Procedural History and Nature of Claims Asserted

1. On July 17, 2020, Mountain Lodge Association filed its initial Complaint with the Circuit Court of Pocahontas County, West Virginia in which it made declaratory judgment and unjust enrichment claims against Snowshoe.

2. On September 11, 2020, Snowshoe filed a *Motion to Dismiss*.

3. On October 6, 2020, Mountain Lodge Association filed its *First Amended Complaint* adding additional claims for contribution, breach of contract and *quantum meruit*. See *First Amended Complaint* attached hereto as *Exhibit 3*.

4. On October 16, 2020, Snowshoe filed its *Motion to Dismiss the Amended Complaint*.

5. On October 22, 2020, Mountain Lodge Association filed a *Motion for Additional Discovery under Rule 56(f)* and its *Response to Snowshoe's Motion to Dismiss*.

6. A scheduling conference was held on October 28, 2020 and an *Agreed Scheduling Order* was entered on November 11, 2020.

7. On November 16, 2020, Snowshoe filed its *Answer to the First Amended Complaint and Counterclaim*. See *First Amended Complaint and Counterclaim* attached hereto as *Exhibit 4*. In its Counterclaim, asserted its counterclaim in the alternative to its motion to dismiss. Snowshoe specifically asserts that “in the event Counts (sic) V of Plaintiff's Amended Complaint are found to be cognizable causes of action, then Defendant would also have grounds to assert the same claim against Plaintiff, which it now does in this instant Counterclaim.” Counterclaim, p. 20.

8. On December 22, 2020, Mountain Lodge Association filed its *Motion to Dismiss Snowshoe's Counterclaim*.

9. On January 29, 2021, Mountain Lodge Association filed its *Motion for Leave to File its Second Amended Complaint* together with its *Second Amended Complaint*. See *Motion to File Second Amended Complaint* and *Second Amended Complaint* attached hereto as *Exhibit 5*. No action has been taken on Plaintiff's *Motion for Leave to File its Second Amended Complaint*.

10. A copy of the docket sheet is attached hereto as *Exhibit 6*.

11. The parties are currently engaged in discovery.

12. No trial date has been set for this matter.

13. All of the claims in this matter involve commercial disputes involving matters of significance to transactions and operations between the parties as business entities. *Trial Court Rule 29.04(a)*.

14. The disputes present commercial issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable. *Id.*

11. The principal claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; or administrative disputes with government organizations and regulatory agencies. *Id.*

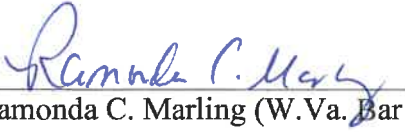
12. The filing of this Motion is timely under the Trial Court Rules. *Trial Court Rule 29.06(a)(2).*

14. Additional related actions are not currently pending.

WHEREFORE, for all of the reasons stated herein, Mountain Lodge Association respectfully requests that the Circuit Court of Pocahontas County, West Virginia, under *West Virginia Code* § 51-2-15 and Rule 29.06 of the *West Virginia Trial Court Rules*, refer the underlying case and order the transfer of it to the Business Court Division and to award Plaintiff any such further relief as this Court deems just and proper.

THE MOUNTAIN
LODGE ASSOCIATION,
a West Virginia non-profit
unincorporated association

By Counsel



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EXHIBIT 1

Pages 1 through 77

MAILED DELIVERED TO

James Marion

DATE *11-17-1982*

DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
OF A TRACT OF 5.01 ACRES AND CERTAIN IMPROVEMENTS
THEREON AND APPURTENANCES THEREUNTO BELONGING SITUATE
AT SNOWSHOE SKI RESORT, EDRAV TAX DISTRICT, POCAHONTAS
COUNTY, WEST VIRGINIA PURSUANT TO CHAPTER 36B
OF THE CODE OF WEST VIRGINIA OF 1931, AS AMENDED

BY

THE COMMONWEALTH GROUP,
A GENERAL PARTNERSHIP ORGANIZED UNDER THE
LAWS OF THE STATE OF SOUTH CAROLINA
1517 Gregg Street
Columbia, South Carolina 29201

SEE PLAT BOOK 4,
PAGES 8, 9, 10,

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1

**DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
OF A TRACT OF 5.01 ACRES AND CERTAIN IMPROVEMENTS
THEREON AND APPURTENANCES THEREUNTO BELONGING SITUATE
AT SNOWSHOE SKI RESORT, EDRAV TAX DISTRICT, POCAHONTAS
COUNTY, WEST VIRGINIA PURSUANT TO CHAPTER 36B
OF THE CODE OF WEST VIRGINIA OF 1931, AS AMENDED**

THE COMMONWEALTH GROUP, a general partnership organized under the laws of the State of South Carolina (hereinafter called the "Declarant"), with its principal office and place of business at 1517 Gregg Street, Columbia, South Carolina 29201, does hereby declare:

I. SUBMISSION OF PROPERTY

The Declarant hereby submits the land together with a portion of the building erected thereon and all easements, rights-of-way and other rights and obligations appurtenant thereto, (hereinafter more specifically described and referred to as the "Property"), to the provisions of Chapter 36B of the Code of West Virginia of 1931, as amended, known as the Uniform Condominium Act and hereinafter referred to as the "Act":

A. The Land. All of that tract of land situate in Edray Tax District of Pocahontas County, West Virginia situate approximately 2.8 miles east of West Virginia Secondary Route 9; being east of Snowshoe Drive extended and roughly 87 feet north of the Treetop Condominium northern boundary as shown on a map recorded in Plat Book 2, Page 21, and Plat Book 2, Page 9, in the Office of the Clerk of the Pocahontas County Commission and being more particularly described as follows:

Commencing at a found iron pin, the northeast corner of Treetop condominium, thence N. 32° 21' 18" E., 117.72 feet, to the beginning, a 5/8" x 30" iron pin, the southeast corner of the hereinafter described tract, thence westerly, 1 line, near the northern boundary of the above referenced and recorded Treetop tracts S. 81° 34' 06" W., 587.30 feet to an iron pin, the southwest corner of the tract, thence, northerly, 4 lines, running near the eastern edge of an existing Snowshoe utility road;

N. 00° 26' 06" E., 91.15 feet, to an iron pin

N. 08° 25' 12" E., 61.00 feet, to an iron pin

pin N. 13° 55' 12" E., 117.64 feet, to an iron

pin N. 12° 31' 06" E., 128.28 feet, to an iron

Thence, easterly, 1 line;

pin N. 64° 27' 30" E., 339.50 feet, to an iron

Thence, southerly, 3 lines;

pin S. 63° 57' 00" E., 106.78 feet, to an iron

pin S. 19° 42' 42" E., 211.52 feet, to an iron

S. 11° 25' 12" E., 209.27 feet, to the beginning, and containing 5.01 acres, more or less, and as shown on a survey made by Power Engineering Company, Inc. dated October 13, 1982, a copy of which is attached hereto as Exhibit No. 1.

There is excepted from this submission and Declaration that portion of the aforesaid 5.01 acre tract known as the "Conference Center" conveyed by the Declarant to Snowshoe Corporation by deed dated November 1, 1982, recorded simultaneously with this Declaration in said Clerk's office, as said Conference Center is shown on Exhibit 2 attached herewith which exhibit together with the aforesaid deed are by reference made a part hereof. Said deed is hereinafter referred to as the "Conference Center Deed."

The real estate hereby submitted to the Act is part of the same property conveyed to the Declarant by Snowshoe Company, a corporation, by deed dated April 12, 1982, and of record in said Clerk's office in Deed Book 164, at page 628, and by corrective deed dated October 26, 1982, also of record in said Clerk's office and is a part of the same real estate conveyed to Snowshoe Company by Mower Lumber Company, a corporation, by deed dated September 6, 1973, and of record in said Clerk's office in Deed Book 129 at page 650, to which deeds and survey reference is here made for a further description of said land.

B. Portions of the Building. There is constructed upon the 5.01 acres a four-story building at a location and in the configuration as shown on Exhibit 3 attached hereto. That portion of the building which is hereby submitted to

the provisions of the Act consists of the upper three floors, all sites on the ground for footers and pillars for the structural supports necessary to support the upper three floors of the building together with the footers, pillars, beams and walls (except walls or portions thereof designated on Exhibit A attached to the Conference Center Deed as being part of the Conference Center) situate thereon, all as hereinafter described. The Conference Center which is not a part of the condominium but which has been deeded to Snowshoe Company and will be owned and operated by it and its successors, grantees and assigns is excluded from the submission. The actual description of the Conference Center and its relationship to the condominium are more particularly described in this Declaration and in the Conference Center Deed.

C. Appurtenant Easements and Rights-of-Way. The following easements and rights-of-way are a part of and appurtenant to the land and that portion of the building which are hereby submitted to the Act:

1. Nonexclusive easements and rights-of-way to use the fifty (50) foot right-of-way providing ingress and egress from and to Snowshoe Drive and to use Snowshoe Drive (West Virginia Route 9/3), and the other public roads within Snowshoe Resort to provide unrestricted ingress and egress for all purposes to and from the Condominium.
2. A nonexclusive easement and right-of-way over and across the streets, roads, parking lots, trails and other areas designated by Snowshoe Company for public use, for access to the public recreational facilities of the Snowshoe Resort.
3. Such nonexclusive easements and rights-of-way over, across and through the property of Snowshoe Company, for the purposes of constructing, locating, installing, removing, repairing, operating and maintaining such water, natural gas, sewage, electrical, telephonic and other utility delivery or distribution lines and facilities as may be necessary for the development, use and enjoyment of the 5.01 acre site.
4. A nonexclusive easement to utilize the property immediately surrounding and adjacent to the property hereby conveyed as necessary to provide for the maintenance and fire protection of the Condominium.
5. The nonexclusive right and license to connect onto any water supply lines and sewage discharge lines now located or hereafter constructed on the property of Snowshoe Company, subject only to the obligation to pay a

fair and reasonable user service fee for water and sewage disposal services.

6. An exclusive easement through the Conference Center for all existing pillars, load-bearing walls, beams and other structural members situate therein or abutting thereon:

(i) Exclusive easements for and ownership of all utility chases and lines, including, but not necessarily limited to, drainage, water, sewer, electric, telephone, sprinkler, cable television lines and ducts or lines for the discharge of waste gas, air, smoke and fumes, all as now located and existing through the Conference Center;

(ii) Exclusive easements for and ownership of all existing passenger elevators and mechanical and equipment rooms and personal property and fixtures in connection therewith;

(iii) An exclusive easement for and ownership of portions of the existing main lobby fireplace and stairway;

(iv) An exclusive easement for and ownership of an existing emergency exit stairway;

(v) An exclusive easement for and ownership of an existing trash chute; together with a non-exclusive easement within the Conference Center in the immediate proximity of the trash chute for facilities to collect the trash emanating from the trash chute;

(vi) A right to full support of the Condominium and all parts thereof including without limitation the right to install, maintain, inspect, repair, replace and remove from time to time all footers, pillars, walls, foundations and other structural members, facilities and property as are sufficient at all times to support the Condominium and so long thereafter as the real and personal property and fixtures constituting such Condominium or any part or parts thereof remain in existence, including any reconstruction or replacement thereof in whole or in part in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across corridors, lobbies, shafts, and open spaces and areas sufficient to provide for maintenance, inspection, repair, replacement and removal of the Condominium or any part thereof and (b) non-exclusive easements for and the right to install, maintain, repair, replace and remove from time to time pipes, cables, ducts

and conduits of every kind and nature for drainage, water, sewage, electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Condominium including further the right to temporarily place ladders and equipment against portions of the Conference Center owned by the Company as reasonably necessary in the exercise of the rights hereby reserved and described;

(vii) The right to discharge in a lawful manner from and through the utility chases and ventilation lines owned by the Condominium through the Conference Center all such fresh, exhaust and waste gas, air, smoke, fumes, water, moisture, drainage and sewage as shall be reasonable having due regard and care for the use and enjoyment of the Conference Center and any structure or improvement therein; together with an easement to construct, maintain, inspect, repair and replace when reasonably necessary within the Conference Center pipes, cables, ducts and conduits sufficient to accommodate the easement for the aforesaid discharge for the benefit of the Condominium;

(viii) Subject to the obligations for support and the easements granted by this deed, the right from time to time to reconstruct or replace within the Condominium in the same location, at the sole expense and risk of the Condominium, and after the expiration of the 30th day following the receipt by the Conference Center owner and all holders of mortgages thereon or any portion thereof of written notice of such effect without receipt by the Condominium Association of Unit Owners, of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and structural members maintained entirely or partially for the benefit of the Conference Center;

(ix) A non-exclusive right of ingress, egress and regress through the public areas of the Conference Center for the use of the Condominium and its Association of Unit Owners, unit owners, and their employees, agents, guests and invitees; and

(x) The non-exclusive right to use the existing trash compactor and freight elevator located within the Conference Center and owned by the Company together with the non-exclusive right of ingress, egress and regress through the Conference Center to provide access to the trash chute and freight elevator for the use of the Condominium and its Association of Unit Owners, unit owners and their employees, agents, guests and invitees.

D. Other Rights and Obligations. All other rights vested in the Declarant which are not otherwise set forth herein but which are more particularly described in the Conference Center Deed, which rights are incorporated herein by reference and made a part hereof as if set forth herein verbatim.

All of the foregoing land, portions of the building and the appurtenant easements and other rights and obligations shall be hereinafter referred to as the "Condominium."

II. NAME AND ADDRESS OF THE CONDOMINIUM

The name and address of the Condominium hereby created shall be "Snowshoe Mountain Lodge Condominium," Snowshoe Drive, Snowshoe, West Virginia 26201. The entire condominium is located in Pocahontas County, West Virginia only.

III. THE CONFERENCE CENTER

The building hereinbefore described which contains the Condominium also contains on the first floor thereof the Conference Center which is owned by Snowshoe Company, a corporation, by virtue of the Conference Center Deed. The Conference Center consists of approximately 33,000 square feet, more or less, making up most of the first floor or "basement" under the east or downhill facing wing of the building together with certain walls and portions thereof. The Conference Center is shown on Exhibit 2 attached hereto. Except for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit. Reference is here made to the Conference Center Deed for a more particular description of the Conference Center.

IV. THE CONDOMINIUM

The Condominium consists of portions of the land, portions of the building and the easements and other rights appurtenant thereto, and contains a total of 229 residential units which shall be the maximum number of units that may be created in the Condominium. The owner of a unit, as hereinafter defined, is herein called a "Unit Owner" and the owners of all units are herein collectively referred to as the "Unit Owners." The Property making up the Condominium shall be

divided into units and common elements as follows:

A. The Units. For purposes of identification, all units in the Condominium are identified by number and are delineated and described in Exhibit 3 attached hereto. No unit bears the same identifying number as any other unit. A graphic description of each of the units within the building is set forth on Exhibit 4 attached hereto. The 229 units in the Condominium consist of eight different types and Unit 139 as follows:

| <u>Unit Type</u> | <u>Number</u> |
|---------------------------|---------------|
| Zermatt (1 Bedroom) | 56 |
| Zermatt R (1 Bedroom) | 70 |
| Innsbruck (2 Bedrooms) | 27 |
| Innsbruck R (2 Bedrooms) | 21 |
| Davos (2 Bedrooms) | 27 |
| Davos R (2 Bedrooms) | 21 |
| St. Moritz (2 Bedrooms) | 3 |
| St. Moritz R (2 Bedrooms) | 3 |
| Unit 139 | 1 |
| | <hr/> |
| | 229 |

The Zermatt and Zermatt R units are 14 feet by 36 feet and contain 504 square feet. Innsbruck and Innsbruck R units are 14 feet by 38 feet with a second bedroom 14 feet by 17 feet and a total square footage of 742 feet. Davos and Davos R units are 14 feet by 36 feet with a second bedroom 14 feet by 19 feet and a total square footage of 770 feet. The St. Moritz and St. Moritz R units are 28 feet by 36 feet and have a total of 1,008 square feet. The basic layout of each of the unit types is shown in Exhibit 4 attached hereto. The boundary of each residential unit consists of the area surrounded by the walls, floors and ceilings and includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other material constituting any part of the finished surfaces thereof together with all door steps, stoops, balconies and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit boundaries as hereinbefore described.

B. Common Elements. The common elements of the Condominium consist of all of the land making up the 5.01 acre tract except that portion which is part of the Conference Center as described and shown on Exhibit 2; the appurtenant easements and other rights as hereinbefore described; everything else within the top three floors of the building that is not included within the individual units themselves, including but not limited to footers, pillars, beams, load-bearing walls and other structural members, air rights, utility

systems, chases, central television antenna systems, roof, perimeter walls, bearing walls, floors and ceilings, hallways, stairs and stairways, atriums, main lobby and fireplace therein, skylights, passenger elevators, trash chute, observation deck, library and fireplace therein, trout ponds, built-in seating, playground (Hipporarium), ski storage area, walkways, freight loading dock, parking areas and all fixtures and personal property used in connection with any of the common elements. All of the major common elements of the Condominium are set forth and shown on Exhibit 3 attached hereto. The only limited common elements as defined by the Act included within the Condominium are the balconies and all exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit boundaries as hereinbefore defined.

V. ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS

Pursuant to the provisions of the Act, each unit Owner shall own, together with his unit, an undivided interest in the common elements and such undivided interest is stated as a percentage of ownership in said common elements with each unit having the percentage of ownership in the common elements as set forth on Exhibit 5 attached hereto. The percentage of undivided interest in the common elements is assigned according to the square feet of living space in each unit as a percentage of the total square feet of living space of all units. The percentage of undivided interest in the common elements for the units in the Condominium is as follows:

| <u>Type of Unit Designation</u> | <u>Percentage of Interest in the Common Elements Assigned to Each Unit</u> |
|-------------------------------------|--|
| Zermatt and Zermatt R | .3534% |
| Innsbruck and Innsbruck R | .5202% |
| Davos and Davos R | .5399% |
| St. Moritz and St. Moritz R | .7067% |
| Unit 139 | .3534% |

VI. COMMON EXPENSES AND SURPLUS

All costs of maintenance, repair and replacement of common elements necessitated by the negligence or misuse by any occupant of a unit shall be borne solely by the unit Owner and the Executive Board of the Association as hereinafter described shall have the right to assess such Unit Owner for such costs. All other costs of maintenance, repair, replacement, preservation and improvement of the common elements shall be unless provided otherwise by the Executive Board as hereinafter defined, Common Expenses. Each Unit Owner shall be liable

for that portion of the Common Expenses equal to his unit's percentage interest in the common elements. Likewise, each Unit Owner's interest in any common surplus shall be equal to his interest in the common elements.

VII. VOTING RIGHTS

Each Unit Owner shall have voting rights in the Association as hereinafter described equal to his unit's undivided percentage interest in the common elements.

VIII. USE OF COMMON ELEMENTS

Every Unit Owner shall have the right to use the common elements except for those areas which are or will be reserved for the use of occupants of certain designated units to the exclusion of others and are or shall be designated as limited common elements. Use of the common elements may otherwise be regulated by rules and regulations promulgated by the Executive Board of the Association. Any person actually occupying any unit may use the common elements and those limited common elements reserved for the use of a particular unit during the time that said occupant is actually in residence in the units, subject, however, to the limitations herein provided and any rules and regulations promulgated by the Executive Board as aforesaid.

IX. LIMITATION ON USE OF UNIT AND RESTRAINTS ON ALIENATION

A. The Unit Owner shall occupy and use his unit for residential purposes for himself and the members of his family and his social guests or designees and for no other purposes; provided, however, nothing herein contained shall prevent any Unit Owner from leasing or renting his unit for residential use and in compliance with this Declaration and its Exhibits, the Act and rules and regulations properly promulgated, if any, nor shall anything herein contained prevent commercial use of Unit number 139 as herein provided. Such renter or lessee may be removed from the Property and/or refused further entrance by the Executive Board of the Unit Owners Association or its designee for non-compliance, and the Unit Owner shall be liable for all damages caused by his lessee or renter and all costs of removal shall be a lien upon his unit the same as the lien for unpaid common expenses. No commercial or business activity shall be carried out in any unit or other part of the Property except that the Declarant, its successors and assigns, may maintain and use Unit number 139 of the Condominium owned by it for management, sales and rental offices, maintenance areas, or for other general commercial purposes. No unit shall be subject to a plan of multiple use, interval ownership or time sharing arrangement by any Unit Owner or a successor in interest.

B. No Unit Owner shall permit or suffer anything to be done or kept in or about his unit or upon the common elements which will obstruct or interfere with the rights of other Unit Owners, their guests or assigns or annoy them by creating any unreasonable noises or otherwise, nor shall any Unit Owner permit or commit any nuisance or illegal act in or about the Property.

C. No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of the units or upon the general or limited common elements; nor shall he plant any type of plants, shrubbery, flower, vine or grass outside a unit; nor shall he cause awnings or storm shutters, screens, enclosures and the like to be affixed or attached to any unit, limited or general common elements; nor shall he place any furniture or equipment outside a unit except with the written consent of the Executive Board of the Unit Owners Association; and further, where provided, subject to the rules and regulations of the Executive Board. No clothesline or similar device shall be allowed on any portion of the Property nor shall clothes be hung anywhere except where designated by the Executive Board. Unit Owners may not screen or enclose any balcony which abuts his unit, where applicable, with any type of material without the prior written consent of the Executive Board.

D. No violations of any law, order, rule or regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property shall be permitted.

E. Each Unit Owner shall maintain the interior temperature of his unit at no lower than such minimum temperature as shall be sufficient to insure that no water pipe or sewer line shall freeze. Any damage caused by the freezing of any water pipe or sewer line which shall result from the failure of any Unit Owner to maintain a sufficient temperature within his unit shall be a liability of such Unit Owner, assessable against the owner of such unit.

F. No person shall use the common elements or any part or parts thereof or a unit or any part of the Property in any manner contrary to, or not in accordance with, such rules and regulations pertaining thereto as may from time to time be promulgated by the Executive Board of the Unit Owners Association, except insofar as such rules and regulations shall conflict with the commercial use of Unit number 139 in which cases such rules and regulations shall not apply to the use and ownership of Unit number 139.

Notwithstanding the provisions hereof, the Declarant, its successors and assigns, shall be allowed to maintain Unit number 139 as a management, sales and rental office; to display and place signs upon the premises to aid in sales or rentals; and to engage in sale or rental activities or other general commercial activities therein.

X. ARCHITECTURAL CONTROL

To preserve the original architectural appearance of the Condominium, no exterior construction of any nature whatsoever except as approved in advance by the Executive Board of the Association shall be commenced or maintained upon any unit or the common elements and any such additions which are permitted shall be architecturally compatible with existing structures. No Unit Owner shall paint, decorate or change the color of any exterior surface, gate, fence, balcony or roof, nor shall any Unit Owner change the design or color of any exterior lighting, nor shall any Unit Owner install, erect or attach to any part of the exterior any sign of any kind whatsoever. No alterations shall be made unless or until plans and specifications showing the nature, kind, shape, height, material, color and location of the same shall have been submitted and approved in writing as to harmony of exterior design, color and location in relation to surrounding structures by the Executive Board, and so long as Declarant, or its successors or assigns, own one or more units in the Condominium the Declarant or its successors and assigns. Failure of the Executive Board and, if appropriate, of the Declarant to approve or disapprove such plans and specifications within sixty (60) days after their being submitted in writing shall constitute approval. A Unit Owner may, however: (i) make any improvements or alterations to the interior of his unit that does not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium; and (ii) after acquiring an adjoining unit may remove or alter any intervening partition or create apertures therein, even if the partition, in whole or in part, is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this provision is not to be considered an alteration of boundaries of the unit.

XI. ENCUMBRANCE ON OR AFFECTING TITLE TO THE CONDOMINIUM

A. Reservations by Mower Lumber Company. The entire 5.01 acre tract is, subject to certain covenants, limitations, reservations, exceptions, rights-of-way, leases

and restrictions set forth and contained in a deed from Mower Lumber Company to Snowshoe Company dated September 6, 1973, and of record in the office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Dead Book 129, at page 650. A copy of pertinent portions of said deed is attached hereto as Exhibit 6. In summary, this deed provides for a reservation of all coal, oil and gas under certain portions of the Ski Resort as well as rights-of-way and easements which do not interfere with the Condominium site.

B. Reservations by Snowshoe Company. The deed from Snowshoe Company to the Declarant is made subject to the following covenants, conditions, reservations and restrictions which shall run with and bind the land and which shall inure to the benefit of and be enforceable by Snowshoe Company and its successors and assigns:

(1) All telephone, electric power and other transmission or utility lines shall be installed on the property below ground.

(2) No buildings or other structures shall be erected or maintained on the property, excepting only a hotel or lodge style condominium development and convention center.

(3) No building or other structures shall be erected, placed, changed, altered or remodeled on the property, nor any site preparation begun until the proposed building plans, specifications and plot plans (showing among other things the proposed locations of all buildings and structures, the exterior colors and finishes, building heights, locations of driveways and parking areas, drainage and landscaping plans, and construction schedules) have been approved by Snowshoe Company in writing, it being expressly understood and agreed that any approval or refusal of such plans or specifications may be based upon any reasonable grounds, including purely aesthetic grounds, in the sole discretion of Snowshoe Company. Snowshoe Company's written approval of the building constructed upon the land making up the Conference Center and the Condominium is attached hereto as Exhibit 7.

(4) The right and easement to construct, operate, maintain and remove water, sewage, natural gas, electric and telephonic distribution lines and facilities and snowmaking pipelines and hydrants, at

such locations as shall be determined by the party of the second part or its successors or assigns, in, over and through the property hereby conveyed, and the nonexclusive right and easement to interconnect with and use any such utility distribution lines and facilities as may be constructed by either party hereto or others on the property hereby conveyed; provided, however, that no such utility lines or facilities shall be located or used by Snowshoe Company or its successors or assigns so as to prevent, interrupt or interfere with the provision of such utilities to the property hereby conveyed or the development and use of the property of the party of the second part or its successors or assigns.

(5) The right to operate, use and maintain, adjacent to and within the vicinity of the land herein described, ski lifts, snow making equipment and snow grooming equipment, without liability for noise or for damage or injury to said real estate or anything constructed or located thereon caused by the deposit or build-up of ice and/or snow generated by the operation of said equipment.

(6) The right of Snowshoe Company to collect an annual assessment against the property hereby conveyed and any portion thereof, which annual assessment shall be determined as hereinafter provided, for maintenance and care of the roads, streets, alleys, sidewalks, parks and common areas and common facilities in and around and owned by Snowshoe, and for basic fire protection and security services, and for such other services as may be made available to land owners or purchasers by Snowshoe, as follows:

(a) Authority for Assessment. Every person or entity who becomes an owner of an interest in any residence unit or units in the Condominium to be constructed on the above-designated property by accepting delivery of a deed or deeds to such residence unit or units agrees and binds himself, his heirs, personal representatives, successors and assigns, to pay an annual assessment, determined as hereinafter provided, for the maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common facilities within the Snowshoe Resort to which said owner may have a right of use or access, and for basic fire protection and security services, and for such other services as may be made available to the residence unit owners by Snowshoe Company,

or its successor, as the operator of the Snowshoe Resort.

(b) Determination of Assessment.

Until such time as the residence unit or units shall be separately identified and assessed for tax purposes upon the real estate tax rolls of Pocahontas County, West Virginia, the annual assessment for each residence unit, as aforesaid, shall be an amount, as determined by Snowshoe Company, or its successor, as the operator of the Snowshoe Resort, in its absolute and sole discretion but not exceeding a sum equal to three-fourths ($\frac{3}{4}$) of one percent (1%) of the sales price last paid for such residence unit. Upon the separate identification and evaluation of the residence unit or units for tax purposes upon the real estate tax rolls of said Pocahontas County, the annual assessment for each residence unit shall be the amount as determined by Snowshoe Company, or its successor, as the operator of the Snowshoe Resort, in its absolute and sole discretion, not to exceed however, a sum equal to one and one-half percent ($1\frac{1}{2}\%$) of the assessed value of the residence unit, as that assessed value shall be determined by the Assessor of Pocahontas County, West Virginia, on the first day of July immediately preceding the year in which the assessment is made hereunder.

(c) Payment of Assessment. The statement or bill for the applicable annual assessment for each calendar year shall be rendered as soon as practical after the first day of July of each year and shall be due and payable, in advance, on the first day of October of such year. Any assessment, or part thereof, not paid within thirty (30) days from and after its due date shall thereafter bear interest at the then highest rate allowable by law. Should the Snowshoe Resort operator and the Executive Board agree, the operator may render to the Association a combined statement or bill covering the total of the annual assessment of the owners of the residence units within the Condominium and otherwise agree with the Executive Board for the payment of such assessments by the Association on behalf of the residence unit owners. No such

agreement, however, shall relieve the individual residence unit owners of liability for the payment of the assessment, nor relieve any residence unit of the lien herein created for assessments which are not paid as herein required.

(d) Liability for and Lien of Assessment.

All sums assessed by the operator of the Snowshoe Resort in accordance herewith shall constitute the personal liability of the owner of the residence unit so assessed, and shall, from the 30th day following the due date of the assessment, constitute a lien against such residence unit, and such personal liability and lien, or either of them, shall be enforceable by appropriate legal proceedings, in the manner provided by law.

(e) Subordination of Lien. The lien

and the annual assessment authorized herein with respect to any residence unit shall be subordinate to the lien of any mortgage placed on such residence unit, except as to such assessments having a due date on or prior to the date such mortgage is filed for record and which have not been paid. Such subordination is merely a subordination, and shall not release the residence unit owner of his personal obligation to pay all assessments coming due at a time when he is the residence unit owner; shall not release such residence unit from the lien or assessment (except to the extent a subordinated lien is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure); and no sale or transfer of such property to the mortgagee or to any person pursuant to foreclosure, or pursuant to any proceedings executed upon the Property shall release the former residence unit owner from the liability for any such assessment or release any subsequent residence unit owner from liability for any assessment coming due after such sale or transfer.

C. Additional Easements Reserved for Snowshoe Company.

1. A non-exclusive right-of-way and utility easement, 50 feet in width, the southern edge of said easement being the southwest corner of the tract and the northern edge being N. 00° 26' 06" E., 50.00 feet from the southwest corner. Said easement bears generally

southerly and westerly from the tract to Snowshoe Drive extended and is located south of the swimming pool site and parking lot and being north and west of the existing water tank. The centerline of this easement generally follows the centerline of an existing Snowshoe utility road and is shown on Exhibits 1 and 2.

2. A non-exclusive easement and right-of-way over and across those portions of the Site constituting common elements of the Condominium outside of the Building (a) for pedestrian access to and from ski slopes, recreational and commercial facilities and other development areas of the Snowshoe Resort; and (b) as necessary to provide pedestrian and vehicular access to and from the Conference Center and the public facilities to be constructed or located within the Conference Center.

3. The right to interconnect with utility lines, which now serve or which may in the future serve the Site, for extension of the utilities to future developments within the Snowshoe Resort.

4. The non-exclusive easement to use the main stairway, the elevators, the main lobby of the Condominium and the main entranceway of the Condominium for the purpose of providing a means of ingress and egress to and from the Conference Center.

5. A non-exclusive easement across those portions of the Site constituting Common Elements of the Condominium to provide a means of ingress and egress to and from the Conference Center, the freight loading dock and the other public areas of the Snowshoe Ski Resort including the public roads serving the Resort.

6. A right of full support of the Conference Center and all parts thereof, including without limitation, the right to install, maintain, inspect, repair, replace and remove from time to time all structural members, footers, pillars, walls, foundations and other members, facilities and property as are sufficient at all times to support the Conference Center so long as such Conference Center or any part or parts thereof remain in existence, including any reconstruction or replacement thereof, in whole or in part, in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across common

elements of the Condominium sufficient to provide for maintenance, inspection, repair, replacement and removal of the Conference Center or any part thereof, and (b) non-exclusive easements through and across the common elements of the Condominium for and the right to install, maintain, repair, replace and remove from time to time existing lines and chases for electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Conference Center, including further the right to temporarily place ladders and equipment against portions of the Condominium as reasonably necessary in the exercise of the rights hereby reserved and described.

7. The right to discharge in a lawful manner from and through existing chases and ventilation facilities, if any, which are part of the common elements of the Condominium all fresh, exhaust and waste air, smoke, fumes and moisture as shall be reasonable having due regard and care for the use and enjoyment of the Condominium and any structure or improvement therein; together with a non-exclusive easement to construct, maintain, inspect, repair and replace when reasonably necessary within the common elements of the Condominium the chases and conduits sufficient to accommodate the easements for the aforesaid discharge for the benefit of the Conference Center.

8. Subject to the obligations of support and the easements granted or reserved by this instrument, the right from time to time to reconstruct or replace within the Conference Center in the same location, at the sole expense and risk of the Conference Center owner, and after the expiration of the 30th day following the receipt by the Condominium Association of Unit Owners, and all holders of mortgages on any unit within the Condominium of written notice of such effect without receipt by the owner of the Conference Center of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and footers, pillars, beams, walls and other structural members owned and maintained entirely or partially for the benefit of the Condominium.

9. The right to attach walls, partitions and other internal construction to various support pillars and load bearing walls running through the Conference Center and owned by the Condominium.

10. A non-exclusive easement to own, operate, install and maintain ceilings, lights, heating,

air conditioning and utility systems within the overhead space lying between the bottom of the lower concrete support beams and the bottom of the concrete floor of the Condominium.

11. A non-exclusive easement to use the freight loading dock which is a common element of the Condominium and is shown on Exhibit 2, to provide ingress, egress and regress to and from the freight elevator owned by Snowshoe Company with the Conference Center.

D. Lien of Real Estate Taxes. Under the Constitution and the statutes of the State of West Virginia, real estate and interests therein are subject to a lien for the payment of real estate taxes as imposed by the County Commissions of each of the respective counties. Property is valued by the county assessor each year and the statutory lien for the payment of real estate taxes for the forthcoming tax year becomes a lien on July 1 of each year. Each unit and the common elements incident thereto will be assessed separately in the name of the recorded owner thereof and the payment of real estate taxes will be the responsibility of said owner. The Constitution and statutes of West Virginia provide that failure to pay real estate taxes within certain prescribed time limits can result in a loss of title to the property through public sales for delinquent taxes.

E. Other Easements. Each person who acquires an interest in a unit shall be deemed thereby to agree that: (i) if any portion of a unit shall encroach upon any portion of the common elements or other unit or any portion of the common elements shall encroach upon any unit, there shall exist a valid easement for such encroachments and for the maintenance and repair of the same so long as it stands; and (ii) in the event the building or a unit is partially or totally destroyed and the reconstruction thereof shall create an encroachment on portions of the common elements or on any unit, there shall exist a valid easement for such encroachment and the maintenance thereof. Each Unit Owner shall have an easement in common with the owners of any other adjoining unit to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any part of the residence units. Each unit shall be subject to an easement in favor of the adjoining unit or units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving each other unit or units and located in such units. The Executive Board shall have the right to grant additional easements and designate the beneficiaries thereof for such time as it determines in its sole discretion. Such rights include, but

are not limited to, the right to grant to others, easements for access and for ingress across portions of the Property as it may be composed from time to time for owners, occupants and users of other properties, facilities, and horizontal property regimes within the Snowshoe Resort or in proximity thereto. No easement shall be granted by the Unit Owners Association if as a result thereof any building or other improvements in the Condominium would be structurally weakened, or within reason, interfere with the use or appearance thereof, or the security of any mortgagee of record would be adversely affected without its written consent.

F. Other Obligations. All other obligations of the Declarant relating to the Condominium which are more particularly described in the Conference Center Deed which obligations are incorporated herein by reference and made a part hereof as if set forth herein verbatim.

XII. MANAGEMENT OF THE CONDOMINIUM

As required by the Act, a Unit Owners Association has been organized to provide for the management of the Condominium. The operation of the Condominium shall be governed by the By-Laws of the Unit Owners Association which are attached to this Declaration as Exhibit 8 and made a part hereof. No modification of, or amendment to, the By-Laws of the Unit Owners Association shall be valid unless set forth in or annexed to a duly recorded amendment. The By-Laws may be amended in the manner provided for therein and in the Act but no amendment to said By-Laws shall be adopted which will affect or impair the validity or priority of any mortgage upon the Property or any portion thereof without written consent of the mortgagee thereof and of all mortgagees of record. No amendment shall change the rights and privileges of the Declarant without written approval of the Declarant or its successors or assigns.

XIII. AMENDMENTS TO THE DECLARATION

This Declaration may be amended at the regular or any special meeting of the Unit Owners Association of the Condominium called and convened in accordance with the By-Laws, upon the affirmative vote of sixty-seven percent (67%) of all Voting Members of the Unit Owners Association; provided, however, that this Declaration may not be cancelled nor any amendment be made hereto having as its effect a termination of the Condominium without the written agreement of all the Unit Owners in the Condominium and all mortgagees holding mortgages of record upon the Condominium or any portion thereof, as provided in the Act. All amendments hereto shall be prepared, executed, certified and recorded as required by the Act, by the Secretary of the Unit Owners

Association. No amendment shall change any unit or the proportionate share of the common expenses or common surplus attributable to each unit, nor the voting rights of any unit, unless all Unit Owners of the Condominium and all mortgagees holding any mortgages or other liens upon the Property or any part thereof shall join in the execution of such amendment. No amendment shall be passed which shall impair or change the provisions of this Declaration with respect to mortgages without the written approval of all mortgagees of record. No amendment shall change the rights and privileges of Declarant, its successors and assigns, without written approval and consent of the Declarant, or its successors or assigns.

XIV. TERMINATION

This Condominium may be voluntarily terminated at any time upon the terms and conditions and in the same manner set forth and prescribed in the Act; provided, however, that unless otherwise required by law or in the Act, before the Condominium may be terminated, all mortgagees of record of any unit or any other part of the Property of the Condominium must agree in writing to accept such termination and to accept as security the undivided portion of the Property owned by the debtor of each. In the event of such termination, all Unit Owners shall become tenants in common of the real property and improvements constituting the unit and common elements. The ownership of each Unit Owner upon such termination as tenant in common shall be the same percentage as his percentage ownership in the common elements at that time.

XV. APPLICATION OF THE ACT

Except as specifically modified by this Declaration and the By-Laws in a manner permitted by the Act, all other applicable provisions of the Act shall govern the creation and management of the Condominium. In the event of any inconsistency between this Declaration or the By-Laws or the provisions of the Act the provisions of the Act shall prevail. This Declaration is intended to comply with all of the applicable provisions of the Act and shall be so interpreted and applied.

IN WITNESS WHEREOF, the Declarant on behalf of itself and to bind itself and its successors in interest has executed this Declaration this 10th day of NOVEMBER, 1982.

THE COMMONWEALTH GROUP, a general
partnership organized under the
laws of South Carolina

By JOHN J. KRUSE INTERESTS, INC., a
corporation

A General Partner

By

[Signature]
Its President

STATE OF West Virginia,

COUNTY OF Kanawha, TO-WIT:

The foregoing instrument was acknowledged before me this 10th day of NOVEMBER, 1982, by John J. Kruse, the President of JOHN J. KRUSE INTERESTS INC. A CORP., a general partner of THE COMMONWEALTH GROUP, a general partnership organized under the laws of South Carolina, on behalf of the corporation and the partnership.

My commission expires April 6, 1991.

[Signature]
Notary Public
State of W. Va.
My Comm. Expires

(SEAL)

This instrument was prepared by Thomas E. Potter Attorney at Law, 1500 One Valley Square, Charleston, West Virginia 25301.

EXHIBIT 5

EACH UNIT'S PERCENTAGE INTEREST IN THE COMMON ELEMENTS, SHARE OF COMMON EXPENSES AND SURPLUS AND VOTING RIGHTS

| Unit No. | Type | Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights |
|----------|-------------|--|
| 101 | Innsbruck R | .5202% |
| 102 | Davos R | .5399% |
| 103 | Davos R | .5399% |
| 104 | Innsbruck R | .5202% |
| 105 | Davos | .5399% |
| 106 | Zermatt R | .3534% |
| 107 | Innsbruck | .5202% |
| 108 | Zermatt | .3534% |
| 109 | Zermatt R | .3534% |
| 110 | Zermatt R | .3534% |
| 111 | Zermatt | .3534% |
| 112 | Zermatt | .3534% |
| 114 | Innsbruck | .5202% |
| 115 | Zermatt R | .3534% |
| 116 | Davos | .5399% |
| 117 | Zermatt | .3534% |
| 119 | Zermatt R | .3534% |
| 120 | Zermatt R | .3534% |
| 122 | Zermatt | .3534% |
| 123 | Davos | .5399% |
| 124 | Zermatt R | .3534% |
| 125 | Innsbruck | .5202% |
| 126 | Zermatt | .3534% |
| 127 | Davos | .5399% |
| 128 | Zermatt R | .3534% |
| 129 | Innsbruck | .5202% |
| 130 | Zermatt R | .3534% |
| 131 | Zermatt R | .3534% |
| 132 | Zermatt | .3534% |
| 133 | Davos | .5399% |
| 134 | Zermatt R | .3534% |
| 135 | Innsbruck | .5202% |
| 136 | Zermatt | .3534% |
| 137 | Zermatt | .3534% |
| 138 | Zermatt | .3534% |
| 139 | | .3534% |
| 140 | Zermatt | .3534% |
| 141 | Davos | .5399% |

Exhibit 5 (Page 2 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|--------------|--|
| 142 | Zermatt R | .3534% |
| 143 | Innsbruck | .5202% |
| 144 | Zermatt R | .3534% |
| 145 | Zermatt | .3534% |
| 146 | St. Moritz R | .7067% |
| 147 | Zermatt R | .3534% |
| 148 | St. Moritz | .7067% |
| 149 | Davos | .5399% |
| 150 | Zermatt | .3534% |
| 151 | Innsbruck | .5202% |
| 152 | Zermatt R | .3534% |
| 154 | Zermatt | .3534% |
| 155 | Davos | .5399% |
| 156 | Zermatt R | .3534% |
| 157 | Innsbruck | .5202% |
| 158 | Zermatt | .3534% |
| 159 | Davos | .5399% |
| 160 | Zermatt R | .3534% |
| 161 | Innsbruck | .5202% |
| 162 | Zermatt | .3534% |
| 163 | Zermatt | .3534% |
| 164 | Zermatt R | .3534% |
| 165 | Innsbruck R | .5202% |
| 166 | Zermatt | .3534% |
| 168 | Davos R | .7067% |
| 169 | Davos R | .7067% |
| 170 | Innsbruck R | .5202% |
| 172 | Zermatt R | .3534% |
| 174 | Zermatt | .3534% |
| 176 | Zermatt R | .3534% |
| 178 | Davos R | .5399% |
| 182 | Innsbruck R | .5202% |
| 184 | Davos R | .5399% |
| 186 | Innsbruck R | .5202% |
| 188 | Zermatt R | .3534% |
| 190 | Davos R | .5399% |
| 194 | Innsbruck R | .5202% |
| 201 | Innsbruck R | .5202% |
| 202 | Davos R | .5399% |
| 203 | Davos R | .5399% |
| 204 | Innsbruck R | .5202% |
| 205 | Davos | .5399% |
| 206 | Zermatt R | .3534% |
| 207 | Innsbruck | .5202% |
| 208 | Zermatt | .3534% |
| 209 | Zermatt R | .3534% |
| 210 | Zermatt R | .3534% |
| 211 | Zermatt | .3534% |

Exhibit 5 (Page 3 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|--------------|--|
| 212 | Zermatt | .3534% |
| 214 | Innsbruck | .5202% |
| 215 | Zermatt R | .3534% |
| 216 | Davos | .5399% |
| 217 | Zermatt | .3534% |
| 219 | Zermatt R | .3534% |
| 220 | Zermatt R | .3534% |
| 222 | Zermatt | .3534% |
| 223 | Davos | .5399% |
| 224 | Zermatt R | .3534% |
| 225 | Innsbruck | .5202% |
| 226 | Zermatt | .3534% |
| 227 | Davos | .5399% |
| 228 | Zermatt R | .3534% |
| 228A | Zermatt | .3534% |
| 229 | Innsbruck | .5202% |
| 230 | Zermatt R | .3534% |
| 231 | Zermatt R | .3534% |
| 232 | Zermatt R | .3534% |
| 233 | Zermatt | .3534% |
| 234 | Davos | .5399% |
| 235 | Zermatt R | .3534% |
| 236 | Innsbruck | .5202% |
| 237 | Zermatt | .3534% |
| 238 | Zermatt | .3534% |
| 239 | Zermatt | .3534% |
| 240 | Zermatt | .3534% |
| 241 | Davos | .5399% |
| 242 | Zermatt R | .3534% |
| 243 | Innsbruck | .5202% |
| 244 | Zermatt R | .3534% |
| 245 | Zermatt | .3534% |
| 246 | St. Moritz R | .7067% |
| 247 | Zermatt R | .3534% |
| 248 | St. Moritz | .7067% |
| 249 | Davos | .5399% |
| 250 | Zermatt | .3534% |
| 251 | Innsbruck | .5202% |
| 252 | Zermatt R | .3534% |
| 253 | Zermatt R | .3534% |
| 254 | Zermatt | .3534% |
| 255 | Davos | .5399% |
| 256 | Zermatt R | .3534% |
| 257 | Innsbruck | .5202% |
| 258 | Zermatt | .3534% |
| 259 | Davos | .5399% |

Exhibit 5 (Page 4 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|-------------|--|
| 260 | Zermatt R | .3534% |
| 261 | Innsbruck | .5202% |
| 262 | Zermatt | .3534% |
| 263 | Zermatt | .3534% |
| 264 | Zermatt R | .3534% |
| 265 | Innsbruck R | .5202% |
| 266 | Zermatt | .3534% |
| 268 | Davos R | .5399% |
| 269 | Davos R | .5399% |
| 270 | Innsbruck R | .5202% |
| 272 | Zermatt R | .3534% |
| 274 | Zermatt | .3534% |
| 276 | Zermatt R | .3534% |
| 278 | Davos R | .5399% |
| 282 | Innsbruck R | .5202% |
| 284 | Davos R | .5399% |
| 286 | Innsbruck R | .5202% |
| 288 | Zermatt R | .3534% |
| 290 | Davos R | .5399% |
| 294 | Innsbruck R | .5202% |
| 301 | Innsbruck R | .5202% |
| 302 | Davos R | .5399% |
| 303 | Davos R | .5399% |
| 304 | Innsbruck R | .5202% |
| 305 | Davos | .5399% |
| 306 | Zermatt R | .3534% |
| 307 | Innsbruck | .5202% |
| 308 | Zermatt | .3534% |
| 309 | Zermatt R | .3534% |
| 310 | Zermatt R | .3534% |
| 311 | Zermatt | .3534% |
| 312 | Zermatt | .3534% |
| 314 | Innsbruck | .5202% |
| 315 | Zermatt R | .3534% |
| 316 | Davos | .5399% |
| 317 | Zermatt | .3534% |
| 319 | Zermatt R | .3534% |
| 320 | Zermatt R | .3534% |
| 322 | Zermatt | .3534% |
| 323 | Davos | .5399% |
| 324 | Zermatt R | .3534% |
| 325 | Innsbruck | .5202% |
| 326 | Zermatt | .3534% |
| 327 | Davos | .5399% |
| 328 | Zermatt R | .3534% |
| 328A | Zermatt | .3534% |

Exhibit 5 (Page 5 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|--------------|--|
| 329 | Innsbruck | .5202% |
| 330 | Zermatt R | .3534% |
| 331 | Zermatt R | .3534% |
| 332 | Zermatt | .3534% |
| 333 | Davos | .5399% |
| 334 | Zermatt R | .3534% |
| 335 | Innsbruck | .5202% |
| 336 | Zermatt | .3534% |
| 337 | Zermatt | .3534% |
| 338 | Zermatt R | .3534% |
| 339 | Zermatt R | .3534% |
| 340 | Zermatt | .3534% |
| 341 | Davos | .5399% |
| 342 | Zermatt R | .3534% |
| 343 | Innsbruck | .5202% |
| 344 | Zermatt R | .3534% |
| 345 | Zermatt | .3534% |
| 346 | St. Moritz R | .7067% |
| 347 | Zermatt R | .3534% |
| 348 | St. Moritz | .7067% |
| 349 | Davos | .5399% |
| 350 | Zermatt | .3534% |
| 351 | Innsbruck | .5202% |
| 352 | Zermatt R | .3534% |
| 353 | Zermatt R | .3534% |
| 354 | Zermatt | .3534% |
| 355 | Davos | .5399% |
| 356 | Zermatt R | .3534% |
| 357 | Innsbruck | .5202% |
| 358 | Zermatt | .3534% |
| 359 | Davos | .5399% |
| 360 | Zermatt R | .3534% |
| 361 | Innsbruck | .5202% |
| 362 | Zermatt | .3534% |
| 363 | Zermatt | .3534% |
| 364 | Zermatt R | .3534% |
| 365 | Innsbruck R | .5202% |
| 366 | Zermatt | .3534% |
| 368 | Davos R | .5399% |
| 369 | Davos R | .5399% |
| 370 | Innsbruck R | .5202% |
| 372 | Zermatt R | .3534% |
| 374 | Zermatt | .3534% |
| 376 | Zermatt R | .3534% |
| 378 | Davos R | .5399% |

Exhibit 5 (Page 6 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|-------------|--|
| 382 | Innsbruck R | .5202% |
| 384 | Davos R | .5399% |
| 386 | Innsbruck R | .5202% |
| 388 | Zermatt R | .3534% |
| 390 | Davos R | .5399% |
| 394 | Innsbruck R | .5202% |

EXHIBIT 6

PERTINENT PROVISIONS OF THE DEED FROM THE MOWER LUMBER COMPANY, A WEST VIRGINIA CORPORATION, TO SNOWSHOE COMPANY, A WEST VIRGINIA CORPORATION, RECORDED IN THE OFFICE OF THE CLERK OF THE COUNTY COMMISSION OF POCAHONTAS COUNTY, WEST VIRGINIA IN DEED BOOK 129 AT PAGE 650.

Mower hereby excepts and reserves for itself, its licensees, invitees, lessees, contractors, grantees, successors, and assigns the right to use all or any part of the roads hereinabove described in common with Snowshoe, its successors and assigns and others having the right to use the same, as a means of ingress and egress to and from other and adjoining lands now owned by Mower, regardless whether said roads be located within or without the boundaries of the 6,696 acre tract herein conveyed by Mower to Snowshoe.

Snowshoe covenants and agrees that said roads will hereafter be maintained by Snowshoe, but it is agreed by and between Mower and Snowshoe that the cost of maintenance of said roads shall be apportioned between Snowshoe and Mower according to the degree of use made by each during each calendar year. It is further understood and agreed that Mower shall not be liable for any part of the cost of widening, paving or otherwise improving said roads.

There is excepted and reserved from this conveyance and operation of this deed all the coal, oil and gas excepted and reserved by Mower's predecessors in title in and underlying Mower Tract No. 5 (530 acres, more or less) and Mower Tract No. 22 (44-3/4 acres, more or less), both wholly included in this conveyance, and Mower Tract No. 23 & 25 (60 acres, more or less), and Mower Tract No. 24 (347 acres, more or less) parts of each of which are included in this conveyance, but any coal, oil, gas or other minerals owned by Mower in and underlying said 6,696 acres of land herein described is hereby conveyed by Mower to Snowshoe.

This conveyance is made expressly subject to all rights-of-way and easements, recorded or unrecorded, heretofore granted to others by Mower or its predecessors in title, and to all easements and rights-of-way, public or private, which are visible upon the ground, including but not limited to the following:

1. Permanent easement and right-of-way granted by Mower to Wallace Galford and Pauline Galford, husband and wife, by Easement and Right-of-Way Easement Agreement dated the 23rd day of November, 1962, duly recorded in the office of the Clerk of the County Court of Pocahontas County, West Virginia, in Deed Book 110, at page 359.

2. Right-of-way for general business use and hauling of timber granted by Mower to Beckwith Lumber Company across Mower Tract 3 (herein referred to as Mower Tract 28) by that certain unrecorded Easement and Right-of-Way Agreement dated the 3rd day of October, 1972, which right-of-way expires October 3, 1973.

3. Right-of-way and easement for use of Black Run Road in connection with the unrecorded contract for purchase, cutting and removing of timber dated the 14th day of June, 1973, between Mower and Forest Lumber Company.

This conveyance is made expressly subject to all the limitations and restrictions affecting the property hereby conveyed set forth in that certain Deed and Bill of Sale dated the 7th day of June, 1962, by and between Mower and the State of West Virginia for the use and benefit of the Department of Natural Resources duly recorded in the office of the Clerk of the County Court of Pocahontas County, West Virginia, in Deed Book 108, at page 314.

This conveyance is made expressly subject to the terms and provisions of that certain Agreement (Oil and Gas Lease) dated the 6th day of December, 1971, by and between Mower as Lessor and C. E. Beck as Lessee, duly recorded in the office of the Clerk of the County Court of Pocahontas County, West Virginia, in Deed Book 126, at page 516.

EXHIBIT 7

The Commonwealth Group
1517 Gregg Street
P. O. Box 11193
Columbia, SC 29211

Gentlemen:

This letter is to evidence the approval of Snowshoe Company to all of the improvements erected on the 5.01 acre site owned by The Commonwealth Group at the Snowshoe Ski Resort, Snowshoe, West Virginia. This approval is given pursuant to the provisions of Article XI, Subparagraph (B) (3) of the Declaration Establishing a Plan for Condominium Ownership for the Snowshoe Mountain Lodge Condominium, dated November 10, 1982, and recorded or to be recorded in the office of the Clerk of the Pocahontas County Commission.

Very truly yours,

SNOWSHOE COMPANY, a corporation

By

[Signature]
Its Executive Vice President

11-10-1982

EXHIBIT 2

111082

THIS DEED AND AGREEMENT, Dated this 10th day of November, 1982, by and between THE COMMONWEALTH GROUP, a general partnership under the laws of the State of South Carolina, hereinafter called "Commonwealth" and SNOWSHOE COMPANY, a West Virginia corporation, hereinafter called the "Company."

SEE PLAT
BOOK 4,
PAGE 6

R E C I T A L S:

By instrument dated December 1, 1981, the Company and Commonwealth entered into an agreement (the "Agreement") whereby in return for the conveyance by the Company to Commonwealth of a tract of 5.01 acres, more or less, situate at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia (hereinafter called the "Site"), Commonwealth committed to construct upon the Site a major meeting/conference center and luxury condominium development.

Pursuant to the Agreement, by deed dated April 12, 1982, and of record in the office of the Clerk of the Pocahontas County Commission in Deed Book 164, at page 628, and Corrective Deed dated October 26, 1982, also of record or to be recorded in said Clerk's office (the "Deeds"), the Company conveyed the Site to Commonwealth and thereafter Commonwealth proceeded with the construction thereon of a four-story building (the "Building") consisting of a ground floor area, a part of which is referred to herein as the

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H 020173
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| 11-12-82 \$330.00 STATE & COUNTY H 021150 | 11-12-82 \$330.00 STATE & COUNTY H 021149 | 11-12-82 \$330.00 STATE & COUNTY H 021148 | 11-12-82 \$330.00 STATE & COUNTY H 021147 | 11-12-82 \$330.00 STATE & COUNTY H 021146 | 11-12-82 \$330.00 STATE & COUNTY H 021145 | 11-12-82 \$330.00 STATE & COUNTY H 021144 |
|--|--|--|--|--|--|--|

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"Conference Center," and three additional floors or stories consisting of 229 apartment units and other improvements which together with portions of the ground floor area are to be submitted to a condominium form of ownership pursuant to the provisions of Chapter 36B of the Code of West Virginia (the "Act") and to be known as the "Snowshoe Mountain Lodge Condominium" all as provided in that certain Declaration of even date herewith of record or to be recorded in said Clerk's office, which portions of the Building are hereinafter sometimes referred to as the "Condominium."

With the substantial completion of the construction of the Conference Center, Commonwealth, pursuant to the terms of the Agreement, and in further consideration of the agreements of the Company hereinafter set forth, is now prepared and does hereinafter convey the Conference Center to the Company subject to all of the terms, conditions, agreements, exceptions and restrictions hereinafter provided.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Commonwealth does hereby GRANT and CONVEY to the Company the Conference Center, being all of

that real property situate within the Site at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia, which lies below (but not above), a horizontal plane, the elevation of which is 4,708.89 feet as measured vertically above sea level as established by the United States Coast and Geodetic Survey and which is bounded by 26 vertical planes which are respectively formed by projecting vertically downward the boundaries of that certain plot or polyhedron bounded and described as follows:

Beginning at a point numbered 123 as shown and designated on that certain plat entitled "As Built Survey for Snowshoe Mountain Lodge Condominium Conference Center Space," dated October 13, 1982, revised November 9, 1982, made by Power Engineering Company, Inc., a copy of which is designated as Exhibit A attached hereto and by reference made a part hereof; which said point number 123 is located the following three calls and distances from the northeast corner of Treetop Condominium located at the Snowshoe Ski Resort, as the same is shown on various plats of record in the Office of the Clerk of the Pocahontas County Commission in Plat Book 2, at pages 9 and 21:

- (1) N. 32° 21' 18" E. 117.72 feet to the beginning point of the site also shown on Exhibit A; thence
- (2) S. 81° 34' 06" W. 17.6 feet to a point in the southerly line of said 5.01 acres; thence
- (3) N. 08° 25' 54" W. 26.1 feet to point number 123 as shown on Exhibit A, being the place of beginning;

Thence, leaving point number 123 S. 63° 44' 54" W. 55.07 feet to point number 66; thence

N. 26° 15' 42" W. 55.49 feet to point number 90; thence

N. 26° 15' 42" W. 14.49 feet to point 91; thence

N. 26° 15' 42" W. 137.88 feet to point 67; thence
 S. 63° 44' 18" W. 16.21 feet to point 68; thence
 N. 26° 15' 42" W. 56.83 feet to point 69; thence
 N. 63° 44' 18" E. 16.29 feet to point 70; thence
 N. 26° 15' 42" W. 55.84 feet to point 71; thence
 N. 63° 44' 18" E. 53.15 feet to point 106; thence
 S. 26° 14' 42" E. 11.02 feet to point 107; thence
 N. 63° 44' 18" E. 8.20 feet to point 108; thence
 S. 26° 06' 54" E. 7.95 feet to point 109; thence
 N. 63° 52' 54" E. 8.00 feet to point 110; thence
 S. 26° 07' 06" E. 8.02 feet to point 111; thence
 N. 64° 09' 12" E. 8.00 feet to point 112; thence
 S. 26° 24' 18" E. 8.00 feet to point 113; thence
 N. 63° 34' 54" E. 8.00 feet to point 114; thence
 S. 26° 08' 06" E. 8.66 feet to point 115; thence
 N. 63° 44' 18" E. 9.71 feet to point 116; thence
 S. 26° 15' 42" E. 69.36 feet to point 117; thence
 S. 63° 44' 18" W. 10.00 feet to point 118; thence
 S. 26° 12' 48" E. 83.96 feet to point 119; thence
 S. 63° 44' 18" W. 8.02 feet to point 120; thence
 S. 26° 15' 42" E. 125.96 feet to point 121; thence
 S. 63° 49' 01" W. 21.90 feet to point 122; thence
 S. 26° 14' 18" E. 97.59 feet to point 123, the
 place of beginning; together with certain walls
 and portions thereof designated on Exhibit A as
 being part of the Conference Center.

Excepting, reserving and excluding therefrom the
 parcels, footers, pillars, beams, walls and other areas as

shown shaded or cross-hatched on Exhibit A and hereinafter described.

For the consideration aforesaid and as appurtenances to the Conference Center hereinbefore conveyed, Commonwealth does further GRANT and CONVEY unto the Company and its successors, grantees and assigns, ownership of the following:

1. A non-exclusive easement and right-of-way over and across those portions of the Site constituting common elements of the Condominium outside of the Building (a) for pedestrian access to and from ski slopes, recreational and commercial facilities and other development areas of the Snowshoe Resort; and (b) as necessary to provide pedestrian and vehicular access to and from the Conference Center and the public facilities to be constructed or located within the Conference Center.

2. The right to interconnect with utility lines, which now serve or which may in the future serve the Site, for extension of the utilities to future developments within the Snowshoe Resort.

3. The non-exclusive easement to use the main stairway, the elevators, the main lobby of the Condominium and the main entranceway of the Condominium for the purpose of providing a means of ingress and egress to and from the Conference Center.

4. A non-exclusive easement across those portions of the Site constituting Common Elements of the Condominium

to provide a means of ingress and egress to and from the Conference Center, the freight loading dock and the other public areas of the Snowshoe Ski Resort including the public roads serving the Resort.

5. A right of full support of the Conference Center and all parts thereof, including without limitation, the right to install, maintain, inspect, repair, replace and remove from time to time all structural members, footers, pillars, walls, foundations and other members, facilities and property as are sufficient at all times to support the Conference Center so long as such Conference Center or any part or parts thereof remain in existence, including any reconstruction or replacement thereof, in whole or in part, in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across common elements of the Condominium sufficient to provide for maintenance, inspection, repair, replacement and removal of the Conference Center or any part thereof, and (b) non-exclusive easements through and across the common elements of the Condominium for and the right to install, maintain, repair, replace and remove from time to time existing lines and chases for electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary

and convenient for use in connection with the Conference Center, including further the right to temporarily place ladders and equipment against portions of the Condominium as reasonably necessary in the exercise of the rights hereby reserved and described.

6. The right to discharge in a lawful manner from and through existing chases and ventilation facilities, if any, which are part of the common elements of the Condominium all fresh, exhaust and waste air, smoke, fumes and moisture as shall be reasonable having due regard and care for the use and enjoyment of the Condominium and any structure or improvement therein; together with a non-exclusive easement to construct, maintain, inspect, repair and replace when reasonably necessary within the common elements of the Condominium the chases and conduits sufficient to accommodate the easements for the aforesaid discharge for the benefit of the Conference Center.

7. Subject to the obligations of support and the easements granted or reserved by this instrument, the right from time to time to reconstruct or replace within the Conference Center in the same location, at the sole expense and risk of the Conference Center owner, and after the expiration of the 30th day following the receipt by the Condominium Association of Unit Owners, and all holders of mortgages on any unit within the Condominium of written notice of such effect without receipt by the owner of the

Conference Center of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and footers, pillars, beams, walls and other structural members owned and maintained entirely or partially for the benefit of the Condominium.

8. The right to attach walls, partitions and other internal construction to various support pillars and load bearing walls running through the Conference Center and owned by the Condominium.

9. A non-exclusive easement to own, operate, install and maintain ceilings, lights, heating, air conditioning and utility systems within the overhead space lying between the bottom of the lower concrete support beams and the bottom of the concrete floor of the Condominium.

10. A non-exclusive easement to use the freight loading dock which is a common element of the Condominium and as shown on Exhibit A, to provide ingress, egress and regress to and from the freight elevator owned by the Company.

The real property heretofore described by metes and bounds and the appurtenant easements and rights set forth in the preceding paragraphs numbered 1 through 10 constitute the "Conference Center."

The property herein conveyed is a part of the Site conveyed to Commonwealth by the Company by the Deeds, reference to which is here made for further description of said real estate.

This conveyance is made subject to all of the reservations, conditions and restrictions set forth in the Deeds and to the following exceptions, reservations, conditions, agreements and restrictions:

A. Commonwealth EXCLUDES, RESERVES and EXCEPTS from this conveyance of the Conference Center hereinbefore described, for itself and its successors, grantees and assigns, ownership of (i) all of those certain parcels of land within or abutting the Conference Center shown shaded or cross-hatched on Exhibit A as sites for the footers for the structural supports necessary to support the upper three stories and other improvements making up that part of the Condominium; (ii) the footers, pillars, beams and walls (except walls or portions thereof designated on Exhibit A as being a part of the Conference Center) situate thereon running through and abutting upon the Conference Center; and (iii) easements through the Conference Center for all existing pillars, load-bearing walls, beams and other structural members situate therein or abutting thereon.

B. Commonwealth reserves for the benefit of itself and its successors, grantees and assigns, and for the benefit of the Condominium ownership of all of the following property, rights and easements in, on, through and abutting the Conference Center which shall constitute a burden thereon:

(1) For the purpose of facilitating construction and total completion of all of the Conference Center and all improvements therein which are the responsibility of Commonwealth,

under the terms of the Agreement, such temporary easements and rights of ingress, egress, passage and movement and storage of materials as may, in the sole discretion of Commonwealth, be necessary or desirable are hereby established and declared to exist until the Conference Center is completed.

(2) Exclusive easements for and ownership of all utility chases and lines, including, but not necessarily limited to, drainage, water, sewer, electric, telephone, sprinkler, cable television lines and ducts or lines for the discharge of waste gas, air, smoke and fumes, all as now located and existing through the Conference Center;

(3) Exclusive easements for and ownership of all existing passenger elevators and mechanical and equipment rooms and personal property and fixtures in connection therewith;

(4) An exclusive easement for and ownership of portions of the existing main lobby fireplace and stairway;

(5) An exclusive easement for and ownership of an existing emergency exit stairway;

(6) An exclusive easement for and ownership of an existing trash chute; together with a non-exclusive easement within the Conference Center in the immediate proximity of the trash chute for facilities to collect the trash emanating from the trash chute;

(7) A right to full support of the Condominium and all parts thereof including without limitation the right to install, maintain, inspect, repair, replace and remove

from time to time all footers, pillars, walls, foundations and other structural members, facilities and property as are sufficient at all times to support the Condominium and so long thereafter as the real and personal property and fixtures constituting such Condominium or any part or parts thereof remain in existence, including any reconstruction or replacement thereof in whole or in part in the event of damage or destruction by casualty or other cause, together with (i) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across corridors, lobbies, shafts, and open spaces and areas sufficient to provide for maintenance, inspection, repair, replacement and removal of the Condominium or any part thereof and (ii) non-exclusive easements for and the right to install, maintain, repair, replace and remove from time to time pipes, cables, ducts and conduits of every kind and nature for drainage, water, sewage, electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Condominium including further the right to temporarily place ladders and equipment against portions of the Conference Center owned by the Company as reasonably necessary in the exercise of the rights hereby reserved and described;

(8) The right to discharge in a lawful manner from and through the utility chases and ventilation

lines owned by the Condominium through the Conference Center all such fresh, exhaust and waste gas, air, smoke, fumes, water, moisture, drainage and sewage as shall be reasonable having due regard and care for the use and enjoyment of the Conference Center and any structure or improvement therein; together with an easement to construct, maintain, inspect, repair and replace when reasonably necessary within the Conference Center pipes, cables, ducts and conduits sufficient to accommodate the easement for the aforesaid discharge for the benefit of the Condominium;

(9) Subject to the obligations for support and the easements granted by this deed, the right from time to time to reconstruct or replace within the Condominium in the same location, at the sole expense and risk of the Condominium, and after the expiration of the 30th day following the receipt by the Conference Center owner and all holders of mortgages thereon or any portion thereof of written notice of such effect without receipt by the Condominium Association of Unit Owners, of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and structural members maintained entirely or partially for the benefit of the Conference Center;

(10) A non-exclusive right of ingress, egress and regress through the public areas of the Conference

Center for the use of the Condominium and its Association of Unit Owners, unit owners, and their employees, agents, guests and invitees; and

(11) The non-exclusive right to use the existing trash compactor and freight elevator located within the Conference Center and owned by the Company together with the non-exclusive right of ingress, egress and regress through the Conference Center to provide access to the trash chute and freight elevator for the use of the Condominium and its Association of Unit Owners, units owners and their employees, agents, guests and invitees.

C. The parties hereby further AGREE:

1. Commonwealth and its successors, grantees and assigns, including the Condominium Association of Unit Owners, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Condominium which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

2. Company and its successors, grantees and assigns, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Conference Center, which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

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3. The parties agree to the following casualty insurance coverages:

(a) The Company shall, at its sole cost and expense, keep and maintain in force policies of insurance covering the Conference Center insuring against all risks of direct physical loss commonly insured against fire and extended coverage perils, the total amount of which insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Commonwealth, through the Association of Unit Owners of the Condominium, shall, at its sole cost and expense, keep and maintain in force policies of insurance on the common elements and units within the Condominium, exclusive of improvements and betterments installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against fire coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(c) The parties agree that all such insurance shall be secured and maintained in a company or companies licensed to do business in the State of West Virginia and that each policy shall contain an agreed amount endorsement and waivers of subrogation as against the other

party and shall name both the owner of the Conference Center and the Unit Owners Association of the Condominium as additional insureds to the extent their interest may appear. The parties further agree to furnish each other with originals or copies of all such policies and to furnish at all times and maintain with each other at all times a certificate or certificates of the insurance carrier or carriers showing that such insurance is in full force and effect and certifying that the same will not be cancelled without at least 30 days advance written notice to each of the parties.

4. All easements established hereby and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted or reserved. Any easements, rights and rights-of-way established hereunder shall be appurtenant to the estate benefited thereby, provided, however, that such easements, rights and rights-of-way shall be non-exclusive but shall also be for the benefit and the use of the burdened estate unless otherwise specified herein to the contrary.

5. In no event shall any reconstruction or replacement or other structural work which may be permitted hereunder upon notice (with the right to objection or otherwise) permanently and materially interfere with or impair or endanger the continuing rights to full support, access and essential or convenient services established by

this instrument.

6. Nothing in this instrument shall be deemed to permit any diminution or impairment of the area of or any right or title or ownership in and to any unit, or any portion thereof, by any unit owner of the Condominium now or hereafter vested by deed in any such unit owner without the consent of such unit owner; provided, changes in and to common elements or limited common elements (as defined in the Act) may be effected subject to the terms and conditions hereof. Subject only to the foregoing sentence, and notwithstanding anything to the contrary contained in this instrument or elsewhere to the contrary, the Executive Board of the Unit Owners Association of the Condominium containing any unit affected hereby shall be the only entity empowered to act and shall so act for and on behalf of any and all unit owners and holders of mortgages in the Condominium in matters pertaining to this instrument and the rights, remedies, duties and obligations established hereby.

7. Each party hereto agrees to repair, replace, restore and maintain all those portions of the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.

8. The recording by Commonwealth of a declaration of condominium in accordance with the Act shall be deemed to be an assignment and transfer of Commonwealth's rights, privileges, duties, liabilities and obligations

herein established; provided, however, that this provision shall in no way affect or impair the obligations of Commonwealth to the Company under the provisions of the Agreement.

9. All rights, easements, covenants, obligations and restrictions set forth in this instrument are intended to run with the real estate consisting of the Conference Center and Condominium and pertain respectively and inure to the benefit of the estate and the owner intended to benefit thereby and to bind and charge the estate and owner intended to be bound thereby.

The conveyance of the Conference Center as aforesaid is made subject to the restriction that it will be used as a meeting/conference center with necessary kitchen, bar, restaurant and restroom facilities and for other lawful commercial purposes not inconsistent with the use of the Condominium as a residential apartment complex. This restriction shall be a covenant running with the land and improvements thereon.

Subject to the matters hereinbefore set forth and to the lien of real estate taxes for the year 1983, Commonwealth hereby WARRANTS GENERALLY the property hereby conveyed and covenants that the same is free and clear of all liens and encumbrances.

This conveyance is made as an exchange in kind for the conveyance made by the aforementioned Deeds.

Commonwealth hereby declares that the actual value

of the property transferred by this document is One Million
One Hundred Thousand Dollars (\$1,100,000).

IN WITNESS WHEREOF, The Commonwealth Group, a
partnership, has caused its name to be signed by John J. Kruse,
INTERESTS, INC, A CORP., a general partner, and to evidence
its agreement of its obligations undertaken hereunder,
Snowshoe Company, a corporation, has caused its corporate
name to be hereunto signed by its EXECUTIVE VICE PRESIDENT thereunto
duly authorized.

THE COMMONWEALTH GROUP

By John J. Kruse Interests, Inc,
a corporation

A General Partner

By John J. Kruse
Its President

SNOWSHOE COMPANY, a West Virginia
corporation

By John J. Kruse
Its EXECUTIVE VICE PRESIDENT

STATE OF West Virginia,

COUNTY OF Kanawha, To-Wit:

The foregoing instrument was acknowledged before
me this 10th day of NOVEMBER, 1982, by JOHN J
KRUSE, the President of JOHN J. KRUSE
INTERESTS, INC, A CORP., a general partner, on behalf of the
corporation and the partnership.

My commission expires APRIL 6, 1991.

Thomas Folter
Notary Public
at-large

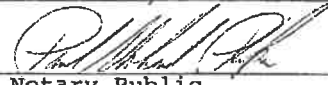
(SEAL)

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STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, To-Wit:

The foregoing instrument was acknowledged before
me this 10th day of November, 1982, by Joseph F.
Bierford, the Executive Vice President
of SNOWSHOE COMPANY, a corporation, on behalf of the corporation.

My commission expires December 5, 1987.


Notary Public

This instrument was prepared by Thomas E. Potter,
Attorney at Law, 1500 One Valley Square, Charleston, West
Virginia 25301.

WEST VIRGINIA
POCAHONTAS COUNTY CLERK'S OFFICE

November 12, 1982

This instrument was this day presented to me in my office, and
thereupon, together with the certificate thereto annexed, is admitted
to record.

Teste: Hildreth J. Meadows Clerk

FILED

1982 NOV 12 PM 2:08

POCAHONTAS CO. CLERK
MARLINTON, WEST VA.

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EXHIBIT 3

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION
a West Virginia unincorporated non-profit association,

Plaintiff,

Civil Action No. 20-C-24
The Honorable Robert A. Richardson

v.

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant.

THE MOUNTAIN LODGE ASSOCIATION’S FIRST AMENDED COMPLAINT

For its First Amended Complaint, The Mountain Lodge Association states as follows:

Parties

1. Plaintiff, The Mountain Lodge Association, is a West Virginia unincorporated nonprofit association (“Plaintiff” or the “Association”). Its principal office address is P. O. Box 183, Snowshoe, West Virginia. The Association exists solely to serve the mutual interests of persons who or that own Units (“Unit Owners”) within Snowshoe Mountain Lodge Condominium, a condominium common interest community situate in Edray Tax District, Pocahontas County, West Virginia (“Mountain Lodge” or the “Condominium”). Membership in the Association is required of and exclusive to Unit Owners within Mountain Lodge.

2. Defendant, Snowshoe Mountain, Inc., is a West Virginia for-profit corporation (“Defendant” or “Snowshoe”). Its principal office address is 10 Snowshoe Drive, Snowshoe, West Virginia. Snowshoe’s business purposes are “arts, entertainment and recreation,

amusement, gambling and recreation industries, other amusement and recreation industries, golf courses, fitness centers, bowling, marinas and skiing facilities”. Snowshoe owns and operates a facility known as the Conference Center located within and physically integrated within the structural and mechanical components of Mountain Lodge (the “Conference Center”).

Jurisdiction and Venue

3. The Condominium and the Conference Center are located entirely in Pocahontas County, West Virginia. Plaintiff and Defendant operate in Pocahontas County. All of the contractual rights, obligations, liabilities, and duties alleged in this civil action arise under documents for the creation, existence and management of the Condominium (the “Condominium Documents”) and under West Virginia law.

4. Jurisdiction and venue are proper in the Circuit Court of Pocahontas County because the Association’s cause of action seeks for declaratory relief under W. Va. Code § 55-13-1 and W. Va. Code § 36B-1-113(a), damages based on contract claims or relief based on equitable claims.

Prefatory Statement

5. Plaintiff brings this civil action largely to seek a declaration of its rights under the Condominium Documents and other documents related to the creation, maintenance, operation replacement and repair of the Condominium and the Conference Center, including its right to be paid or reimbursed for Defendant’s fair share of the costs to maintain, operate, replace and repair the Condominium and the Conference Center. Since the creation of the Condominium and the Conference Center — an integrated, mixed residential and commercial use building on a single parcel of land — Defendant and its predecessors for over 30 years have paid no funds toward those costs. Plaintiff bears the entire burden of the costs of the relationship between Plaintiff and

Defendant while Defendant benefits without obligation or liability to Plaintiff. The current financial arrangement is violative of West Virginia law, unfair and unjust.

Background

6. The Commonwealth Group, a South Carolina general partnership, was the Declarant of the Condominium (“Commonwealth” or the “Declarant”). The Declarant submitted a tract of land containing 5.01 acres, more or less, to that certain “Declaration Establishing a Plan for Condominium Ownership *etc.* Pursuant to Chapter 36B of the Code of West Virginia of 1931, as amended” dated November 10, 1982, and recorded in the office of the Clerk of the County Commission of Pocahontas County, West Virginia in Deed Book 169, at page 1 (the “Declaration”) (a true copy of the Declaration is attached hereto as *Exhibit A-1*). Exhibits 1, 2, 3, and 4 to the Declaration are attached hereto as *Exhibit A-2* and show the Declaration Plan for the Condominium. The Declaration and the Declaration Plan are read together as a unified document.

7. The Declarant submitted “the Land together with portions of the building erected thereon and all easements, rights-of-way and other rights and obligations appurtenant thereto” (the “Property”), to the provisions of Chapter 36B of the Code of West Virginia of 1931, as amended, known as the Uniform Condominium Act (“UCA”). See Section I of the Declaration in Deed Book 169, at page 2 in *Exhibit A*.

8. The UCA was enacted and codified by the West Virginia Legislature as Chapter 36B to become effective on July 1, 1980.

9. The West Virginia Legislature fully amended and replaced the UCA in its entirety with the Uniform Common Interest Ownership Act (“UCIOA”) as the law governing common interest communities, including condominiums created under the UCA.

10. The Declaration “[a]s required by the Act” establishes a Unit Owners Association “to provide for the management of the Condominium”. See Section XII of the Declaration in Deed Book 169, at page 20 in *Exhibit A*. The Association is the association for the Condominium and for the Unit Owners.

11. The Association may institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community and exercise any other powers necessary and proper for the governance and operation of the association. W. Va. Code §§ 36B-3-102(a)(4) and (18).

12. The Executive Board of the Association may act in all instances on behalf of the [A]ssociation or of any two or more unit owners. W. Va. Code § 36B-3-103(a); Former W. Va. Code § 36B-3-103.

13. In the Condominium, a “Unit” means a physical portion of the common interest community designated for separate ownership or occupancy . . .” W. Va. Code § 36B-1-103(33); Former W. Va. Code § 36B-1-103(23).

14. A “Unit Owner” means “a declarant or other person who owns a unit”. W. Va. Code § 36B-1-103(34); Former W. Va. Code 36B-1-103(24).

15. Article IV of the Declaration, *The Condominium*, provides in part:

The condominium consists of portions of the land, portions of the building and the easements and other rights appurtenant thereto, and contains a total of 229 residential units which shall be the maximum number of units that may be created in the Condominium. The owner of a unit, as hereinafter defined, is herein called a “Unit Owner” and the owners of all units are herein collectively referred to as the “Unit Owners.” The Property making up the Condominium shall be divided into units and common elements as follows:

A. The Units. For purposes of identification, all units in the Condominium are identified by number and are delineated and described in Exhibit 3 attached hereto. No unit bears the same identifying number as any other unit. A graphic description of each of the units within the building is set forth on

Exhibit 4 attached hereto. The 229 units in the Condominium consist of eight different types and Unit 139 as follows:

| Unit Type | Number |
|---------------------------|----------|
| Zermatt (1 Bedroom) | 56 |
| Zermatt R (1 Bedroom) | 70 |
| Innsbruck (2 Bedrooms) | 27 |
| Innsbruck R (2 Bedrooms) | 21 |
| Davos (2 Bedrooms) | 27 |
| Davos R (2Bedrooms) | 21 |
| St. Moritz (2 Bedrooms) | 3 |
| St. Moritz R (2 Bedrooms) | 3 |
| Unit 139 | <u>1</u> |

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The Zermatt and Zermatt R units are 14 feet by 36 feet and contain 504 square feet. Innsbruck and Innsbruck R units are 14 feet by 38 feet with a second bedroom 14 feet by 17 feet and a total square footage of 742 feet. Davos and Davos R units are 14 feet by 36 feet with a second bedroom 14 feet by 19 feet and a total square footage of 770 feet. The St. Moritz and St. Moritz R units are 28 feet by 36 feet and have a total of 1,008 square feet. The basic layout of each of the unit types is shown in Exhibit 4 attached hereto. The boundary of each residential unit consists of the are surrounded by the walls, floors and ceilings and includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other material constituting any part of the finished surfaces thereof together with all door steps, stoops, balconies and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit boundaries as hereinbefore described.

B. Common Elements. The common elements of the Condominium consist of all of the land making up the 5.01 acre tract except that portion which is part of the Conference Center as described and shown on Exhibit 2; the appurtenant easements and other rights as hereinbefore described; everything else within the top three floors of the building that is not included within the individual units themselves, including but not limited to footers, pillars, beams, load-bearing walls and other structural members, air rights, utility systems, chases, central television antenna systems, roof, perimeter walls, bearing walls, floors and ceilings, hallways, stairs and stairways, atriums, main lobby and fireplace therein, skylights, passenger elevators, trash chute, observation deck, library and fireplace therein, trout ponds, built-in seating, playground (Hipporarium), ski storage areas, walkways, freight loading dock, parking areas and all fixtures and personal property used in connection with any of the common elements. All of the major common elements of the Condominium are set forth and shown on Exhibit 3 attached hereto. The only limited common elements as defined by the Act

included within the Condominium are the balconies and all exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit boundaries as hereinbefore defined.

16. “Common Elements” in a condominium means “all portions of the common interest community other than the units.” W. Va. Code § 36B-1-103(4)(i) (former W. Va. Code § 36B-1-103(4).)

17. “In a condominium . . . , [i]f there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.” W. Va. Code § 36B-1-105(b)(1); Former W. Va. Code § 36B-1-105(a).

18. “In a condominium, the common elements are not subject to partition and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.” W. Va. Code § 36B-2-107(f) (former W. Va. Code 36B-2-108(d).).

The Conference Center

19. By that certain Deed and Agreement, dated November 10, 1982, and recorded in the Clerk’s office in Deed Book 168, at page 674, The Commonwealth Group, a South Carolina general partnership, conveyed to Snowshoe Company what is identified therein Conference Center (which deed is the “Conference Center Deed”, a true copy of which is attached as *Exhibit B*).

20. The parties to the Conference Center Deed recited in that instrument as follows:

a. By instrument dated December 1, 1981, the Company and Commonwealth entered into an agreement (the “Agreement”) whereby in return for the conveyance by the Company to Commonwealth of a tract of 5.01 acres, more or less, situate at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia (hereinafter called the “Site”),

Commonwealth committed to construct upon the Site a major meeting/conference center and luxury condominium development.

b. Pursuant to the Agreement, by deed dated April 12, 1982, and of record in the office of the Clerk of the County Commission in Deed Book 162, at page 628, and Corrective Deed dated October 26, 1982, also of record or to be recorded in said Clerk's office (the "Deeds"), the Company conveyed the Site to Commonwealth and thereafter Commonwealth proceeded with the construction thereon of a four-story building (the "Building") consisting of a ground floor area, a part of which is referred to herein as the "Conference Center," and three additional floors or stories consisting of 229 apartment units and other improvements which together with portions of the ground floor area are to be submitted to a condominium form of ownership pursuant to the provisions of Chapter 36B of the Code of West Virginia (the "Act") and to be known as the "Snowshoe Mountain Lodge Condominium" all as provided in that certain Declaration of even date herewith of record or to be recorded in said Clerk's office, which portions of the Building are hereinafter sometimes referred to as the Condominium.

c. With the substantial completion of the construction of the Conference Center, Commonwealth, pursuant to the terms of the Agreement, and in further consideration of the agreements of the Company hereinafter set forth, is now prepared and does hereinafter set forth, is now prepared and does hereinafter convey the Conference Center to the Company subject to all of the terms, conditions, agreements, exceptions and restrictions hereinafter provided.

21. By the Conference Center Deed, Commonwealth purported to grant and convey to Snowshoe Company a quantum of space described therein in part as "a horizontal plane, the elevation of which is 4,708.89 feet as measured vertically above sea level as established by the United States Coast and Geodetic Survey and which is bounded by 26 vertical planes which are respectively formed by projecting vertically downward and the boundaries of that certain plot or polyhedron" and as further described in the Conference Center Deed.

22. From the purported conveyance of the space known as the Conference Center by the Conference Center Deed, Commonwealth purported to except, reserve and exclude

“therefrom the parcels, footers, pillars, beams, walls and other areas as shown shaded or cross-hatched or Exhibit A and hereinafter described.”

23. On information and belief, Exhibit A to the Conference Center Deed is omitted from that instrument of record in the Pocahontas County Clerk’s office.

24. By the Conference Center Deed, Commonwealth further purported to convey to Snowshoe Company as “appurtenances to the Conference Center” the following rights and interests in the Mountain Lodge Condominium:

a. A non-exclusive easement and right-of-way over and across those portions of the Site constituting common elements of the Condominium outside of the Building (a) for pedestrian access to and from ski slopes, creational and commercial facilities and other development areas of the Snowshoe Resort; and (b) as necessary to provide pedestrian and vehicular access to and from the Conference Center and the public facilities to be constructed or located within the Conference Center.

b. The right to interconnect with utility lines, which now serve or which may in the future serve the Site, for extension of the utilities to future developments within the Snowshoe Resort.

c. The non-exclusive easement to use the main stairway, the elevators, the main lobby of the Condominium and the main entranceway of the Condominium for the purpose of providing a means of ingress and egress to and from the Conference Center.

d. A non-exclusive easement across those portions of the Site constituting Common Elements of the Condominium to provide a means of ingress and egress to and from the Conference Center, the freight loading dock and the other public areas of the Snowshoe Ski Resort including the public roads serving the Resort.

e. A right of full support of the Conference Center and all parts thereof, including without limitation, the right to install, maintain, inspect, repair, replace and remove from time to time all structural members, footers, pillars, walls, foundations and other members, facilities and property as are sufficient at all times to support the Conference Center so long as such Conference Center or any part or parts thereof remain in existence, including any

reconstruction or replacement thereof, in whole or in part, in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across common elements of the Condominium sufficient to provide for maintenance, inspection, repair, replacement and removal of the Conference Center or any part thereof, and (b) non-exclusive easements through and across the common elements of the Condominium for and the right to install, maintain, repair, replace and remove from time to time existing lines and changes for electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Conference Center, including further the right to temporarily place ladders and equipment against portions of the Condominium as reasonably necessary in the exercise of the rights hereby reserved and described.

f. The right to discharge in a lawful manner from and through existing chases and ventilation facilities, if any, which are part of the common elements of the Condominium all fresh, exhaust and waste air, smoke, fumes and moisture as shall be reasonable having due regard and care for the use and enjoyment of the Condominium and any structure or improvement therein; together with a non-exclusive easement to construct, maintain, inspect, repair and replace when reasonably necessary within the common elements of the Condominium the chases and conduits sufficient to accommodate the easements of the aforesaid discharge for the benefit of the Conference Center.

g. Subject to the obligations of support and the easements granted or reserved by this instrument, the right from time to time to reconstruct or replace within the Conference Center in the same location, at the sole expense and risk of the Conference Center owner, and after the expiration of the 30th day following the receipt by the Condominium Association of Unit Owners, and all holders of mortgages on any unit within the Condominium of written notice of such effect without receipt by the owner of the Conference Center of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and footers, pillars, beams, walls and other structural members owned and maintained entirely or partially for the benefit of the Condominium.

h. The right to attach walls, partitions and other internal construction to various support pillars and loan bearing walls running through the Conference Center and owned by the Condominium.

i. A non-exclusive easement to own, operate, install and maintain ceilings, lights, heating, air conditioning and utility systems within the overhead space lying between the bottom of the lower concrete support beams and the bottom of the concrete floor of the Condominium.

j. A non-exclusive easement to use the freight loading dock which is a common element of the Condominium and as shown on Exhibit A, to provide ingress, egress, and regress to and from the freight elevator owned by the Company.

25. In Section C of the Conference Center Deed, the parties further agreed as follows:

a. Commonwealth and its successors, grantees and assigns, including the Condominium Association of Unit Owners, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Condominium which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

b. Company and its successors, grantees and assigns, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Conference Center, which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

c. The parties agree to the following casualty insurance coverages:

i. The Company shall, at its sole cost and expense, keep and maintain in force policies of insurance covering the Conference Center insuring against all risks of direct physical loss commonly insured against fire and extended coverage perils, the total amount of which insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

ii. Commonwealth, through the Association of Unit Owners of the Condominium, shall, at its sole cost and expense, keep and maintain in force policies of insurance on the common elements and units within the Condominium, exclusive of improvements and betterments installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against fire coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

iii. The parties agree that all such insurance shall be secured and maintained in a company or companies licensed to do business in the State of West Virginia and that each policy shall contain an agreed amount endorsement and waivers of subrogation as against the other party and shall name both the owner of the Conference Center and the Unit Owners Association of the Condominium as additional insureds to the extent their interest may appear. The parties further agree to furnish each other with originals or copies of all such policies and to furnish at all times and maintain with each other at all times a certificate or certificates of the insurance carrier or carriers showing that such insurance is in full force and effect and certifying that the same will not be cancelled without at least 30 days advance written notice to each of the parties.

d. All easements established hereby and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted or reserved. Any easements, rights and rights-of-way established hereunder shall be appurtenant to the estate benefited thereby, provided, however, that such easements, rights and rights-of-way shall be non-exclusive but shall also be for the benefit and the use of the burdened estate unless otherwise specified herein to the contrary.

e. In no event shall any reconstruction or replacement or other structural work which may be permitted hereunder upon notice (with the right to objection or otherwise) permanently and materially interfere with or impair or endanger the continuing rights [t]o full support, access and essential or convenient services established by this instrument.

f. Nothing in this instrument shall be deemed to permit any diminution or impairment of the area of or any right or

title or ownership in and to any unit, or any portion thereof, by any unit owner of the Condominium now or hereafter vested by deed in any such unit owner without the consent of such unit owner, provided, changes in and to common elements or limited common elements (as defined in the Act) may be effected subject to the terms and conditions hereof. Subject only to the foregoing sentence, and notwithstanding anything to the contrary contained in this instrument or elsewhere to the contrary, the Executive Board of the Unit Owners Association of the Condominium containing any unit affected hereby shall be the only entity empowered to act and shall so act for and on behalf of any and all unit owners and holders of mortgages in the Condominium in matters pertaining to this instrument and the rights, remedies, duties and obligations established hereby.

g. Each party hereto agrees to repair, replace, restore, and maintain all those portions of the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.

h. The recording by Commonwealth of a declaration of condominium in accordance with the Act shall be deemed to be an assignment and transfer of Commonwealth's rights, privileges, duties, liabilities and obligations herein established; provided, however, that this provision shall in no way affect or impair the obligations of Commonwealth to the Company under the provisions of the Agreement.

i. All rights, easements, covenants, obligations and restrictions set forth in this instrument are intended to run with the real estate consisting of the Conference Center and Condominium and pertain respectively and inure to the benefit of the estate and the owner intended to benefit thereby and to bind and charge the estate and owner intended to be bound thereby. The conveyance of the Conference Center as aforesaid is made subject to the restriction that it will be used as a meeting/conference center with necessary kitchen, bar, restaurant and restroom facilities and for other lawful commercial purposes not inconsistent with the use of the Condominium as a residential apartment complex. This restriction shall be a covenant running with the land and improvements thereon.

26. The Conference Center also defined term in Article III, *The Conference Center*, of the Declaration, is further described on plats recorded in the Clerk's office. The Conference

Center comprises approximately 33,000 square feet, more or less, making up most of the first floor or “basement” under the east or downhill facing wing of the building together with certain walls and portions thereof of the Condominium building. *See* the Declaration in Deed Book 169, at page 7.

27. The Conference Center shares many common elements within the building with Plaintiff and its unit owners but does not share in the common expenses for operating, maintaining, repairing, and replacing the common elements.

28. Defendant is the successor in title and interest in and to the Conference Center.

29. Defendant acquired and assumed all rights and benefits in relation to the Conference Center under the Conference Center Deed and the Condominium Documents.

30. Defendant acquired and assumed all obligations and liabilities in relation to the Conference Center under the Conference Center Deed and the Condominium Documents.

31. On information and belief, Defendant has been the sole and exclusive title and assessed owner of the Conference Center.

32. Defendant owns and controls the dominant estate in relation to the Condominium manifested in part by the easements created by the Conference Center Deed and described in the Condominium Documents.

33. On information and belief, since the creation of the Condominium, the Conference Center has been or should have been assessed in the Assessor’s office as a single parcel of real estate in the name of Defendant.

Count I -- Conference Center Must Be Declared a Unit

34. The allegations set forth in Paragraphs 1 through 33 are incorporated as if fully rewritten herein.

35. Article I of the Declaration, *Submission of Property*, described the land and improvements that are submitted to UCIOA and states that “[t]here is excepted from this submission and Declaration that portion of the aforesaid 5.01 acre tract known as the “Conference Center”. See Declaration in Deed Book 169, at page 3 in *Exhibit A*.

36. Article III of the Declaration, *The Conference Center*, describes portions of the Building, already submitted to UCIOA, and then recites that “[e]xcept for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit.” See Declaration in Deed Book 169, at page 7 in *Exhibit A* (emphasis supplied).

37. On information and belief, Defendant has never paid assessments or other money to Plaintiff, including such assessments as should have been paid under their share of the Common Expense Liability or related to the use and enjoyment of the Conference Center.

38. Defendant is responsible for its share of the past Common Expense Liability and for those past expenses attributable to the Conference Center.

39. Defendant has a non-waivable obligation under the Declaration and the UCIOA to pay its proportionate share of the Common Expense Liability for the Condominium and to submit to all other obligations not otherwise lawfully inapplicable to Defendant under the UCIOA.

40. Moreover, “[e]xcept as expressly provided in [the UCIOA], provisions [in the UCIOA] may not be varied by agreement, and rights conferred may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of [UCIOA] or the declaration.” W. Va. Code § 36B-1-104.

41. “In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with [UCIOA].” W. Va. Code § 36B-2-103(c).

42. The Conference Center is a Unit and is subject to the Common Expense Liability, the assessments for the Common Expense Liability and to the liens to secure the payment of the assessments for the Common Expense Liability.

Count II – Declaratory Judgment under the UCIOA

43. The allegations set forth in Paragraphs 1 through 42 are incorporated as if fully rewritten herein.

44. Under W. Va. Code § 36B-1-103(2), “Allocated Interests” means . . . “[i]n a condominium, the undivided interest in the common elements, the common expense liability and votes in the Association.” West Virginia Code § 36B-1-103(6) defines “Common Expense Liability” as “the liability for common expenses allocated to each unit pursuant to [W. Va. Code § 36B-2-107]” while W. Va. Code § 36B-1-103(5) defines “Common Expenses” as “expenditures made by, or financial liabilities of, the Association, together with any allocation to reserves.”

45. W. Va. Code § 36B-3-115(b) provides that “[e]xcept for assessments under subsections (c), (d) and (e), all common expenses must be assessed against all units in

accordance with the allocations set forth in the declaration pursuant to [W. Va. Code § 36B-2-107(a) and (b)]”.

46. Article V of the Declaration, *Allocation of Undivided Interests in Common Elements*, describes the manner “[p]ursuant to the provisions of the Act, each unit Owner shall own, together with his unit, an undivided interest in the common elements and such undivided interest is stated as a percentage of ownership in said common elements with each unit having the percentage of ownership in the common elements . . .” See Deed Book 169, at page 9 in Exhibit A.

47. UCIOA and the Declaration impose on each Unit Owner the obligation for monetary assessment to maintain, operate and replace the Common Elements in accordance with its Allocated Interest in the Common Elements. See Section VI of the Declaration in Deed Book 169, at page 9 in *Exhibit A*.

48. However, during its ownership, Defendant has claimed that the Conference Center is not subject to UCIOA, based on Article III of the Declaration, and, thus, are not obligated to pay their Allocated Interests in the Common Expense Liability for operating the Condominium.

49. Consequently, the Conference Center was never “assigned” the “percentage of undivided interest in the Common Elements . . .”

50. The Conference Center is subject to UCIOA and, thus, is subject to the Common Expense Liability, the assessments for the Common Expense Liability and to the liens to secure the payment of the assessments for the Common Expense Liability.

51. Article I of the Declaration, *Submission of Property*, described the land and improvements that are submitted to UCIOA and states that “[t]here is excepted from this

submission and Declaration that portion of the aforesaid 5.01 acre tract known as the “Conference Center”. *See* Declaration in Deed Book 169, at page 3 in *Exhibit A*.

52. Article III of the Declaration, *The Conference Center*, describes portions of the Building, already submitted to UCIOA, and then recites that “[e]xcept for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit.” *See* Declaration in Deed Book 169, at page 7 in *Exhibit A* (emphasis supplied).

53. On information and belief, Defendant has never paid assessments or other funds to Plaintiff, including such assessments as should have been paid pursuant to their share of the Common Expense Liability or related to the use and enjoyment of the Conference Center.

54. Defendant is responsible for their share of the past Common Expense Liability and for those past expenses attributable to the Conference Center.

55. Defendant has a non-waivable obligation under the Declaration and UCIOA to pay its proportionate share of the Common Expense Liability for the Condominium and to submit to all other obligations not otherwise lawfully inapplicable to Defendant under UCIOA.

56. Moreover, “[e]xcept as expressly provided in [UCIOA], provisions [in UCIOA] may not be varied by agreement, and rights conferred may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of [UCIOA] or the declaration.” W. Va. Code § 36B-1-104.

57. “In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with [UCIOA].” W. Va. Code § 36B-2-103(c).

58. As a direct and proximate result of Defendant’s actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count III – Declaratory Judgment Under the UCA

59. The allegations set forth in Paragraphs 1 through 58 are incorporated as if fully rewritten herein.

60. In the alternative, if the Condominium is not found to be subject to UCIOA, the Condominium is subject to the UCA and the Conference Center must be declared a unit and assigned an Allocated Interest. Former W. Va. Code § 36B-1-103(6) defines “common expense liability as “the liability for common expenses allocated to each unit . . .” while former W. Va. Code § 36B-1-103(5) defines “common expenses” as “expenditures made by or financial liabilities of the Association, together with any allocations to reserves.” Former W. Va. Code § 36B-3-114 states “common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit.” The uniform UCA defines this allocation of common expense liability as the “Allocated Interest.”

61. Article V of the Declaration, *Allocation of Undivided Interests in Common Elements*, describes the manner “[p]ursuant to the provisions of the Act, each unit Owner shall own, together with his unit, an undivided interest in the common elements and such undivided interest is stated as a percentage of ownership in said common elements with each unit having the percentage of ownership in the common elements . . .” See Deed Book 169, at page 9 in

Exhibit A. The UCA and the Declaration impose on each Unit Owner the obligation for monetary assessment to maintain, operate and replace the Common Elements, in accordance with its Allocated Interest in the Common Elements. *See* Section VI of the Declaration in Deed Book 169, at page 9 in *Exhibit A*.

62. However, during its ownership, Defendant has claimed that the Conference Center is not subject to UCA, based on Article III of the Declaration, and, thus, Defendant is not obligated to pay their Allocated Interests in the Common Expense Liability for operating the Condominium. Consequently, the Conference Center was never “assigned” the “percentage of undivided interest in the Common Elements . . .” or in other words, given its allocated interest in the Common Elements.

63. As a direct and proximate result of Defendant’s actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count IV - Conference Center Part of the Condominium Subject to UCA

64. The allegations set forth in Paragraphs 1 through 63 are incorporated as if fully rewritten herein.

65. The Conference Center is subject to UCA, and, thus, is subject to the Common Expense Liability, the assessments for the Common Expense Liability and to the liens to secure the payment of the assessments for the Common Expense Liability. Article I of the Declaration, *Submission of Property*, described the land and improvements that are submitted to the UCA and states that “[t]here is excepted from this submission and Declaration that portion of the aforesaid 5.01 acre tract known as the “Conference Center”. *See* Declaration in Deed Book 169, at page 3 in *Exhibit A*.

66. Article III of the Declaration, *The Conference Center*, describes portions of the Building, already submitted to UCA, and then recites that “[e]xcept for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit.” See Declaration in Deed Book 169, at page 7 in *Exhibit A*. The Conference Center is a Unit under UCA and former W. Va. Code § 36B-3-114(b) provides that “[e]xcept for assessments under subsections (c), common expenses shall be assessed against all units in accordance with the common expense liability allocated to each unit.” (Emphasis supplied).

67. On information and belief, Defendant has never paid assessments or other funds to Plaintiff, including such assessments as should have been paid pursuant to their share of the Common Expense Liability or related to the use and enjoyment of the Conference Center. Defendant is responsible for their share of the past Common Expense Liability and for those past expenses attributable to the Conference Center.

68. Defendant has a non-waivable obligation under the Declaration and UCA to pay its proportionate share of the Common Expense Liability for the Condominium and to submit to all other obligations not otherwise lawfully inapplicable to Defendant under UCIOA.

69. Moreover, “[e]xcept as expressly provided in [UCA], provisions [in UCA] may not be varied by agreement, and rights conferred may not be waived. A declarant may not act

under a power of attorney, or use any other device, to evade the limitations or prohibitions of [UCIOA] or the declaration.” (Former W. Va. Code § 36B-1-104).

70. “If a conflict exists between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with [UCA].” Former W. Va. Code § 36B-2-103(c).

71. As a direct and proximate result of Defendant’s actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count V – Declaratory Judgment at Common Law

72. The allegations set forth in Paragraphs 1 through 71 are incorporated as if fully rewritten herein.

73. In the alternative, if the Conference Center is exempted from the Condominium and UCIOA or UCA, Defendant is responsible for its fair share of the costs associated with the maintenance and operations of the Condominium under West Virginia law.

74. In the event that the Court does not declare that the Conference Center is a “unit” under either UCA or UCIOA, then Defendant nonetheless under the common law or principles of servitudes is liable for its fair share of costs and expenses incurred by Plaintiff to maintain, operate, repair or replace the elements shared in common with the unit owners of Mountain Lodge.

75. Under common law, the intent to create a servitude may be expressed or implied. No particular form of expression is required.

76. A servitude may be created to burden or benefit any estate in land or another servitude.

77. The servitudes for the benefit of Defendant in relation to the Conference Center are real, substantial and render value to Defendant the burdens for which are wholly borne by Plaintiff (which means every Unit Owner within the Condominium).

78. The servitudes for the benefit of Defendant in relation to the Conference Center satisfy the requirements of the statute of frauds.

79. Also, it would be a manifest injustice to Plaintiff if Defendant is permitted to evade its fair share of costs incurred by Plaintiff to maintain, operate, repair or replace the elements shared in common with the unit owners of Mountain Lodge.

80. Defendant is or should be estopped to deny the existence of one or more servitudes for the benefit of Defendant in relation to the Conference Center.

81. Further, one or more servitudes for the benefit of Defendant in relation to the Conference Center were created by implication and thus have corresponding liabilities to Plaintiff therefor, and for which Plaintiff is entitled to be paid or reimbursed for.

82. Further, servitudes are implied for the benefit of Defendant in relation to the Conference Center and thus have corresponding liabilities to Plaintiff therefor, and for which Plaintiff is entitled to be paid or reimbursed for.

83. Whether or not the Conference Center is determined to be part of the Condominium and subject to UCA or UCIOA, the Conference Center is part of the building and enjoys the use thereof, as well as the use and benefits from the building's infrastructure, utility systems, building systems *etc.*

84. The Condominium, which includes the building in which the Conference Center is situate, was created in 1982. On information and belief, Defendant has never paid assessments

or other moneys to Plaintiff, including for costs associated with those elements of the Building shared between the Condominium and the Conference Center.

85. On information and belief, Defendant has enjoyed the use and benefits of the Condominium, the Building, the Common Elements, for 38 years without paying a single dollar to Plaintiff.

86. As a direct and proximate result of Defendant's actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count VI – Breach of Contract in the Conference Center Deed

87. The allegations set forth in Paragraphs 1 through 86 are incorporated as if fully rewritten herein.

88. The Conference Center Deed constitutes a contract imposing on Defendant the costs, expenses, obligations, and liabilities for repairing, replacing, restoring and maintaining “the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.”

89. Under the Conference Center Deed, Defendant has a right of ownership in the “Building and equipment in connection therewith” because Defendant is the dominant estate and owns the dominant rights created thereunder.

90. The ownership of dominant rights in an easement creates a servitude as described in Count V *supra*.

91. Plaintiff for many years has sought Defendant to bear or pay its fair share of the costs, expenses, obligations and liabilities for repairing, replacing, restoring and maintaining “the

Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.”

92. Defendant has failed or refused to bear or pay its fair share of the costs, expenses, obligations and liabilities for repairing, replacing, restoring and maintaining “the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.”

93. Repairing, replacing, restoring, and maintaining the Building and equipment are constant, continuing, and recurring obligations and liabilities attached to the ownership, use and enjoyment of them.

94. Defendant has breached its contract with Plaintiff.

95. Defendant continues to breach its contract with Plaintiff.

96. Defendant’s failure or refusal to bear or pay its fair share of the costs, expenses, obligations, and liabilities for them has directly and proximately caused Plaintiff and its Members damages and injury.

97. Plaintiff is entitled to an award of money because of Defendant’s breach or breaches of the Conference Center Deed.

Count VII – Quantum Meruit

98. The allegations set forth in Paragraphs 1 through 97 are incorporated as if fully rewritten herein.

99. Plaintiff has paid or incurred all of the costs of maintaining, operating, repairing and replacing the Building, the Condominium and the Conference Center.

100. Plaintiff reasonably expected to be paid by Defendant for such goods and services under based on the Conference Center Deed.

101. Plaintiff is entitled to recover from Defendant its share of the costs paid by Plaintiff in relation to maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

102. Plaintiff has conferred upon Defendant significant value over the years in in relation to maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

103. Meanwhile, Defendant refuses to bear its fair share of those costs.

104. As a direct and proximate result of Defendant's actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count VIII – Unjust Enrichment

105. The allegations set forth in Paragraphs 1 through 104 are incorporated as if fully rewritten herein.

106. Defendant, because of its ownership of the Conference Center and the appurtenant easements in and to the Condominium, enjoys the Building and the Condominium without bearing its fair share of the costs of maintaining, operating, repairing and replacing the Building, the Condominium and the Conference Center.

107. Plaintiff has conferred upon Defendant significant value over the years in in relation to maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

108. By failing to pay to Plaintiff any Assessments or costs associated with maintaining, operating, repairing, and replacing the Building, the Condominium and the

Conference Center, Defendant has been unjustly enriched at the cost of Plaintiff and its Members.

109. As a direct and proximate result of Defendant's actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count IX – Rescission of the Conference Center Deed

110. The allegations set forth in Paragraphs 1 through 109 are incorporated as if fully rewritten herein.

111. Under the Conference Center Deed, Defendant is the dominant estate and owns the dominant rights in the easements created thereunder, which ownership and rights imposes certain obligations and duties on Defendant to pay the costs associated therewith.

112. In the event that there is an adjudication on any of the foregoing counts that Plaintiff is not entitled to money damages at law or, in lieu thereof, to equitable relief in the form of reimbursement or a continuing obligation to pay its fair share of the costs of maintaining, operating, repairing and replacing the Building, the Condominium and the Conference Center, then each party to the Conference Center Deed should be relieved of its rights and obligations thereunder.

113. In the event that there is an adjudication on any of the foregoing counts that Plaintiff is not entitled to money damages at law or, in lieu thereof, to equitable relief, then the servitude and easement rights and obligations created by the Conference Center Deed should be rescinded and terminated.

Prayer for Declaratory Relief

Based on the foregoing, Plaintiff, The Mountain Lodge Association, under W. Va. Code § 55-13-1 and other West Virginia law, hereby prays for relief of this Honorable Court to declare, order and decree that:

A. Plaintiff is entitled to declaratory relief consistent with its allegations in Counts I, II, III, IV, V VI, VII, VIII and IX of the First Amended Complaint, whether such relief is sought independently or alternatively.

B. The Conference Center is a “unit” under UCIOA or UCA and thus subject to the Declaration.

C. All provisions of the Declaration that purport to exclude the Conference Center from the operation of UCIOA or UCA are void and unenforceable under UCIOA, UCA or other West Virginia law.

D. All provisions of the Declaration purporting to exclude the Conference Center from the imposition of the Allocated Interests, the Common Expense Liability or liens are void and unenforceable under UCIOA, UCA or other West Virginia law.

E. Defendant pay to Plaintiff all assessments or costs related to the Conference Center that should have been paid to Plaintiff since the creation of the Condominium.

F. Defendant pay to Plaintiff all assessments and costs related to the Conference Center that should be paid to Plaintiff after relief is given to Plaintiff.

G. Defendant pay contract damages commensurate with Defendants’ fair share of the costs maintain, operate, repair, and replace the Condominium, the Conference Center, or the elements in common between them.

H. In the alternative to obtaining relief in the form of one or more declaratory judgments or contract damages, rescind all or part of the Conference Center Deed.

I. Defendant pay to Plaintiff damages in an amount to be determined by the jury.

J. Defendant pay Plaintiff its costs and reasonable attorneys' fees for prosecuting this civil action and other remedies, to which it may be entitled under UCIOA, UCA, or other West Virginia law or in equity.

K. Grant Plaintiff for such other remedies or relief to which it is entitled at law or in equity.

The Mountain Lodge Association demands a trial by jury.

THE MOUNTAIN LODGE ASSOCIATION

By its counsel

/s/ Mark A. Sadd

Mark A. Sadd (W. Va. Bar no. 6005)

Ramonda C. Marling (W. Va. Bar no. 6927)

John R. Bsharah (W. Va. Bar no. 12607)

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IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION
a West Virginia unincorporated non-profit association,

Plaintiff,

Civil Action No. 20-C-24
The Honorable Robert A. Richardson

v.

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant.

CERTIFICATE OF SERVICE

I, Mark A. Sadd hereby affirm that on this date, October 6, 2020, I caused the foregoing
MOUNTAIN LODGE ASSOCIATION'S FIRST AMENDED COMPLAINT to be served
on the following attorneys by depositing a true and accurate copy of the same via electronic
filing through West Virginia E-Filing:

Seth P. Hayes, Esq.
Dale H. Harrison, Esq.
JACKSON KELLY PLLC
150 Clay Street, Suite 500
Morgantown, WV 26501
Counsel for Defendant

/s/ Mark A. Sadd
Mark A. Sadd

EXHIBIT 4



West Virginia E-Filing Notice

CC-38-2020-C-24

Judge: Robert E. Richardson

To: Mark A. Sadd
msadd@lewisglasser.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA
THE MOUNTAIN LODGE ASSOCIATION v. SNOWSHOE MOUNTAIN INC.
CC-38-2020-C-24

The following answer was FILED on 11/16/2020 12:44:30 PM

Notice Date: 11/16/2020 12:44:30 PM

Connie Carr
CLERK OF THE CIRCUIT
Pocahontas
900 Tenth Avenue
MARLINTON, WV 24954

(304) 799-4604
connie.carr@courtsww.gov

COVER SHEET

E-FILED | 11/16/2020 12:44 PM
CC-38-2020-C-24
Pocahontas County Circuit Clerk
Connie Carr

GENERAL INFORMATION

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY WEST VIRGINIA
THE MOUNTAIN LODGE ASSOCIATION v. SNOWSHOE MOUNTAIN INC.

First Plaintiff:

☐ Business ☐ Individual
☐ Government ☒ Other

First Defendant:

☐ Business ☐ Individual
☐ Government ☒ Other

Judge:

Robert E. Richardson

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Other

Origin:

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested:

☒ Yes ☐ No

Case will be ready for trial by: 11/16/2021

Mediation Requested:

☐ Yes ☒ No

Substantial Hardship Requested: ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: Seth Hayes, 150 Clay Street, Suite 500, Morgantown, WV 26501

SERVED PARTIES

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION,
a West Virginia unincorporated non-profit association

Plaintiff,

v.

Civil Action No.: 20-C-24

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant.

**DEFENDANT SNOWSHOE MOUNTAIN, INC.'S ANSWER TO THE MOUNTAIN
LODGE ASSOCIATION'S AMENDED COMPLAINT AND COUNTERCLAIM**

I. ANSWER AND AFFIRMATIVE DEFENSES

Defendant Snowshoe Mountain, Inc. ("Snowshoe" or "Defendant"), by and through counsel, Jackson Kelly PLLC, serves the following Answer and Affirmative Defenses to The Mountain Lodge Association's ("Association" or "Plaintiff") Amended Complaint.

Parties

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint.

2. For its response to Paragraph 2 of Plaintiff's Amended Complaint, Defendant admits it is a West Virginia for-profit corporation, with a principal place of business of 10 Snowshoe Drive, Snowshoe, West Virginia. Defendant further admits that it owns the referenced Conference Center and that the Conference Center is located on the ground floor of the Mountain Lodge complex. The remaining allegations are vague and therefore Defendants denies all remaining allegations contained in Paragraph 2 of Plaintiff's Amended Complaint.

Jurisdiction and Venue

3. The allegations contained in Paragraph 3 of Plaintiff's Amended Complaint are legal conclusions for which no response is required.

4. The allegations contained in Paragraph 4 of Plaintiff's Amended Complaint are legal conclusions for which no response is required.

Prefatory Statement

5. Defendant denies the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint.

Background

6. For its response to Paragraph 6 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 6 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

7. For its response to Paragraph 7 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 7 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

8. The allegations contained in Paragraph 8 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Amended Complaint.

9. The allegations contained in Paragraph 9 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Amended Complaint.

10. For its response to Paragraph 10 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 10 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

11. The allegations contained in Paragraph 11 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint.

12. The allegations contained in Paragraph 12 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 12 of Plaintiff's Amended Complaint.

13. The allegations contained in Paragraph 13 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Amended Complaint.

14. The allegations contained in Paragraph 14 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Amended Complaint.

15. For its response to Paragraph 15 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 15 of Plaintiff's Amended

Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

16. The allegations contained in Paragraph 16 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 16 of Plaintiff's Amended Complaint.

17. The allegations contained in Paragraph 17 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint.

18. The allegations contained in Paragraph 18 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 18 of Plaintiff's Amended Complaint.

Conference Center

19. For its response to Paragraph 19 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 19 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

20. For its response to Paragraph 20 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 20 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

21. For its response to Paragraph 21 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 21 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

22. For its response to Paragraph 22 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 22 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

23. Defendant is without sufficient information to either admit or deny the allegations set forth in Paragraph 23 of Plaintiff's Amended Complaint.

24. For its response to Paragraph 24 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 24 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

25. For its response to Paragraph 25 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 25 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

26. For its response to Paragraph 26 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 26 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

27. For its response to Paragraph 27 of Plaintiff's Amended Complaint, Defendant states that it retains certain non-exclusive easements in certain portions of the "Condominium," as defined in that certain Declaration recorded in the Office of the Clerk of Pocahontas County, West Virginia, in Deed Book 169, Page 1 ("Declaration"), which are more fully set forth in the Conference Center Deed and the Declaration. To the extent Plaintiff alleges otherwise, Paragraph 27 of its Amended Complaint is denied. Furthermore, to the extent Plaintiff alleges in Paragraph 27 of its Amended Complaint that Defendant owes or is otherwise responsible for common expenses for operating, maintaining, repairing, and replacing common elements that are a part of the Condominium, as defined by the Declaration, the same is denied.

28. Defendant admits the allegations contained in Paragraph 28 of Plaintiff's Amended Complaint.

29. For its response to Paragraph 29 of Plaintiff's Amended Complaint, all rights and benefits in relation to the Conference Center Deed are set forth in the Conference Center Deed itself and the Declaration itself. To the extent the allegations contained in Paragraph 29 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed or the Declaration, the same is denied.

30. For its response to Paragraph 30 of Plaintiff's Amended Complaint, all obligations and liabilities in relation to the Conference Center Deed are set forth in the Conference Center

Deed itself and the Declaration itself. To the extent the allegations contained in Paragraph 29 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed or the Declaration, the same is denied.

31. Defendant admits the allegations contained in Paragraph 31 of Plaintiff's Amended Complaint.

32. For its response to Paragraph 32 of Plaintiff's Amended Complaint, the interest possessed by Defendant in the Conference Center or any easement or similar interest it retains in the Condominium is set forth in the Conference Center Deed and the Declaration. All allegations that attempt to characterize this interest that is inconsistent with the legal effect of the Conference Center Deed or the Declaration are denied.

33. The allegations contained in Paragraph 33 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Amended Complaint.

Count I – Conference Center Must Be Declared a Unit

34. Defendant incorporates by reference all its responses to Paragraphs 1 through 33 as if fully set forth herein.

35. For its response to Paragraph 35 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 35 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

36. For its response to Paragraph 36 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms

contained therein. To the extent the allegations set forth in Paragraph 36 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

37. Defendant denies the allegations contained in Paragraph 37 of Plaintiff's Amended Complaint.

38. Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Amended Complaint.

39. Defendant denies the allegations contained in Paragraph 39 of Plaintiff's Amended Complaint.

40. The allegations contained in Paragraph 40 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 40 of Plaintiff's Amended Complaint.

41. The allegations contained in Paragraph 41 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Amended Complaint.

42. Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Amended Complaint.

Count II – Declaratory Judgment under the UCIOA

43. Defendant incorporates by reference all its responses to Paragraphs 1 through 42 as if fully set forth herein.

44. The allegations contained in Paragraph 44 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Amended Complaint.

45. The allegations contained in Paragraph 45 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 45 of Plaintiff's Amended Complaint.

46. For its response to Paragraph 46 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 46 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

47. With respect to the allegations contained in Paragraph 47 of Plaintiff's Amended Complaint pertaining to the UCIOA, said allegations are legal conclusions for which no response is required. To the extent a response is required with respect to the allegations pertaining to the UCIOA contained in Paragraph 47 of Plaintiff's Amended Complaint, Defendant denies said allegations. With respect to the allegation contained in Paragraph 47 of Plaintiff's Amended Complaint pertaining to the Declaration, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 47 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

48. Defendant denies the allegations contained Paragraph 48 of Plaintiff's Amended Complaint to the extent it alleges that Defendant is obligated or responsible for any common expense liability for operating the Condominium. Defendant further denies that is granted or is otherwise required to be assigned any "Allocated Interest" under the Declaration or the UCIOA.

49. Defendant denies the allegations contained in Paragraph 49 to the extent it alleges the Conference Center was required to be assigned a percentage of undivided interest in the common elements.

50. Defendant denies the allegations contained in Paragraph 50 of Plaintiff's Amended Complaint.

51. For its response to Paragraph 51 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 51 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied. Defendant denies all other allegations contained in Paragraph 51 of Plaintiff's Amended Complaint.

52. For its response to Paragraph 52 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 52 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied. Defendant denies all other allegations contained in Paragraph 52 of Plaintiff's Amended Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of the Amended Complaint to the extent it alleges Defendant is responsible for past common expense liability.

54. Defendant denies the allegations contained in Paragraph 54 of Plaintiff's Amended Complaint.

55. Defendant denies the allegations contained in Paragraph 55 of Plaintiff's Amended Complaint.

56. The allegations contained in Paragraph 56 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 56 of Plaintiff's Amended Complaint.

57. The allegations contained in Paragraph 57 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 57 of Plaintiff's Amended Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of Plaintiff's Amended Complaint.

Count III – Declaratory Judgment Under the UCA

59. Defendant incorporates by reference all its responses to Paragraphs 1 through 58 as if fully set forth herein.

60. Defendant denies the allegation contained in Paragraph 60 of Plaintiff's Amended Complaint that the Conference Center is a unit under either the UCA or the UCIOA. The remaining allegations contained in Paragraph 60 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 60 of Plaintiff's Amended Complaint.

61. For its response to Paragraph 61 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 61 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied. Defendant denies all other allegations contained in Paragraph 61 of Plaintiff's Amended Complaint to the extent it alleges the Conference Center is a "unit" under either the Declaration or the UCA and further denies that it is obligated to pay assessments to

maintain, operate, and replace common elements. Defendant further denies that it is assigned an allocated interest under the Declaration or the UCA.

62. Defendant denies the allegations contained in Paragraph 62 of Plaintiff's Amended Complaint to the extent it alleges that it is obligated or responsible for any common expense liability for operating the Condominium and Defendant further denies it is required to be assigned any allocated interest under the Declaration or UCA. Defendant further denies the allegations contained in Paragraph 62 of Plaintiff's Amended Complaint to the extent it alleges the Conference Center was required to be assigned a percentage of undivided interest in the common elements.

63. Defendant denies the allegations contained in Paragraph 63 of Plaintiff's Amended Complaint.

Count IV – Conference Center Part of the Condominium Subject to UCA

64. Defendant incorporates by reference all its responses to Paragraphs 1 through 63 as if fully set forth herein.

65. Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Amended Complaint that the Conference Center is subject to common expense liability, assessments for common expense liability, and to liens to secure the payment of the assessments for common expense liability. The remaining allegations contained in Paragraph 65 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Amended Complaint.

66. Defendant denies the allegation contained in Paragraph 66 of Plaintiff's Amended Complaint that the Conference Center is a Unit under the UCA and former West Virginia Code § 36B-3-114(b). With respect to the remaining allegations contained in Paragraph 66 of Plaintiff's

Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 66 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

67. Defendant denies the allegations contained in Paragraph 67 of Plaintiff's Amended Complaint.

68. Defendant denies the allegations contained in Paragraph 68 of Plaintiff's Amended Complaint.

69. The allegations contained in Paragraph 69 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 69 of Plaintiff's Amended Complaint.

70. The allegations contained in Paragraph 70 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 70 of Plaintiff's Amended Complaint.

71. Defendant denies the allegations contained in Paragraph 71 of Plaintiff's Amended Complaint.

Count V – Declaratory Judgment at Common Law

72. Defendant incorporates by reference all its responses to Paragraphs 1 through 71 as if fully set forth herein.

73. Defendant denies the allegations contained in Paragraph 73 of Plaintiff's Amended Complaint.

74. Defendant denies the allegations contained in Paragraph 74 of Plaintiff's Amended Complaint.

75. The allegations contained in Paragraph 75 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 75 of Plaintiff's Amended Complaint.

76. The allegations contained in Paragraph 76 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 76 of Plaintiff's Amended Complaint.

77. Defendant denies the allegations contained in Paragraph 77 of Plaintiff's Amended Complaint.

78. Defendant denies the allegations contained in Paragraph 78 of Plaintiff's Amended Complaint.

79. Defendant denies the allegations contained in Paragraph 79 of Plaintiff's Amended Complaint.

80. Defendant denies the allegation contained in Paragraph 80 of Plaintiff's Amended Complaint.

81. Defendant denies the allegations contained in Paragraph 81 of Plaintiff's Amended Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of Plaintiff's Amended Complaint.

83. For its response to Paragraph 83 of Plaintiff's Amended Complaint, Defendant admits that the Conference Center is part of the building that also contains the Condominium. Defendant denies all other allegations contained in Paragraph 83 of Plaintiff's Amended Complaint.

84. Defendant denies the allegations contained in Paragraph 84 to the extent it alleges that Defendant is responsible for costs associated with those elements of the Building in which it retains an easement under the Conference Center Deed or Declaration.

85. Defendant denies the allegations contained in Paragraph 85 to the extent it alleges that Defendant is responsible for costs associated with those elements of the Building in which it retains an easement under the Conference Center Deed or Declaration.

86. Defendant denies the allegations contained in Paragraph 86 of Plaintiff's Amended Complaint.

Count VI – Breach of Contract in the Conference Center Deed

87. Defendant incorporates by reference all its responses to Paragraphs 1 through 86 as if fully set forth herein.

88. Defendant denies the allegations contained in Paragraph 88 of Plaintiff's Amended Complaint to the extent that it alleges the Conference Center Deed renders Defendant liable for repairing, replacing, restoring, and maintaining portions of the "Building" in which it only retains an easement. By way of further response, Defendant states that the Conference Center Deed speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 88 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

89. Defendant denies the allegations contained in Paragraph 88 of Plaintiff's Amended Complaint to the extent that it alleges the Conference Center Deed renders Defendant liable for repairing, replacing, restoring, and maintaining portions of the "Building" in which it only retains an easement. By way of further response, Defendant states that the Conference Center Deed speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set

forth in Paragraph 89 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied

90. Defendant denies the allegations contained in Paragraph 90 of Plaintiff's Amended Complaint.

91. Defendant denies the allegations contained in Paragraph 91 of Plaintiff's Amended Complaint.

92. Defendant denies the allegations contained in Paragraph 92 of Plaintiff's Amended Complaint.

93. Defendant denies the allegations contained in Paragraph 93 of Plaintiff's Amended Complaint.

94. Defendant denies the allegations contained in Paragraph 94 of Plaintiff's Amended Complaint.

95. Defendant denies the allegations contained in Paragraph 95 of Plaintiff's Amended Complaint.

96. Defendant denies the allegations contained in Paragraph 96 of Plaintiff's Amended Complaint.

97. Defendant denies the allegations contained in Paragraph 97 of Plaintiff's Amended Complaint.

Count VII – Quantum Meruit

98. Defendant incorporates by reference all its responses to Paragraphs 1 through 97 as if fully set forth herein.

99. Defendant denies the allegations contained in Paragraph 99 of Plaintiff's Amended Complaint.

100. Defendant denies the allegations contained in Paragraph 100 of Plaintiff's Amended Complaint.

101. Defendant denies the allegations contained in Paragraph 101 of Plaintiff's Amended Complaint.

102. Defendant denies the allegations contained in Paragraph 102 of Plaintiff's Amended Complaint.

103. Defendant denies the allegations contained in Paragraph 103 of Plaintiff's Amended Complaint.

104. Defendant denies the allegations contained in Paragraph 104 of Plaintiff's Amended Complaint.

Count VIII – Unjust Enrichment

105. Defendant incorporates by reference all its responses to Paragraphs 1 through 104 as if fully set forth herein.

106. Defendant denies the allegations contained in Paragraph 106 of Plaintiff's Amended Complaint.

107. Defendant denies the allegations contained in Paragraph 107 of Plaintiff's Amended Complaint.

108. Defendant denies the allegations contained in Paragraph 108 of Plaintiff's Amended Complaint.

109. Defendant denies the allegations contained in Paragraph 109 of Plaintiff's Amended Complaint.

Count IX – Rescission of the Conference Center Deed

110. Defendant incorporates by reference all its responses to Paragraphs 1 through 109 as if fully set forth herein.

111. For its response to Paragraph 111 of Plaintiff's Amended Complaint, Defendant states that the terms the Conference Center Deed speaks for itself and is the best evidence of the terms contained therein, as well as the interest conveyed therein. To the extent the allegations set forth in Paragraph 111 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

112. Defendant denies the allegations contained in Paragraph 112 of Plaintiff's Amended Complaint.

113. Defendant denies the allegations contained in Paragraph 113 of Plaintiff's Amended Complaint.

114. Defendant denies all allegations set forth in Plaintiff's Amended Complaint not expressly admitted herein.

115. Defendant denies Plaintiff is entitled to any relief request in its Prayer for Declaratory Relief

Affirmative Defenses

Having responded to Plaintiff's Amended Complaint, Defendant asserts the following affirmative defenses:

1. The Amended Complaint fails to state a claim upon which relief may be granted against the Defendant.

2. To the extent discovery reveals the same, the Defendant asserts the defenses set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure including:

- a. accord and satisfaction;
- b. estoppel;
- c. laches;
- d. payment;
- e. release;
- f. statute of limitations;
- g. waiver;
- h. ratification; and
- i. any other matter constituting an avoidance or affirmative defense.

3. To the extent discovery and facts warrant, the Defendant reserves the defenses of ratification, course of performance, course of dealings, and custom and usage.

4. To the extent the Amended Complaint references certain documents and records, said documents and records speak on their own merits and are the best evidence of the terms contained therein.

5. All of Plaintiff's equitable claims are barred by unclean hands.

6. Plaintiff's claims are barred by statute of frauds.

7. Plaintiff's claims are barred by statute of limitations

8. This Defendant reserves the right to amend its Answer and defenses if investigation, discovery and further information should warrant such amendment, and, further, to assert any applicable matters of law during the pendency of this action.

WHEREFORE, Defendant demands that the Amended Complaint be dismissed and that it recovers costs incurred in connection therewith, including reasonable attorney's fees.

Defendant demands trial by jury

II. COUNTERCLAIM

Defendant Snowshoe Mountain, Inc. (“Snowshoe” or “Defendant”), by and through counsel, Jackson Kelly PLLC, asserts the following Counterclaim against The Mountain Lodge Association’s (“Association” or “Plaintiff”) Amended Complaint. Defendant’s Counterclaim is asserted in the alternative to its 12(b)(6) motion to dismiss with respect to Count V (Declaratory Judgment at Common Law) of Plaintiff’s Amended Complaint in accordance with Rule 8(e) of the West Virginia Rules of Civil Procedure, which permits the assertion or pleading of alternative defenses and/or claims. Specifically, Defendant maintains that Count V of Plaintiff’s Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure for failure to state a claim for which relief can be granted. However, in the event Counts V of Plaintiff’s Amended Complaint are found to be cognizable causes of action, then Defendant would also have grounds to assert the same claim against Plaintiff, which it now does in this instant Counterclaim. In support of its Counterclaim brought in the alternative to its 12(b)(6) motion to dismiss, Defendant avers the following:

I. Parties

1. Plaintiff The Mountain Lodge Association is a West Virginia unincorporated nonprofit association (“Plaintiff” or “Association”). Its principal office address is P. O. Box 183, Snowshoe, West Virginia. The Association consists of individuals who own units within Mountain Lodge Condominium (“Condominium”), which is part of and physically integrated within a larger structure or building known or commonly referred to as Snowshoe Mountain Lodge.

2. Defendant Snowshoe Mountain, Inc. is a West Virginia for-profit corporation (“Defendant” or “Snowshoe”). Its principal office address is 10 Snowshoe Drive, Snowshoe, West Virginia. Snowshoe owns and operate a facility known as the Conference Center, which is part of

and physically integrated within a larger structure or building known or commonly referred to as Snowshoe Mountain Lodge (“Mountain Lodge” or “Building”).

II. Jurisdiction and Venue

3. The Condominium and Conference Center that make up the Mountain Lodge are located in Pocahontas County, West Virginia. Therefore, this Court has subject matter jurisdiction as to the claims and property at issue in this action pursuant to West Virginia Code § 51-2-2.

4. The parties are West Virginia corporations and therefore this Court has personal jurisdiction as to those parties pursuant to West Virginia Code § 56-3-33.

5. This Court is the proper venue for this action pursuant to West Virginia Code § 56-1-1 because the property at issue is located in Pocahontas County, West Virginia.

6. A portion of this Counterclaim is also brought before this Court under and pursuant to West Virginia’s Uniform Declaratory Judgment Act, codified as Article 13 of Chapter 55 of the West Virginia Code.

III. Operative Facts

7. Defendant incorporates by reference all allegations contained in Paragraphs 1 through 6 as if fully set forth herein.

8. By that certain Deed and Agreement dated November 10, 1982, and recorded in the Office of the Clerk of Pocahontas County, West Virginia, in Deed Book 168, Page 674, the Associations predecessor in interest, The Commonwealth Group, conveyed to Snowshoe’s predecessor in interest, what is identified therein as a Conference Center (“Conference Center Deed”).¹

9. Specifically, the Conference Deed recites the following:

¹ A copy of the Conference Center Deed is attached to Plaintiff’s Amended Complaint and is incorporated herein by reference.

- a. By instrument dated December 1, 1981, the Company and Commonwealth entered into an agreement (the "Agreement") whereby in return for the conveyance by the Company to Commonwealth of a tract of 5.01 acres, more or less, situate at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia (hereinafter called the "Site"), Commonwealth committed to construct upon the Site a major meeting/conference center and luxury condominium development.
- b. Pursuant to the Agreement, by deed dated April 12, 1982, and of record in the office of the Clerk of the County Commission in Deed Book 162, at page 628, and Corrective Deed dated October 26, 1982, also of record or to be recorded in said Clerk's office (the "Deeds"), the Company conveyed the Site to Commonwealth and thereafter Commonwealth proceeded with the construction thereon of a four-story building ("the Building") consisting of a ground floor area, a part of which is referred to herein as the "Conference Center," and three additional floors or stories consisting of 229 apartment units and other improvements which together with portions of the ground floor area are to be submitted to a condominium form of ownership pursuant to the provisions of Chapter 36B of the Code of West Virginia (the "Act") and to be known as the "Snowshoe Mountain Lodge Condominium" all as provided in that certain Declaration of even date herewith of record or to be recorded in said Clerk's office, which portions of the Building are hereinafter sometimes referred to as the Condominium.
- c. With the substantial completion of the construction of the Conference Center, Commonwealth, pursuant to the terms of the Agreement, and in further consideration of the agreements of the Company hereinafter set forth, is now prepared and does hereinafter set forth, is not prepared and does hereinafter convey the Conference Center to the Company subject to all the terms, conditions, agreements, exceptions and restrictions hereinafter provided.

10. The Commonwealth excepted, reserved, and excluded from the conveyance of the Conference Center in the Conference Center Deed all other portions of the "Building" that make up the Condominium.

11. In addition, the Commonwealth excepted and reserved “for the benefit of itself and its successors, grantees and assigns, and for the benefit of the Condominium ownership of all of the following property, rights and easements in, on, through and abutting the Conference Center, which shall constitute a burden thereon:”

(1) For the purpose of facilitating construction and total completion of all of the conference Center and all improvements therein which are the responsibility of commonwealth, under the terms of the Agreement, such temporary easements and rights of ingress, egress, passage and movement and storage of materials as may I the sole discretion of Commonwealth, be necessary or desirable are hereby established and declared to exist until the Conference Center is completed.

(2) Exclusive easements for and ownership of all utility chases and lines, including, but not necessarily limited to, drainage, water, sewer, electric, telephone, sprinkler, cable television lines and ducts or lines for the discharge of waste gas, air, smoke and fumes, all as now located and existing through the Conference Center;

(3) Exclusive easements for and ownership of all existing passenger elevators and mechanical and equipment rooms and personal property and fixtures in connection therewith;

(4) An exclusive easement for and ownership of portions of the existing mail lobby fireplace and stairway;

(5) An exclusive easement for and ownership of an existing emergency exit stairway;

(6) An exclusive easement for and ownership of an existing trash chute; together with a non-exclusive easement within the Conference Center in the immediate proximity of the trash chute for facilities to collect the trash emanating from the trash chute;

(7) A right to full support of the Condominium and all parts thereof including without limitation the right to install, maintain, inspect, repair, replace and remove from time to time all footers, pillars, walls, foundations and other structural members, facilities and property as are sufficient at all times to support the Condominium and so long thereafter as the real and personal property and fixtures constituting such Condominium or any part or

parts thereof remain in existence, including any reconstruction or replacement thereof in whole or in part in the event of damage or destruction by casualty or other cause, together with (i) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across corridors, lobbies, shafts, and open spaces and areas sufficient to provide for maintenance, inspection, repair, replacement and removal of the condominium or any part thereof and (ii) non-exclusive easements for and the right to install, maintain, repair, replace and remove from time to time pipes, cables, ducts and conduits of every kind and nature for drainage, water, sewage, electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Condominium including further the right to temporarily place ladders and equipment against portions of the conference Center owned by the Company as reasonable necessary in the exercise of the rights hereby reserved and described;

(8) The right to discharge in a lawful manner from and through the utility chases and ventilation lines owned by the Condominium through the Conference Center all such fresh, exhaust and waste gas, air, smoke, fumes, water, moisture, drainage and sewage as shall be reasonable having due regard and care for the use and enjoyment of the Conference Center and any structure or improvement therein; together with an easement to construct, maintain, inspect, repair and replace when reasonably necessary within the Conference Center pipes, cables, ducts and conduits sufficient to accommodate the easement for the aforesaid discharge for the benefit of the Condominium;

(9) Subject to the obligations for support and the easements granted by this deed, the right from time to time to reconstruct or replace within the Condominium in the same location,, at the sole expense and risk of the Condominium, and after the expiration of the 30th day following the receipt by the Conference Center owner and all holders of mortgages thereon or any portion thereof of written notice of such effect without receipt by the Condominium Association of Unit Owners, of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and structural members maintained entirely or partially for the benefit of the Conference Center;

(10) A non-exclusive right of ingress, egress and regress through the public areas of the Conference Center for the use of the Condominium and its Association of Unit Owners, unit owners, and their employees, agents, guests and invitees; and

(11) the non-exclusive right to use the existing trash compactor and freight elevator located within the Conference Center and owned by the Company together with the non-exclusive right of ingress, egress and regress through the Conference Center to provide access to the trash chute and freight elevator for the use of the Condominium and its Association of Unit Owners, units owners and their employees, agents, guests and invitees.

12. In Section C of the Conference Center Deed, the parties further agreed as follows:

(1) Commonwealth and its successors, grantees and assigns, including the Condominium Association of Unit Owners, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Condominium which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

(2) Company and its successors, grantees and assigns, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Conference Center, which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

(3) The parties agree to the following casualty insurance coverages:

(a) The Company shall, at its sole cost and expense, keep and maintain in force policies of insurance covering the conference Center insuring against all risks of direct physical loss commonly insured against fire and extended coverage perils, the total amount of which insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Commonwealth, through the Association of Unit Owners of the Condominium, shall, at its sole cost and expense, keep and maintain in force policies of insurance on the common elements and units within the Condominium, exclusive of

improvements and betterments installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against fire coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(c) The parties agree that all such insurance shall be secured and maintained in a company or companies licensed to do business in the State of West Virginia and that each policy shall contain an agreed amount endorsement and waivers of subrogation as against the other party and shall name both the owner of the Conference Center and the Unit Owners Association of the Condominium as additional insureds to the extent their interest may appear. The parties further agree to furnish each other with originals or copies of all such policies and to furnish at all times and maintain with each other at all times a certificate or certificates of the insurance carrier or carriers showing that such insurance is in full force and effect and certifying that the same will not be cancelled without at least 30 days advance written notice to each of the parties.

(4) All easements established hereby and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted or reserved. Any easements, rights and rights-of-way established hereunder shall be appurtenant to the estate benefited thereby, provided, however, that such easements, rights and rights-of-way shall be non-exclusive but shall also be for the benefit and the use of the burdened estate unless otherwise specified herein to the contrary.

(5) In no event shall any reconstruction or replacement or other structural work which may be permitted hereunder upon notice (with the right to objection or otherwise) permanently and materially interfere with or impair or endanger the continuing rights to full support, access and essential or convenient services established by this instrument.

(6) Nothing in this instrument shall be deemed to permit any diminution or impairment of the area of or any right or title or ownership in and to any unit, or any portion thereof, by any unit owner of the Condominium now or hereafter vested by deed in any such unit owner without the consent of such unit owner; provided, changes in and to common elements or limited common elements (as defined in the Act) may be effected subject to the terms and

conditions hereof. Subject only to the foregoing sentence, and notwithstanding anything to the contrary contained in this instrument or elsewhere to the contrary, the Executive Board of the Unit Owners Association of the Condominium containing any unit affected hereby shall be the only entity empowered to act and shall so act for and on behalf of any and all unit owners and holders of mortgages in the Condominium in matters pertaining to this instrument and the rights, remedies, duties and obligations established hereby.

(7) Each party hereto agrees to repair, replace, restore and maintain all those portions of the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.

(8) The recording by Commonwealth of a declaration of condominium in accordance with the Act shall be deemed to be an assignment and transfer of Commonwealth's rights, privileges, duties, liabilities and obligations herein established; provided, however, that this provision shall in no way affect or impair the obligations of Commonwealth to the Company under the provisions of the Agreement.

(9) All rights, easements, covenants, obligations and restrictions set forth in this instrument are intended to run with the real estate consisting of the Conference Center and Condominium and pertain respectively and inure to the benefit of the estate and the owner intended to benefit thereby and to bind and charge the estate and owner intended to be bound thereby.

13. The Condominium utilizes several portions of the Conference Center, as would be required since the Condominium and Conference Center are both integrated in the same Building.

14. Accordingly, the Association owns and controls the dominate estate in relation to the Conference Center manifested in the easements created on behalf of and for the benefit for the Association by the Conference Center Deed.

Counterclaim Count I – (Declaratory Judgment at Common Law)

15. Snowshoe incorporates by reference all allegations contained in Paragraphs 1 through 14 as if fully set forth herein.

16. In the alternative to Snowshoe's 12(b)(6) motion to dismiss the Association's claims for Declaratory Judgment at Common Law, the Association is responsible for its fair share of the costs associated with the maintenance and operation of the Conference Center in which it holds an easement or otherwise maintains the right to use for the benefit of the Condominium and the Association.

17. In the event Snowshoe's 12(b)(6) motion to dismiss the Association's claims for Declaratory Judgment at Common Law is denied, the Association under common law or principles of servitudes is liable for its fair share of costs and expenses incurred by Snowshoe to maintain, operate, repair, or replace elements of the Conference Center shared in common with the Condominium and the Association.

18. As an alternative pleading, Snowshoe avers that under common law, the intent to create a servitude may be express or implied, and no particular form of expression is required.

19. As an alternative pleading, Snowshoe avers that a servitude may be created to burden or benefit any estate in land or another servitude.

20. As an alternative pleading, Snowshoe avers that the servitudes for the benefit of the Association in relation to its use of the Conference Center for the benefit of the Condominium and the Association are real, substantial, and render value to the Association, the burdens for which are wholly borne by Snowshoe.

21. As an alternative pleading, Snowshoe avers that the servitudes for the benefit of the Association in relation to its members use of the Conference Center satisfy the requirements of the statute of frauds.

22. As an alternative pleading, Snowshoe avers that it would be a manifest injustice to Snowshoe if the association is permitted to evade its fair share of costs incurred by Snowshoe to

maintain, operate, repair, or replace the portions of the Conference Center shared with the Association and its individual members.

23. As an alternative pleading, Snowshoe avers that the Association is or should be estopped to deny the existence of one or more servitudes for the benefit of the Association and its individual members in relation to its use of certain portions of the Conference Center.

24. As an alternative pleading, Snowshoe avers that one or more servitudes for the benefit of the Association in relation to its and its members' use of the Conference Center were created by implication and thus have corresponding liabilities to Snowshoe for which Snowshoe is entitled to be paid reimbursement.

25. As an alternative pleading, Snowshoe avers that servitudes are implied for the benefit of the Association in relation to its and its members' use of the Conference Center and thus have corresponding liabilities to Snowshoe for which Snowshoe is entitled to be paid or reimbursed for.

26. As an alternative pleading, Snowshoe avers that the Condominium, is part of the Building that also contained the Condominium and therefore the Association and its individual members enjoy the use thereof, as well as the use and benefits from the portion of the Conference Center that supports the Buildings infrastructure, utility system, building system, *etc.*

27. As an alternative pleading, Snowshoe avers that the Association as used portions of the Conference Center in which it retains an easement but has never reimbursed or otherwise paid Snowshoe for the maintenance, repair, or other costs association with the portions of the Conference Center that the Association and its individual members utilize on a daily basis.

28. As an alternative pleading, Snowshoe avers that as a direct and proximate result of the Association's actions, assertions and representations, Snowshoe has suffered and will continue to suffer damages in an unknown amount to be determined by a jury.

WHEREFORE, in the alternative to Snowshoe's Rule 12(b)(6) motion to dismiss Count V (Declaratory Judgment at Common Law) of Plaintiff's Amended Complaint in accordance with Rule 8(e) of the West Virginia Rules of Civil Procedure, which permits the assertion or pleading of alternative defenses and/or claims, Snowshoe asserts it is entitled to the following relief:

A. The Association pay to Snowshoe all costs and expenses related to Snowshoe's maintenance, repair, replace, and/or restore portions of the Conference Center in which the Association owns or possesses an easement or right of use since the inception of the Association, as determined by a jury;

B. The Association pay Snowshoe's reasonable costs and attorney's fees for prosecuting this counterclaim; and

C. Grant Snowshoe all other remedies or relief this Court may deem just and proper.

Defendant Counterclaimant Demands a Trial by Jury

Respectfully Submitted,
SNOWSHOE MOUNTAIN, INC.
By Counsel.

/s/ Seth P. Hayes

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Counsel for Defendant

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION,
a West Virginia unincorporated non-profit association

Plaintiff,

v.

Civil Action No.: 20-C-24

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant.

CERTIFICATE OF SERVICE

I, Seth P. Hayes, do hereby certify that I served a true copy of “**DEFENDANT SNOWSHOE MOUNTAIN, INC.’S ANSWER TO THE MOUNTAIN LODGE ASSOCIATION’S AMENDED COMPLAINT AND COUNTERCLAIM,**” via WV E-file and Electronic Mail (E-Mail), this **16th day of November 2020**, to the following:

Mark A. Sadd, Esquire
Ramonda C. Marling, Esquire
John R. Bsharah, Esquire
Lewis Glasser PLLC
P.O. Box 1746
Charleston, West Virginia 25326
Counsel for Plaintiff

/s/ Seth P. Hayes
Seth P. Hayes, Esquire

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Defendant.

**DEFENDANT SNOWSHOE MOUNTAIN, INC.'S ANSWER TO THE MOUNTAIN
LODGE ASSOCIATION'S AMENDED COMPLAINT AND COUNTERCLAIM**

I. ANSWER AND AFFIRMATIVE DEFENSES

Defendant Snowshoe Mountain, Inc. ("Snowshoe" or "Defendant"), by and through counsel, Jackson Kelly PLLC, serves the following Answer and Affirmative Defenses to The Mountain Lodge Association's ("Association" or "Plaintiff") Amended Complaint.

Parties

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint.

2. For its response to Paragraph 2 of Plaintiff's Amended Complaint, Defendant admits it is a West Virginia for-profit corporation, with a principal place of business of 10 Snowshoe Drive, Snowshoe, West Virginia. Defendant further admits that it owns the referenced Conference Center and that the Conference Center is located on the ground floor of the Mountain Lodge complex. The remaining allegations are vague and therefore Defendants denies all remaining allegations contained in Paragraph 2 of Plaintiff's Amended Complaint.

Jurisdiction and Venue

3. The allegations contained in Paragraph 3 of Plaintiff's Amended Complaint are legal conclusions for which no response is required.

4. The allegations contained in Paragraph 4 of Plaintiff's Amended Complaint are legal conclusions for which no response is required.

Prefatory Statement

5. Defendant denies the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint.

Background

6. For its response to Paragraph 6 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 6 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

7. For its response to Paragraph 7 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 7 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

8. The allegations contained in Paragraph 8 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Amended Complaint.

9. The allegations contained in Paragraph 9 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Amended Complaint.

10. For its response to Paragraph 10 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 10 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

11. The allegations contained in Paragraph 11 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint.

12. The allegations contained in Paragraph 12 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 12 of Plaintiff's Amended Complaint.

13. The allegations contained in Paragraph 13 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Amended Complaint.

14. The allegations contained in Paragraph 14 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Amended Complaint.

15. For its response to Paragraph 15 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 15 of Plaintiff's Amended

Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

16. The allegations contained in Paragraph 16 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 16 of Plaintiff's Amended Complaint.

17. The allegations contained in Paragraph 17 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint.

18. The allegations contained in Paragraph 18 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 18 of Plaintiff's Amended Complaint.

Conference Center

19. For its response to Paragraph 19 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 19 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

20. For its response to Paragraph 20 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 20 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

21. For its response to Paragraph 21 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 21 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

22. For its response to Paragraph 22 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 22 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

23. Defendant is without sufficient information to either admit or deny the allegations set forth in Paragraph 23 of Plaintiff's Amended Complaint.

24. For its response to Paragraph 24 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 24 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

25. For its response to Paragraph 25 of Plaintiff's Amended Complaint, Defendant states that the Conference Center Deed referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 25 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

26. For its response to Paragraph 26 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 26 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

27. For its response to Paragraph 27 of Plaintiff's Amended Complaint, Defendant states that it retains certain non-exclusive easements in certain portions of the "Condominium," as defined in that certain Declaration recorded in the Office of the Clerk of Pocahontas County, West Virginia, in Deed Book 169, Page 1 ("Declaration"), which are more fully set forth in the Conference Center Deed and the Declaration. To the extent Plaintiff alleges otherwise, Paragraph 27 of its Amended Complaint is denied. Furthermore, to the extent Plaintiff alleges in Paragraph 27 of its Amended Complaint that Defendant owes or is otherwise responsible for common expenses for operating, maintaining, repairing, and replacing common elements that are a part of the Condominium, as defined by the Declaration, the same is denied.

28. Defendant admits the allegations contained in Paragraph 28 of Plaintiff's Amended Complaint.

29. For its response to Paragraph 29 of Plaintiff's Amended Complaint, all rights and benefits in relation to the Conference Center Deed are set forth in the Conference Center Deed itself and the Declaration itself. To the extent the allegations contained in Paragraph 29 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed or the Declaration, the same is denied.

30. For its response to Paragraph 30 of Plaintiff's Amended Complaint, all obligations and liabilities in relation to the Conference Center Deed are set forth in the Conference Center

Deed itself and the Declaration itself. To the extent the allegations contained in Paragraph 29 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed or the Declaration, the same is denied.

31. Defendant admits the allegations contained in Paragraph 31 of Plaintiff's Amended Complaint.

32. For its response to Paragraph 32 of Plaintiff's Amended Complaint, the interest possessed by Defendant in the Conference Center or any easement or similar interest it retains in the Condominium is set forth in the Conference Center Deed and the Declaration. All allegations that attempt to characterize this interest that is inconsistent with the legal effect of the Conference Center Deed or the Declaration are denied.

33. The allegations contained in Paragraph 33 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Amended Complaint.

Count I – Conference Center Must Be Declared a Unit

34. Defendant incorporates by reference all its responses to Paragraphs 1 through 33 as if fully set forth herein.

35. For its response to Paragraph 35 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 35 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

36. For its response to Paragraph 36 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms

contained therein. To the extent the allegations set forth in Paragraph 36 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

37. Defendant denies the allegations contained in Paragraph 37 of Plaintiff's Amended Complaint.

38. Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Amended Complaint.

39. Defendant denies the allegations contained in Paragraph 39 of Plaintiff's Amended Complaint.

40. The allegations contained in Paragraph 40 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 40 of Plaintiff's Amended Complaint.

41. The allegations contained in Paragraph 41 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Amended Complaint.

42. Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Amended Complaint.

Count II – Declaratory Judgment under the UCIOA

43. Defendant incorporates by reference all its responses to Paragraphs 1 through 42 as if fully set forth herein.

44. The allegations contained in Paragraph 44 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Amended Complaint.

45. The allegations contained in Paragraph 45 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 45 of Plaintiff's Amended Complaint.

46. For its response to Paragraph 46 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 46 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

47. With respect to the allegations contained in Paragraph 47 of Plaintiff's Amended Complaint pertaining to the UCIOA, said allegations are legal conclusions for which no response is required. To the extent a response is required with respect to the allegations pertaining to the UCIOA contained in Paragraph 47 of Plaintiff's Amended Complaint, Defendant denies said allegations. With respect to the allegation contained in Paragraph 47 of Plaintiff's Amended Complaint pertaining to the Declaration, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 47 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

48. Defendant denies the allegations contained Paragraph 48 of Plaintiff's Amended Complaint to the extent it alleges that Defendant is obligated or responsible for any common expense liability for operating the Condominium. Defendant further denies that is granted or is otherwise required to be assigned any "Allocated Interest" under the Declaration or the UCIOA.

49. Defendant denies the allegations contained in Paragraph 49 to the extent it alleges the Conference Center was required to be assigned a percentage of undivided interest in the common elements.

50. Defendant denies the allegations contained in Paragraph 50 of Plaintiff's Amended Complaint.

51. For its response to Paragraph 51 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 51 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied. Defendant denies all other allegations contained in Paragraph 51 of Plaintiff's Amended Complaint.

52. For its response to Paragraph 52 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 52 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied. Defendant denies all other allegations contained in Paragraph 52 of Plaintiff's Amended Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of the Amended Complaint to the extent it alleges Defendant is responsible for past common expense liability.

54. Defendant denies the allegations contained in Paragraph 54 of Plaintiff's Amended Complaint.

55. Defendant denies the allegations contained in Paragraph 55 of Plaintiff's Amended Complaint.

56. The allegations contained in Paragraph 56 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 56 of Plaintiff's Amended Complaint.

57. The allegations contained in Paragraph 57 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 57 of Plaintiff's Amended Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of Plaintiff's Amended Complaint.

Count III – Declaratory Judgment Under the UCA

59. Defendant incorporates by reference all its responses to Paragraphs 1 through 58 as if fully set forth herein.

60. Defendant denies the allegation contained in Paragraph 60 of Plaintiff's Amended Complaint that the Conference Center is a unit under either the UCA or the UCIOA. The remaining allegations contained in Paragraph 60 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 60 of Plaintiff's Amended Complaint.

61. For its response to Paragraph 61 of Plaintiff's Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 61 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied. Defendant denies all other allegations contained in Paragraph 61 of Plaintiff's Amended Complaint to the extent it alleges the Conference Center is a "unit" under either the Declaration or the UCA and further denies that it is obligated to pay assessments to

maintain, operate, and replace common elements. Defendant further denies that it is assigned an allocated interest under the Declaration or the UCA.

62. Defendant denies the allegations contained in Paragraph 62 of Plaintiff's Amended Complaint to the extent it alleges that it is obligated or responsible for any common expense liability for operating the Condominium and Defendant further denies it is required to be assigned any allocated interest under the Declaration or UCA. Defendant further denies the allegations contained in Paragraph 62 of Plaintiff's Amended Complaint to the extent it alleges the Conference Center was required to be assigned a percentage of undivided interest in the common elements.

63. Defendant denies the allegations contained in Paragraph 63 of Plaintiff's Amended Complaint.

Count IV – Conference Center Part of the Condominium Subject to UCA

64. Defendant incorporates by reference all its responses to Paragraphs 1 through 63 as if fully set forth herein.

65. Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Amended Complaint that the Conference Center is subject to common expense liability, assessments for common expense liability, and to liens to secure the payment of the assessments for common expense liability. The remaining allegations contained in Paragraph 65 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Amended Complaint.

66. Defendant denies the allegation contained in Paragraph 66 of Plaintiff's Amended Complaint that the Conference Center is a Unit under the UCA and former West Virginia Code § 36B-3-114(b). With respect to the remaining allegations contained in Paragraph 66 of Plaintiff's

Amended Complaint, Defendant states that the Declaration referenced therein speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 66 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Declaration, the same is denied.

67. Defendant denies the allegations contained in Paragraph 67 of Plaintiff's Amended Complaint.

68. Defendant denies the allegations contained in Paragraph 68 of Plaintiff's Amended Complaint.

69. The allegations contained in Paragraph 69 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 69 of Plaintiff's Amended Complaint.

70. The allegations contained in Paragraph 70 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 70 of Plaintiff's Amended Complaint.

71. Defendant denies the allegations contained in Paragraph 71 of Plaintiff's Amended Complaint.

Count V – Declaratory Judgment at Common Law

72. Defendant incorporates by reference all its responses to Paragraphs 1 through 71 as if fully set forth herein.

73. Defendant denies the allegations contained in Paragraph 73 of Plaintiff's Amended Complaint.

74. Defendant denies the allegations contained in Paragraph 74 of Plaintiff's Amended Complaint.

75. The allegations contained in Paragraph 75 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 75 of Plaintiff's Amended Complaint.

76. The allegations contained in Paragraph 76 of Plaintiff's Amended Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 76 of Plaintiff's Amended Complaint.

77. Defendant denies the allegations contained in Paragraph 77 of Plaintiff's Amended Complaint.

78. Defendant denies the allegations contained in Paragraph 78 of Plaintiff's Amended Complaint.

79. Defendant denies the allegations contained in Paragraph 79 of Plaintiff's Amended Complaint.

80. Defendant denies the allegation contained in Paragraph 80 of Plaintiff's Amended Complaint.

81. Defendant denies the allegations contained in Paragraph 81 of Plaintiff's Amended Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of Plaintiff's Amended Complaint.

83. For its response to Paragraph 83 of Plaintiff's Amended Complaint, Defendant admits that the Conference Center is part of the building that also contains the Condominium. Defendant denies all other allegations contained in Paragraph 83 of Plaintiff's Amended Complaint.

84. Defendant denies the allegations contained in Paragraph 84 to the extent it alleges that Defendant is responsible for costs associated with those elements of the Building in which it retains an easement under the Conference Center Deed or Declaration.

85. Defendant denies the allegations contained in Paragraph 85 to the extent it alleges that Defendant is responsible for costs associated with those elements of the Building in which it retains an easement under the Conference Center Deed or Declaration.

86. Defendant denies the allegations contained in Paragraph 86 of Plaintiff's Amended Complaint.

Count VI – Breach of Contract in the Conference Center Deed

87. Defendant incorporates by reference all its responses to Paragraphs 1 through 86 as if fully set forth herein.

88. Defendant denies the allegations contained in Paragraph 88 of Plaintiff's Amended Complaint to the extent that it alleges the Conference Center Deed renders Defendant liable for repairing, replacing, restoring, and maintaining portions of the "Building" in which it only retains an easement. By way of further response, Defendant states that the Conference Center Deed speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set forth in Paragraph 88 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

89. Defendant denies the allegations contained in Paragraph 88 of Plaintiff's Amended Complaint to the extent that it alleges the Conference Center Deed renders Defendant liable for repairing, replacing, restoring, and maintaining portions of the "Building" in which it only retains an easement. By way of further response, Defendant states that the Conference Center Deed speaks for itself and is the best evidence of the terms contained therein. To the extent the allegations set

forth in Paragraph 89 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied

90. Defendant denies the allegations contained in Paragraph 90 of Plaintiff's Amended Complaint.

91. Defendant denies the allegations contained in Paragraph 91 of Plaintiff's Amended Complaint.

92. Defendant denies the allegations contained in Paragraph 92 of Plaintiff's Amended Complaint.

93. Defendant denies the allegations contained in Paragraph 93 of Plaintiff's Amended Complaint.

94. Defendant denies the allegations contained in Paragraph 94 of Plaintiff's Amended Complaint.

95. Defendant denies the allegations contained in Paragraph 95 of Plaintiff's Amended Complaint.

96. Defendant denies the allegations contained in Paragraph 96 of Plaintiff's Amended Complaint.

97. Defendant denies the allegations contained in Paragraph 97 of Plaintiff's Amended Complaint.

Count VII – Quantum Meruit

98. Defendant incorporates by reference all its responses to Paragraphs 1 through 97 as if fully set forth herein.

99. Defendant denies the allegations contained in Paragraph 99 of Plaintiff's Amended Complaint.

100. Defendant denies the allegations contained in Paragraph 100 of Plaintiff's Amended Complaint.

101. Defendant denies the allegations contained in Paragraph 101 of Plaintiff's Amended Complaint.

102. Defendant denies the allegations contained in Paragraph 102 of Plaintiff's Amended Complaint.

103. Defendant denies the allegations contained in Paragraph 103 of Plaintiff's Amended Complaint.

104. Defendant denies the allegations contained in Paragraph 104 of Plaintiff's Amended Complaint.

Count VIII – Unjust Enrichment

105. Defendant incorporates by reference all its responses to Paragraphs 1 through 104 as if fully set forth herein.

106. Defendant denies the allegations contained in Paragraph 106 of Plaintiff's Amended Complaint.

107. Defendant denies the allegations contained in Paragraph 107 of Plaintiff's Amended Complaint.

108. Defendant denies the allegations contained in Paragraph 108 of Plaintiff's Amended Complaint.

109. Defendant denies the allegations contained in Paragraph 109 of Plaintiff's Amended Complaint.

Count IX – Recission of the Conference Center Deed

110. Defendant incorporates by reference all its responses to Paragraphs 1 through 109 as if fully set forth herein.

111. For its response to Paragraph 111 of Plaintiff's Amended Complaint, Defendant states that the terms the Conference Center Deed speaks for itself and is the best evidence of the terms contained therein, as well as the interest conveyed therein. To the extent the allegations set forth in Paragraph 111 of Plaintiff's Amended Complaint characterizes or is otherwise inconsistent with the express terms and legal effect of said Conference Center Deed, the same is denied.

112. Defendant denies the allegations contained in Paragraph 112 of Plaintiff's Amended Complaint.

113. Defendant denies the allegations contained in Paragraph 113 of Plaintiff's Amended Complaint.

114. Defendant denies all allegations set forth in Plaintiff's Amended Complaint not expressly admitted herein.

115. Defendant denies Plaintiff is entitled to any relief request in its Prayer for Declaratory Relief

Affirmative Defenses

Having responded to Plaintiff's Amended Complaint, Defendant asserts the following affirmative defenses:

1. The Amended Complaint fails to state a claim upon which relief may be granted against the Defendant.

2. To the extent discovery reveals the same, the Defendant asserts the defenses set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure including:

- a. accord and satisfaction;
- b. estoppel;
- c. laches;
- d. payment;
- e. release;
- f. statute of limitations;
- g. waiver;
- h. ratification; and
- i. any other matter constituting an avoidance or affirmative defense.

3. To the extent discovery and facts warrant, the Defendant reserves the defenses of ratification, course of performance, course of dealings, and custom and usage.

4. To the extent the Amended Complaint references certain documents and records, said documents and records speak on their own merits and are the best evidence of the terms contained therein.

5. All of Plaintiff's equitable claims are barred by unclean hands.

6. Plaintiff's claims are barred by statute of frauds.

7. Plaintiff's claims are barred by statute of limitations

8. This Defendant reserves the right to amend its Answer and defenses if investigation, discovery and further information should warrant such amendment, and, further, to assert any applicable matters of law during the pendency of this action.

WHEREFORE, Defendant demands that the Amended Complaint be dismissed and that it recovers costs incurred in connection therewith, including reasonable attorney's fees.

Defendant demands trial by jury

II. COUNTERCLAIM

Defendant Snowshoe Mountain, Inc. (“Snowshoe” or “Defendant”), by and through counsel, Jackson Kelly PLLC, asserts the following Counterclaim against The Mountain Lodge Association’s (“Association” or “Plaintiff”) Amended Complaint. Defendant’s Counterclaim is asserted in the alternative to its 12(b)(6) motion to dismiss with respect to Count V (Declaratory Judgment at Common Law) of Plaintiff’s Amended Complaint in accordance with Rule 8(e) of the West Virginia Rules of Civil Procedure, which permits the assertion or pleading of alternative defenses and/or claims. Specifically, Defendant maintains that Count V of Plaintiff’s Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure for failure to state a claim for which relief can be granted. However, in the event Counts V of Plaintiff’s Amended Complaint are found to be cognizable causes of action, then Defendant would also have grounds to assert the same claim against Plaintiff, which it now does in this instant Counterclaim. In support of its Counterclaim brought in the alternative to its 12(b)(6) motion to dismiss, Defendant avers the following:

I. Parties

1. Plaintiff The Mountain Lodge Association is a West Virginia unincorporated nonprofit association (“Plaintiff” or “Association”). Its principal office address is P. O. Box 183, Snowshoe, West Virginia. The Association consists of individuals who own units within Mountain Lodge Condominium (“Condominium”), which is part of and physically integrated within a larger structure or building known or commonly referred to as Snowshoe Mountain Lodge.

2. Defendant Snowshoe Mountain, Inc. is a West Virginia for-profit corporation (“Defendant” or “Snowshoe”). Its principal office address is 10 Snowshoe Drive, Snowshoe, West Virginia. Snowshoe owns and operate a facility known as the Conference Center, which is part of

and physically integrated within a larger structure or building known or commonly referred to as Snowshoe Mountain Lodge (“Mountain Lodge” or “Building”).

II. Jurisdiction and Venue

3. The Condominium and Conference Center that make up the Mountain Lodge are located in Pocahontas County, West Virginia. Therefore, this Court has subject matter jurisdiction as to the claims and property at issue in this action pursuant to West Virginia Code § 51-2-2.

4. The parties are West Virginia corporations and therefore this Court has personal jurisdiction as to those parties pursuant to West Virginia Code § 56-3-33.

5. This Court is the proper venue for this action pursuant to West Virginia Code § 56-1-1 because the property at issue is located in Pocahontas County, West Virginia.

6. A portion of this Counterclaim is also brought before this Court under and pursuant to West Virginia’s Uniform Declaratory Judgment Act, codified as Article 13 of Chapter 55 of the West Virginia Code.

III. Operative Facts

7. Defendant incorporates by reference all allegations contained in Paragraphs 1 through 6 as if fully set forth herein.

8. By that certain Deed and Agreement dated November 10, 1982, and recorded in the Office of the Clerk of Pocahontas County, West Virginia, in Deed Book 168, Page 674, the Associations predecessor in interest, The Commonwealth Group, conveyed to Snowshoe’s predecessor in interest, what is identified therein as a Conference Center (“Conference Center Deed”).¹

9. Specifically, the Conference Deed recites the following:

¹ A copy of the Conference Center Deed is attached to Plaintiff’s Amended Complaint and is incorporated herein by reference.

- a. By instrument dated December 1, 1981, the Company and Commonwealth entered into an agreement (the "Agreement") whereby in return for the conveyance by the Company to Commonwealth of a tract of 5.01 acres, more or less, situate at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia (hereinafter called the "Site"), Commonwealth committed to construct upon the Site a major meeting/conference center and luxury condominium development.
- b. Pursuant to the Agreement, by deed dated April 12, 1982, and of record in the office of the Clerk of the County Commission in Deed Book 162, at page 628, and Corrective Deed dated October 26, 1982, also of record or to be recorded in said Clerk's office (the "Deeds"), the Company conveyed the Site to Commonwealth and thereafter Commonwealth proceeded with the construction thereon of a four-story building ("the Building") consisting of a ground floor area, a part of which is referred to herein as the "Conference Center," and three additional floors or stories consisting of 229 apartment units and other improvements which together with portions of the ground floor area are to be submitted to a condominium form of ownership pursuant to be provisions of Chapter 36B of the Code of West Virginia (the "Act") and to be known as the "Snowshoe Mountain Lodge Condominium" all as provided in that certain Declaration of even date herewith of record or to be recorded in said Clerk's office, which portions of the Building are hereinafter sometimes referred to as the Condominium.
- c. With the substantial completion of the construction of the Conference Center, Commonwealth, pursuant to the terms of the Agreement, and in further consideration of the agreements of the Company hereinafter set forth, is now prepared and does hereinafter set forth, is not prepared and does hereinafter convey the Conference Center to the Company subject to all the terms, conditions, agreements, exceptions and restrictions hereinafter provided.

10. The Commonwealth excepted, reserved, and excluded from the conveyance of the Conference Center in the Conference Center Deed all other portions of the "Building" that make up the Condominium.

11. In addition, the Commonwealth excepted and reserved “for the benefit of itself and its successors, grantees and assigns, and for the benefit of the Condominium ownership of all of the following property, rights and easements in, on, through and abutting the Conference Center, which shall constitute a burden thereon:”

(1) For the purpose of facilitating construction and total completion of all of the conference Center and all improvements therein which are the responsibility of commonwealth, under the terms of the Agreement, such temporary easements and rights of ingress, egress, passage and movement and storage of materials as may I the sole discretion of Commonwealth, be necessary or desirable are hereby established and declared to exist until the Conference Center is completed.

(2) Exclusive easements for and ownership of all utility chases and lines, including, but not necessarily limited to, drainage, water, sewer, electric, telephone, sprinkler, cable television lines and ducts or lines for the discharge of waste gas, air, smoke and fumes, all as now located and existing through the Conference Center;

(3) Exclusive easements for and ownership of all existing passenger elevators and mechanical and equipment rooms and personal property and fixtures in connection therewith;

(4) An exclusive easement for and ownership of portions of the existing mail lobby fireplace and stairway;

(5) An exclusive easement for and ownership of an existing emergency exit stairway;

(6) An exclusive easement for and ownership of an existing trash chute; together with a non-exclusive easement within the Conference Center in the immediate proximity of the trash chute for facilities to collect the trash emanating from the trash chute;

(7) A right to full support of the Condominium and all parts thereof including without limitation the right to install, maintain, inspect, repair, replace and remove from time to time all footers, pillars, walls, foundations and other structural members, facilities and property as are sufficient at all times to support the Condominium and so long thereafter as the real and personal property and fixtures constituting such Condominium or any part or

parts thereof remain in existence, including any reconstruction or replacement thereof in whole or in part in the event of damage or destruction by casualty or other cause, together with (i) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across corridors, lobbies, shafts, and open spaces and areas sufficient to provide for maintenance, inspection, repair, replacement and removal of the condominium or any part thereof and (ii) non-exclusive easements for and the right to install, maintain, repair, replace and remove from time to time pipes, cables, ducts and conduits of every kind and nature for drainage, water, sewage, electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Condominium including further the right to temporarily place ladders and equipment against portions of the conference Center owned by the Company as reasonable necessary in the exercise of the rights hereby reserved and described;

(8) The right to discharge in a lawful manner from and through the utility chases and ventilation lines owned by the Condominium through the Conference Center all such fresh, exhaust and waste gas, air, smoke, fumes, water, moisture, drainage and sewage as shall be reasonable having due regard and care for the use and enjoyment of the Conference Center and any structure or improvement therein; together with an easement to construct, maintain, inspect, repair and replace when reasonably necessary within the Conference Center pipes, cables, ducts and conduits sufficient to accommodate the easement for the aforesaid discharge for the benefit of the Condominium;

(9) Subject to the obligations for support and the easements granted by this deed, the right from time to time to reconstruct or replace within the Condominium in the same location,, at the sole expense and risk of the Condominium, and after the expiration of the 30th day following the receipt by the Conference Center owner and all holders of mortgages thereon or any portion thereof of written notice of such effect without receipt by the Condominium Association of Unit Owners, of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and structural members maintained entirely or partially for the benefit of the Conference Center;

(10) A non-exclusive right of ingress, egress and regress through the public areas of the Conference Center for the use of the Condominium and its Association of Unit Owners, unit owners, and their employees, agents, guests and invitees; and

(11) the non-exclusive right to use the existing trash compactor and freight elevator located within the Conference Center and owned by the Company together with the non-exclusive right of ingress, egress and regress through the Conference Center to provide access to the trash chute and freight elevator for the use of the Condominium and its Association of Unit Owners, units owners and their employees, agents, guests and invitees.

12. In Section C of the Conference Center Deed, the parties further agreed as follows:

(1) Commonwealth and its successors, grantees and assigns, including the Condominium Association of Unit Owners, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Condominium which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

(2) Company and its successors, grantees and assigns, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Conference Center, which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

(3) The parties agree to the following casualty insurance coverages:

(a) The Company shall, at its sole cost and expense, keep and maintain in force policies of insurance covering the conference Center insuring against all risks of direct physical loss commonly insured against fire and extended coverage perils, the total amount of which insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Commonwealth, through the Association of Unit Owners of the Condominium, shall, at its sole cost and expense, keep and maintain in force policies of insurance on the common elements and units within the Condominium, exclusive of

improvements and betterments installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against fire coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(c) The parties agree that all such insurance shall be secured and maintained in a company or companies licensed to do business in the State of West Virginia and that each policy shall contain an agreed amount endorsement and waivers of subrogation as against the other party and shall name both the owner of the Conference Center and the Unit Owners Association of the Condominium as additional insureds to the extent their interest may appear. The parties further agree to furnish each other with originals or copies of all such policies and to furnish at all times and maintain with each other at all times a certificate or certificates of the insurance carrier or carriers showing that such insurance is in full force and effect and certifying that the same will not be cancelled without at least 30 days advance written notice to each of the parties.

(4) All easements established hereby and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted or reserved. Any easements, rights and rights-of-way established hereunder shall be appurtenant to the estate benefited thereby, provided, however, that such easements, rights and rights-of-way shall be non-exclusive but shall also be for the benefit and the use of the burdened estate unless otherwise specified herein to the contrary.

(5) In no event shall any reconstruction or replacement or other structural work which may be permitted hereunder upon notice (with the right to objection or otherwise) permanently and materially interfere with or impair or endanger the continuing rights to full support, access and essential or convenient services established by this instrument.

(6) Nothing in this instrument shall be deemed to permit any diminution or impairment of the area of or any right or title or ownership in and to any unit, or any portion thereof, by any unit owner of the Condominium now or hereafter vested by deed in any such unit owner without the consent of such unit owner; provided, changes in and to common elements or limited common elements (as defined in the Act) may be effected subject to the terms and

conditions hereof. Subject only to the foregoing sentence, and notwithstanding anything to the contrary contained in this instrument or elsewhere to the contrary, the Executive Board of the Unit Owners Association of the Condominium containing any unit affected hereby shall be the only entity empowered to act and shall so act for and on behalf of any and all unit owners and holders of mortgages in the Condominium in matters pertaining to this instrument and the rights, remedies, duties and obligations established hereby.

(7) Each party hereto agrees to repair, replace, restore and maintain all those portions of the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.

(8) The recording by Commonwealth of a declaration of condominium in accordance with the Act shall be deemed to be an assignment and transfer of Commonwealth's rights, privileges, duties, liabilities and obligations herein established; provided, however, that this provision shall in no way affect or impair the obligations of Commonwealth to the Company under the provisions of the Agreement.

(9) All rights, easements, covenants, obligations and restrictions set forth in this instrument are intended to run with the real estate consisting of the Conference Center and Condominium and pertain respectively and inure to the benefit of the estate and the owner intended to benefit thereby and to bind and charge the estate and owner intended to be bound thereby.

13. The Condominium utilizes several portions of the Conference Center, as would be required since the Condominium and Conference Center are both integrated in the same Building.

14. Accordingly, the Association owns and controls the dominate estate in relation to the Conference Center manifested in the easements created on behalf of and for the benefit for the Association by the Conference Center Deed.

Counterclaim Count I – (Declaratory Judgment at Common Law)

15. Snowshoe incorporates by reference all allegations contained in Paragraphs 1 through 14 as if fully set forth herein.

16. In the alternative to Snowshoe's 12(b)(6) motion to dismiss the Association's claims for Declaratory Judgment at Common Law, the Association is responsible for its fair share of the costs associated with the maintenance and operation of the Conference Center in which it holds an easement or otherwise maintains the right to use for the benefit of the Condominium and the Association.

17. In the event Snowshoe's 12(b)(6) motion to dismiss the Association's claims for Declaratory Judgment at Common Law is denied, the Association under common law or principles of servitudes is liable for its fair share of costs and expenses incurred by Snowshoe to maintain, operate, repair, or replace elements of the Conference Center shared in common with the Condominium and the Association.

18. As an alternative pleading, Snowshoe avers that under common law, the intent to create a servitude may be express or implied, and no particular form of expression is required.

19. As an alternative pleading, Snowshoe avers that a servitude may be created to burden or benefit any estate in land or another servitude.

20. As an alternative pleading, Snowshoe avers that the servitudes for the benefit of the Association in relation to its use of the Conference Center for the benefit of the Condominium and the Association are real, substantial, and render value to the Association, the burdens for which are wholly borne by Snowshoe.

21. As an alternative pleading, Snowshoe avers that the servitudes for the benefit of the Association in relation to its members use of the Conference Center satisfy the requirements of the statute of frauds.

22. As an alternative pleading, Snowshoe avers that it would be a manifest injustice to Snowshoe if the association is permitted to evade its fair share of costs incurred by Snowshoe to

maintain, operate, repair, or replace the portions of the Conference Center shared with the Association and its individual members.

23. As an alternative pleading, Snowshoe avers that the Association is or should be estopped to deny the existence of one or more servitudes for the benefit of the Association and its individual members in relation to its use of certain portions of the Conference Center.

24. As an alternative pleading, Snowshoe avers that one or more servitudes for the benefit of the Association in relation to its and its members' use of the Conference Center were created by implication and thus have corresponding liabilities to Snowshoe for which Snowshoe is entitled to be paid reimbursement.

25. As an alternative pleading, Snowshoe avers that servitudes are implied for the benefit of the Association in relation to its and its members' use of the Conference Center and thus have corresponding liabilities to Snowshoe for which Snowshoe is entitled to be paid or reimbursed for.

26. As an alternative pleading, Snowshoe avers that the Condominium, is part of the Building that also contained the Condominium and therefore the Association and its individual members enjoy the use thereof, as well as the use and benefits from the portion of the Conference Center that supports the Buildings infrastructure, utility system, building system, *etc.*

27. As an alternative pleading, Snowshoe avers that the Association as used portions of the Conference Center in which it retains an easement but has never reimbursed or otherwise paid Snowshoe for the maintenance, repair, or other costs association with the portions of the Conference Center that the Association and its individual members utilize on a daily basis.

28. As an alternative pleading, Snowshoe avers that as a direct and proximate result of the Association's actions, assertions and representations, Snowshoe has suffered and will continue to suffer damages in an unknown amount to be determined by a jury.

WHEREFORE, in the alternative to Snowshoe's Rule 12(b)(6) motion to dismiss Count V (Declaratory Judgment at Common Law) of Plaintiff's Amended Complaint in accordance with Rule 8(e) of the West Virginia Rules of Civil Procedure, which permits the assertion or pleading of alternative defenses and/or claims, Snowshoe asserts it is entitled to the following relief:

A. The Association pay to Snowshoe all costs and expenses related to Snowshoe's maintenance, repair, replace, and/or restore portions of the Conference Center in which the Association owns or possesses an easement or right of use since the inception of the Association, as determined by a jury;

B. The Association pay Snowshoe's reasonable costs and attorney's fees for prosecuting this counterclaim; and

C. Grant Snowshoe all other remedies or relief this Court may deem just and proper.

Defendant Counterclaimant Demands a Trial by Jury

Respectfully Submitted,
SNOWSHOE MOUNTAIN, INC.
By Counsel.

/s/ Seth P. Hayes

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W.Va. State Bar I.D. # 11784
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Counsel for Defendant

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION,
a West Virginia unincorporated non-profit association

Plaintiff,

v.

Civil Action No.: 20-C-24

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant.

CERTIFICATE OF SERVICE

I, Seth P. Hayes, do hereby certify that I served a true copy of “**DEFENDANT SNOWSHOE MOUNTAIN, INC.’S ANSWER TO THE MOUNTAIN LODGE ASSOCIATION’S AMENDED COMPLAINT AND COUNTERCLAIM,**” via WV E-file and Electronic Mail (E-Mail), this **16th day of November 2020**, to the following:

Mark A. Sadd, Esquire
Ramonda C. Marling, Esquire
John R. Bsharah, Esquire
Lewis Glasser PLLC
P.O. Box 1746
Charleston, West Virginia 25326
Counsel for Plaintiff

/s/ Seth P. Hayes
Seth P. Hayes, Esquire

EXHIBIT 5



West Virginia E-Filing Notice

CC-38-2020-C-24

Judge: Robert E. Richardson

To: Ramonda C. Marling
rmarling@lewisglasser.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA
THE MOUNTAIN LODGE ASSOCIATION v. SNOWSHOE MOUNTAIN INC.
CC-38-2020-C-24

The following motion was FILED on 1/29/2021 10:30:41 AM

Notice Date: 1/29/2021 10:30:41 AM

Connie Carr
CLERK OF THE CIRCUIT COURT
Pocahontas County
900 Tenth Avenue
MARLINTON, WV 24954

(304) 799-4604
connie.carr@courtswwv.gov

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION
a West Virginia unincorporated non-profit association,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 20-C-24
The Honorable Robert A. Richardson

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant/Counterclaim Plaintiff.

THE MOUNTAIN LODGE ASSOCIATION'S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

Plaintiff/Counterclaim Defendant The Mountain Lodge Association ("Plaintiff" or the "Association") respectfully moves this Court for leave to file its Second Amended Complaint. In support of this Motion, the Association states as follows:

1. W. Va. R. Civ. P. 15(a), states that, "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders." W. Va. R. Civ. P. 15(a).

2. The purpose of W. Va. R. Civ. P. 15(a) is to secure an adjudication on the merits of the controversy as would be secured under identical factual situations in the absence of

procedural impediments; therefore, motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue. *Brooks v. Isinghood*, 213 W. Va. 675, 584 S.E.2d 531 (2003). Subdivision (a) of this rule clearly mandates liberality in the consideration of a party's right to amend a pleading. *Employers Fire Ins. Co. v. Biser*, 161 W. Va. 493, 242 S.E.2d 708 (1978). The provision that leave to amend a pleading "shall be freely given when justice so requires" should be liberally construed in order to promote substantial justice and, in accordance with the requirement of Rule 1, in such a manner as "to secure the just, speedy, and inexpensive determination of every action." *Perdue v. S. J. Groves & Sons Co.*, 152 W. Va. 222, 161 S.E.2d 250 (1968).

3. The Association filed its original Complaint in this matter on or about July 16, 2020 and filed its *First Amended Complaint* on October 6, 2020. The Association's Second Amended Complaint is attached hereto as **Exhibit A**. The purpose of the Second Amended Complaint is to assert a claim for reformation of the Conference Center Deed and the Declaration as an alternate theory of relief. See Count IX of the Second Amended Complaint. Notably, the *First Amended Complaint* includes a claim for rescission of the Conference Center Deed. First Amended Complaint, Count IX. Thus, the proposed amendment will permit the presentation of the merits of The Mountain Lodge Association's Defendant/Counterclaim Plaintiff Snowshoe Mountain, Inc. ("Snowshoe") under alternate theories of relief. Further, as discovery is ongoing in its early stages in this matter and a trial date has not been set, Snowshoe will not be prejudiced by the amendment and will have an ample opportunity to meet the additional claim for relief.

WHEREFORE, The Mountain Lodge Association respectfully requests the Court to grant it leave to file the Second Amended Compliant attached hereto as Exhibit A.

THE MOUNTAIN LODGE ASSOCIATION

By its counsel

/s/ Mark A. Sadd

Mark A. Sadd (W. Va. Bar No. 6005)

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IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION
a West Virginia unincorporated non-profit association,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 20-C-24
The Honorable Robert A. Richardson

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant/Counterclaim Plaintiff.

THE MOUNTAIN LODGE ASSOCIATION'S
SECOND AMENDED COMPLAINT

For its Second Amended Complaint, The Mountain Lodge Association states as follows:

Parties

1. Plaintiff, The Mountain Lodge Association, is a West Virginia unincorporated nonprofit association ("Plaintiff" or the "Association"). Its principal office address is P. O. Box 183, Snowshoe, West Virginia. The Association exists solely to serve the mutual interests of persons who or that own Units ("Unit Owners") within Snowshoe Mountain Lodge Condominium, a condominium common interest community situate in Edray Tax District, Pocahontas County, West Virginia ("Mountain Lodge" or the "Condominium"). Membership in the Association is required of and exclusive to Unit Owners within Mountain Lodge.

2. Defendant, Snowshoe Mountain, Inc., is a West Virginia for-profit corporation ("Defendant" or "Snowshoe"). Its principal office address is 10 Snowshoe Drive, Snowshoe, West Virginia. Snowshoe's business purposes are "arts, entertainment and recreation, amusement, gambling and recreation industries, other amusement and recreation industries, golf

courses, fitness centers, bowling, marinas and skiing facilities”. Snowshoe owns and operates a facility known as the Conference Center located within and physically integrated within the structural and mechanical components of Mountain Lodge (the “Conference Center”).

Jurisdiction and Venue

3. The Condominium and the Conference Center are located entirely in Pocahontas County, West Virginia. Plaintiff and Defendant operate in Pocahontas County. All of the contractual rights, obligations, liabilities, and duties alleged in this civil action arise under documents for the creation, existence, and management of the Condominium (the “Condominium Documents”) and under West Virginia law.

4. Jurisdiction and venue are proper in the Circuit Court of Pocahontas County because the Association’s causes of action seek declaratory relief under W. Va. Code § 55-13-1 and W. Va. Code § 36B-1-113(a), damages based on contract claims or relief based on equitable claims.

Prefatory Statement

5. Plaintiff brings this civil action largely to seek a declaration of its rights under the Condominium Documents and other documents related to the creation, maintenance, operation replacement and repair of the Condominium and the Conference Center, including its right to be paid or reimbursed for Defendant’s fair share of the costs to maintain, operate, replace, and repair the Condominium and the Conference Center. Since the creation of the Condominium and the Conference Center — an integrated, mixed residential and commercial use building on a single parcel of land — Defendant and its predecessors for over 30 years have not paid their fair share of those costs. Plaintiff bears the burden of the costs of the relationship between Plaintiff

and Defendant while Defendant benefits without obligation or liability to Plaintiff. The current financial arrangement is violative of West Virginia law, unfair and unjust.

Background

6. The Commonwealth Group, a South Carolina general partnership, was the Declarant of the Condominium (“Commonwealth” or the “Declarant”). The Declarant submitted a tract of land containing 5.01 acres, more or less, to that certain “Declaration Establishing a Plan for Condominium Ownership *etc.* Pursuant to Chapter 36B of the Code of West Virginia of 1931, as amended” dated November 10, 1982, and recorded in the office of the Clerk of the County Commission of Pocahontas County, West Virginia in Deed Book 169, at page 1 (the “Declaration”) (a true copy of the Declaration is attached hereto as *Exhibit A*). Exhibits 1, 2, 3, and 4 to the Declaration are attached hereto as *Exhibit A-1* and show the Declaration Plan for the Condominium. The Declaration and the Declaration Plan are read together as a unified document.

7. The Declarant submitted “the Land together with portions of the building erected thereon and all easements, rights-of-way and other rights and obligations appurtenant thereto” (the “Property”), to the provisions of Chapter 36B of the Code of West Virginia of 1931, as amended, known as the Uniform Condominium Act (“UCA”). See Section I of the Declaration in Deed Book 169, at page 2 in *Exhibit A*.

8. The UCA was enacted and codified by the West Virginia Legislature as Chapter 36B to become effective on July 1, 1980.

9. The West Virginia Legislature fully amended and replaced the UCA in its entirety with the Uniform Common Interest Ownership Act (“UCIOA”) as the law governing common interest communities, including condominiums created under the UCA.

10. The Declaration “[a]s required by the Act” establishes a Unit Owners Association “to provide for the management of the Condominium”. See Section XII of the Declaration in Deed Book 169, at page 20 in *Exhibit A*. The Association is the association for the Condominium and for the Unit Owners.

11. The Association may institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community and exercise any other powers necessary and proper for the governance and operation of the association. W. Va. Code §§ 36B-3-102(a)(4) and (18).

12. The Executive Board of the Association may act in all instances on behalf of the [A]ssociation or of any two or more unit owners. W. Va. Code § 36B-3-103(a); Former W. Va. Code § 36B-3-103.

13. In the Condominium, a “Unit” means a physical portion of the common interest community designated for separate ownership or occupancy . . .” W. Va. Code § 36B-1-103(33); Former W. Va. Code § 36B-1-103(23).

14. A “Unit Owner” means “a declarant or other person who owns a unit”. W. Va. Code § 36B-1-103(34); Former W. Va. Code 36B-1-103(24).

15. Article IV of the Declaration, *The Condominium*, provides in part:

The condominium consists of portions of the land, portions of the building and the easements and other rights appurtenant thereto, and contains a total of 229 residential units which shall be the maximum number of units that may be created in the Condominium. The owner of a unit, as hereinafter defined, is herein called a “Unit Owner” and the owners of all units are herein collectively referred to as the “Unit Owners.” The Property making up the Condominium shall be divided into units and common elements as follows:

A. The Units. For purposes of identification, all units in the Condominium are identified by number and are delineated and described in Exhibit 3 attached hereto. No unit bears the same identifying number as any other unit. A graphic description of each of the units within the building is set forth on

Exhibit 4 attached hereto. The 229 units in the Condominium consist of eight different types and Unit 139 as follows:

| Unit Type | Number |
|---------------------------|----------|
| Zermatt (1 Bedroom) | 56 |
| Zermatt R (1 Bedroom) | 70 |
| Innsbruck (2 Bedrooms) | 27 |
| Innsbruck R (2 Bedrooms) | 21 |
| Davos (2 Bedrooms) | 27 |
| Davos R (2 Bedrooms) | 21 |
| St. Moritz (2 Bedrooms) | 3 |
| St. Moritz R (2 Bedrooms) | 3 |
| Unit 139 | <u>1</u> |
| | 229 |

The Zermatt and Zermatt R units are 14 feet by 36 feet and contain 504 square feet. Innsbruck and Innsbruck R units are 14 feet by 38 feet with a second bedroom 14 feet by 17 feet and a total square footage of 742 feet. Davos and Davos R units are 14 feet by 36 feet with a second bedroom 14 feet by 19 feet and a total square footage of 770 feet. The St. Moritz and St. Moritz R units are 28 feet by 36 feet and have a total of 1,008 square feet. The basic layout of each of the unit types is shown in Exhibit 4 attached hereto. The boundary of each residential unit consists of the area surrounded by the walls, floors and ceilings and includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other material constituting any part of the finished surfaces thereof together with all door steps, stoops, balconies and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit boundaries as hereinbefore described.

B. Common Elements. The common elements of the Condominium consist of all of the land making up the 5.01 acre tract except that portion which is part of the Conference Center as described and shown on Exhibit 2; the appurtenant easements and other rights as hereinbefore described; everything else within the top three floors of the building that is not included within the individual units themselves, including but not limited to footers, pillars, beams, load-bearing walls and other structural members, air rights, utility systems, chases, central television antenna systems, roof, perimeter walls, bearing walls, floors and ceilings, hallways, stairs and stairways, atriums, main lobby and fireplace therein, skylights, passenger elevators, trash chute, observation deck, library and fireplace therein, trout ponds, built-in seating, playground (Hipporarium), ski storage areas, walkways, freight loading dock, parking areas and all fixtures and personal property used in connection with any of the common elements. All of the major common elements of the Condominium are set forth and shown on Exhibit 3 attached hereto. The only limited common elements as defined by the Act

included within the Condominium are the balconies and all exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit boundaries as hereinbefore defined.

16. “Common Elements” in a condominium means “all portions of the common interest community other than the units.” W. Va. Code § 36B-1-103(4)(i) (former W. Va. Code § 36B-1-103(4).)

17. “In a condominium . . ., [i]f there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.” W. Va. Code § 36B-1-105(b)(1); Former W. Va. Code § 36B-1-105(a).

18. “In a condominium, the common elements are not subject to partition and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.” W. Va. Code § 36B-2-107(f) (former W. Va. Code 36B-2-108(d).).

The Conference Center

19. By that certain Deed and Agreement, dated November 10, 1982, and recorded in the Clerk’s office in Deed Book 168, at page 674, The Commonwealth Group, a South Carolina general partnership, conveyed to Snowshoe Company what is identified therein Conference Center (which deed is the “Conference Center Deed”, a true copy of which is attached as *Exhibit B*).

20. The parties to the Conference Center Deed recited in that instrument as follows:

a. By instrument dated December 1, 1981, the Company and Commonwealth entered into an agreement (the “Agreement”) whereby in return for the conveyance by the Company to Commonwealth of a tract of 5.01 acres, more or less, situate at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia (hereinafter called the “Site”),

Commonwealth committed to construct upon the Site a major meeting/conference center and luxury condominium development.

b. Pursuant to the Agreement, by deed dated April 12, 1982, and of record in the office of the Clerk of the County Commission in Deed Book 162, at page 628, and Corrective Deed dated October 26, 1982, also of record or to be recorded in said Clerk's office (the "Deeds"), the Company conveyed the Site to Commonwealth and thereafter Commonwealth proceeded with the construction thereon of a four-story building (the "Building") consisting of a ground floor area, a part of which is referred to herein as the "Conference Center," and three additional floors or stories consisting of 229 apartment units and other improvements which together with portions of the ground floor area are to be submitted to a condominium form of ownership pursuant to the provisions of Chapter 36B of the Code of West Virginia (the "Act") and to be known as the "Snowshoe Mountain Lodge Condominium" all as provided in that certain Declaration of even date herewith of record or to be recorded in said Clerk's office, which portions of the Building are hereinafter sometimes referred to as the Condominium.

c. With the substantial completion of the construction of the Conference Center, Commonwealth, pursuant to the terms of the Agreement, and in further consideration of the agreements of the Company hereinafter set forth, is now prepared, and does hereinafter convey the Conference Center to the Company subject to all of the terms, conditions, agreements, exceptions and restrictions hereinafter provided.

21. By the Conference Center Deed, Commonwealth purported to grant and convey to Snowshoe Company a quantum of space described therein in part as "a horizontal plane, the elevation of which is 4,708.89 feet as measured vertically above sea level as established by the United States Coast and Geodetic Survey and which is bounded by 26 vertical planes which are respectively formed by projecting vertically downward and the boundaries of that certain plot or polyhedron" and as further described in the Conference Center Deed.

22. From the purported conveyance of the space known as the Conference Center by the Conference Center Deed, Commonwealth purported to except, reserve, and exclude

“therefrom the parcels, footers, pillars, beams, walls and other areas as shown shaded or cross-hatched or Exhibit A and hereinafter described.”

23. On information and belief, Exhibit A to the Conference Center Deed is omitted from that instrument of record in the Pocahontas County Clerk’s office.

24. By the Conference Center Deed, Commonwealth further purported to convey to Snowshoe Company as “appurtenances to the Conference Center” the following rights and interests in the Mountain Lodge Condominium:

a. A non-exclusive easement and right-of-way over and across those portions of the Site constituting common elements of the Condominium outside of the Building (a) for pedestrian access to and from ski slopes, creational and commercial facilities and other development areas of the Snowshoe Resort; and (b) as necessary to provide pedestrian and vehicular access to and from the Conference Center and the public facilities to be constructed or located within the Conference Center.

b. The right to interconnect with utility lines, which now serve or which may in the future serve the Site, for extension of the utilities to future developments within the Snowshoe Resort.

c. The non-exclusive easement to use the main stairway, the elevators, the main lobby of the Condominium and the main entranceway of the Condominium for the purpose of providing a means of ingress and egress to and from the Conference Center.

d. A non-exclusive easement across those portions of the Site constituting Common Elements of the Condominium to provide a means of ingress and egress to and from the Conference Center, the freight loading dock and the other public areas of the Snowshoe Ski Resort including the public roads serving the Resort.

e. A right of full support of the Conference Center and all parts thereof, including without limitation, the right to install, maintain, inspect, repair, replace and remove from time to time all structural members, footers, pillars, walls, foundations and other members, facilities and property as are sufficient at all times to support the Conference Center so long as such Conference Center or any part or parts thereof remain in existence, including any

reconstruction or replacement thereof, in whole or in part, in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across common elements of the Condominium sufficient to provide for maintenance, inspection, repair, replacement and removal of the Conference Center or any part thereof, and (b) non-exclusive easements through and across the common elements of the Condominium for and the right to install, maintain, repair, replace and remove from time to time existing lines and changes for electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Conference Center, including further the right to temporarily place ladders and equipment against portions of the Condominium as reasonably necessary in the exercise of the rights hereby reserved and described.

f. The right to discharge in a lawful manner from and through existing chases and ventilation facilities, if any, which are part of the common elements of the Condominium all fresh, exhaust and waste air, smoke, fumes and moisture as shall be reasonable having due regard and care for the use and enjoyment of the Condominium and any structure or improvement therein; together with a non-exclusive easement to construct, maintain, inspect, repair and replace when reasonably necessary within the common elements of the Condominium the chases and conduits sufficient to accommodate the easements of the aforesaid discharge for the benefit of the Conference Center.

g. Subject to the obligations of support and the easements granted or reserved by this instrument, the right from time to time to reconstruct or replace within the Conference Center in the same location, at the sole expense and risk of the Conference Center owner, and after the expiration of the 30th day following the receipt by the Condominium Association of Unit Owners, and all holders of mortgages on any unit within the Condominium of written notice of such effect without receipt by the owner of the Conference Center of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and footers, pillars, beams, walls and other structural members owned and maintained entirely or partially for the benefit of the Condominium.

h. The right to attach walls, partitions and other internal construction to various support pillars and loan bearing walls running through the Conference Center and owned by the Condominium.

i. A non-exclusive easement to own, operate, install, and maintain ceilings, lights, heating, air conditioning and utility systems within the overhead space lying between the bottom of the lower concrete support beams and the bottom of the concrete floor of the Condominium.

j. A non-exclusive easement to use the freight loading dock which is a common element of the Condominium and as shown on Exhibit A, to provide ingress, egress, and regress to and from the freight elevator owned by the Company.

25. In Section C of the Conference Center Deed, the parties further agreed as follows:

a. Commonwealth and its successors, grantees and assigns, including the Condominium Association of Unit Owners, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Condominium which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

b. Company and its successors, grantees and assigns, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Conference Center, which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

c. The parties agree to the following casualty insurance coverages:

i. The Company shall, at its sole cost and expense, keep and maintain in force policies of insurance covering the Conference Center insuring against all risks of direct physical loss commonly insured against fire and extended coverage perils, the total amount of which insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

ii. Commonwealth, through the Association of Unit Owners of the Condominium, shall, at its sole cost and expense, keep and maintain in force policies of insurance on the common elements and units within the Condominium, exclusive of improvements and betterments installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against fire coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

iii. The parties agree that all such insurance shall be secured and maintained in a company or companies licensed to do business in the State of West Virginia and that each policy shall contain an agreed amount endorsement and waivers of subrogation as against the other party and shall name both the owner of the Conference Center and the Unit Owners Association of the Condominium as additional insureds to the extent their interest may appear. The parties further agree to furnish each other with originals or copies of all such policies and to furnish at all times and maintain with each other at all times a certificate or certificates of the insurance carrier or carriers showing that such insurance is in full force and effect and certifying that the same will not be cancelled without at least 30 days advance written notice to each of the parties.

d. All easements established hereby and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted or reserved. Any easements, rights and rights-of-way established hereunder shall be appurtenant to the estate benefited thereby, provided, however, that such easements, rights, and rights-of-way shall be non-exclusive but shall also be for the benefit and the use of the burdened estate unless otherwise specified herein to the contrary.

e. In no event shall any reconstruction or replacement or other structural work which may be permitted hereunder upon notice (with the right to objection or otherwise) permanently and materially interfere with or impair or endanger the continuing rights [t]o full support, access and essential or convenient services established by this instrument.

f. Nothing in this instrument shall be deemed to permit any diminution or impairment of the area of or any right or

title or ownership in and to any unit, or any portion thereof, by any unit owner of the Condominium now or hereafter vested by deed in any such unit owner without the consent of such unit owner, provided, changes in and to common elements or limited common elements (as defined in the Act) may be effected subject to the terms and conditions hereof. Subject only to the foregoing sentence, and notwithstanding anything to the contrary contained in this instrument or elsewhere to the contrary, the Executive Board of the Unit Owners Association of the Condominium containing any unit affected hereby shall be the only entity empowered to act and shall so act for and on behalf of any and all unit owners and holders of mortgages in the Condominium in matters pertaining to this instrument and the rights, remedies, duties and obligations established hereby.

g. Each party hereto agrees to repair, replace, restore, and maintain all those portions of the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.

h. The recording by Commonwealth of a declaration of condominium in accordance with the Act shall be deemed to be an assignment and transfer of Commonwealth's rights, privileges, duties, liabilities, and obligations herein established; provided, however, that this provision shall in no way affect or impair the obligations of Commonwealth to the Company under the provisions of the Agreement.

i. All rights, easements, covenants, obligations, and restrictions set forth in this instrument are intended to run with the real estate consisting of the Conference Center and Condominium and pertain respectively and inure to the benefit of the estate and the owner intended to benefit thereby and to bind and charge the estate and owner intended to be bound thereby. The conveyance of the Conference Center as aforesaid is made subject to the restriction that it will be used as a meeting/conference center with necessary kitchen, bar, restaurant, and restroom facilities and for other lawful commercial purposes not inconsistent with the use of the Condominium as a residential apartment complex. This restriction shall be a covenant running with the land and improvements thereon.

26. The Conference Center also defined term in Article III, *The Conference Center*, of the Declaration, is further described on plats recorded in the Clerk's office. The Conference

Center comprises approximately 33,000 square feet, more or less, making up most of the first floor or “basement” under the east or downhill facing wing of the building together with certain walls and portions thereof of the Condominium building. *See* the Declaration in Deed Book 169, at page 7.

27. The Conference Center shares many common elements within the building with Plaintiff and its unit owners but does not share in the common expenses for operating, maintaining, repairing, and replacing the common elements.

28. Defendant is the successor in title and interest in and to the Conference Center.

29. Defendant acquired and assumed all rights and benefits in relation to the Conference Center under the Conference Center Deed and the Condominium Documents.

30. Defendant acquired and assumed all obligations and liabilities in relation to the Conference Center under the Conference Center Deed and the Condominium Documents.

31. On information and belief, Defendant has been the sole and exclusive title and assessed owner of the Conference Center.

32. Defendant owns and controls the dominant estate in relation to the Condominium manifested in part by the easements created by the Conference Center Deed and described in the Condominium Documents.

33. On information and belief, since the creation of the Condominium, the Conference Center has been or should have been assessed in the Assessor’s office as a single parcel of real estate in the name of Defendant.

Count I -- Conference Center Must Be Declared a Unit

34. The allegations set forth in Paragraphs 1 through 33 are incorporated as if fully rewritten herein.

35. Article I of the Declaration, *Submission of Property*, described the land and improvements that are submitted to UCIOA and states that “[t]here is excepted from this submission and Declaration that portion of the aforesaid 5.0 acre tract known as the ‘Conference Center’”. See Declaration in Deed Book 169, at page 3 in *Exhibit A*.

36. Article III of the Declaration, *The Conference Center*, describes portions of the Building, already submitted to UCIOA, and then recites that “[e]xcept for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit.” See Declaration in Deed Book 169, at page 7 in *Exhibit A* (emphasis supplied).

37. On information and belief, Defendant has never paid assessments to Plaintiff, including such assessments as should have been paid under their share of the Common Expense Liability or related to the use and enjoyment of the Conference Center.

38. Defendant is responsible for its share of the past Common Expense Liability and for those past expenses attributable to the Conference Center.

39. Defendant has a non-waivable obligation under the Declaration and the UCIOA to pay its proportionate share of the Common Expense Liability for the Condominium and to submit to all other obligations not otherwise lawfully inapplicable to Defendant under the UCIOA.

40. Moreover, “[e]xcept as expressly provided in [the UCIOA], provisions [in the UCIOA] may not be varied by agreement, and rights conferred may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of [UCIOA] or the declaration.” W. Va. Code § 36B-1-104.

41. “In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with [UCIOA].” W. Va. Code § 36B-2-103(c).

42. The Conference Center is a Unit and is subject to the Common Expense Liability, the assessments for the Common Expense Liability and to the liens to secure the payment of the assessments for the Common Expense Liability.

Count II – Declaratory Judgment under the UCIOA

43. The allegations set forth in Paragraphs 1 through 42 are incorporated as if fully rewritten herein.

44. Under W. Va. Code § 36B-1-103(2), “Allocated Interests” means . . . “[i]n a condominium, the undivided interest in the common elements, the common expense liability and votes in the Association.” West Virginia Code § 36B-1-103(6) defines “Common Expense Liability” as “the liability for common expenses allocated to each unit pursuant to [W. Va. Code § 36B-2-107]” while W. Va. Code § 36B-1-103(5) defines “Common Expenses” as “expenditures made by, or financial liabilities of, the Association, together with any allocation to reserves.”

45. W. Va. Code § 36B-3-115(b) provides that “[e]xcept for assessments under subsections (c), (d) and (e), all common expenses must be assessed against all units in

accordance with the allocations set forth in the declaration pursuant to [W. Va. Code § 36B-2-107(a) and (b)]”.

46. Article V of the Declaration, *Allocation of Undivided Interests in Common Elements*, describes the manner “[p]ursuant to the provisions of the Act, each unit Owner shall own, together with his unit, an undivided interest in the common elements and such undivided interest is stated as a percentage of ownership in said common elements with each unit having the percentage of ownership in the common elements . . .” See Deed Book 169, at page 9 in Exhibit A.

47. UCIOA and the Declaration impose on each Unit Owner the obligation for monetary assessment to maintain, operate and replace the Common Elements in accordance with its Allocated Interest in the Common Elements. See Section VI of the Declaration in Deed Book 169, at page 9 in *Exhibit A*.

48. However, during its ownership, Defendant has claimed that the Conference Center is not subject to UCIOA, based on Article III of the Declaration, and, thus, are not obligated to pay their Allocated Interests in the Common Expense Liability for operating the Condominium.

49. Consequently, the Conference Center was never “assigned” the “percentage of undivided interest in the Common Elements . . .”

50. The Conference Center is subject to UCIOA and, thus, is subject to the Common Expense Liability, the assessments for the Common Expense Liability and to the liens to secure the payment of the assessments for the Common Expense Liability.

51. Article I of the Declaration, *Submission of Property*, described the land and improvements that are submitted to UCIOA and states that “[t]here is excepted from this

submission and Declaration that portion of the aforesaid 5.01 acre tract known as the “Conference Center”. *See* Declaration in Deed Book 169, at page 3 in *Exhibit A*.

52. Article III of the Declaration, *The Conference Center*, describes portions of the Building, already submitted to UCIOA, and then recites that “[e]xcept for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit.” *See* Declaration in Deed Book 169, at page 7 in *Exhibit A* (emphasis supplied).

53. On information and belief, Defendant has never paid assessments to Plaintiff, including such assessments as should have been paid pursuant to their share of the Common Expense Liability or related to the use and enjoyment of the Conference Center.

54. Defendant is responsible for their share of the past Common Expense Liability and for those past expenses attributable to the Conference Center.

55. Defendant has a non-waivable obligation under the Declaration and UCIOA to pay its proportionate share of the Common Expense Liability for the Condominium and to submit to all other obligations not otherwise lawfully inapplicable to Defendant under UCIOA.

56. Moreover, “[e]xcept as expressly provided in [UCIOA], provisions [in UCIOA] may not be varied by agreement, and rights conferred may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of [UCIOA] or the declaration.” W. Va. Code § 36B-1-104.

57. “In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with [UCIOA].” W. Va. Code § 36B-2-103(c).

58. As a direct and proximate result of Defendant’s actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count III – Declaratory Judgment Under the UCA

59. The allegations set forth in Paragraphs 1 through 58 are incorporated as if fully rewritten herein.

60. In the alternative, if the Condominium is not found to be subject to UCIOA, the Condominium is subject to the UCA and the Conference Center must be declared a unit and assigned an Allocated Interest. Former W. Va. Code § 36B-1-103(6) defines “common expense liability as “the liability for common expenses allocated to each unit . . .” while former W. Va. Code § 36B-1-103(5) defines “common expenses” as “expenditures made by or financial liabilities of the Association, together with any allocations to reserves.” Former W. Va. Code § 36B-3-114 states “common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit.” The uniform UCA defines this allocation of common expense liability as the “Allocated Interest.”

61. Article V of the Declaration, *Allocation of Undivided Interests in Common Elements*, describes the manner “[p]ursuant to the provisions of the Act, each unit Owner shall own, together with his unit, an undivided interest in the common elements and such undivided interest is stated as a percentage of ownership in said common elements with each unit having the percentage of ownership in the common elements . . .” See Deed Book 169, at page 9 in

Exhibit A. The UCA and the Declaration impose on each Unit Owner the obligation for monetary assessment to maintain, operate and replace the Common Elements, in accordance with its Allocated Interest in the Common Elements. *See* Section VI of the Declaration in Deed Book 169, at page 9 in *Exhibit A*.

62. However, during its ownership, Defendant has claimed that the Conference Center is not subject to UCA, based on Article III of the Declaration, and, thus, Defendant is not obligated to pay their Allocated Interests in the Common Expense Liability for operating the Condominium. Consequently, the Conference Center was never “assigned” the “percentage of undivided interest in the Common Elements . . .” or in other words, given its allocated interest in the Common Elements.

63. As a direct and proximate result of Defendant’s actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count IV - Conference Center Part of the Condominium Subject to UCA

64. The allegations set forth in Paragraphs 1 through 63 are incorporated as if fully rewritten herein.

65. The Conference Center is subject to UCA, and, thus, is subject to the Common Expense Liability, the assessments for the Common Expense Liability and to the liens to secure the payment of the assessments for the Common Expense Liability. Article I of the Declaration, *Submission of Property*, described the land and improvements that are submitted to the UCA and states that “[t]here is excepted from this submission and Declaration that portion of the aforesaid 5.01 acre tract known as the “Conference Center”. *See* Declaration in Deed Book 169, at page 3 in *Exhibit A*.

66. Article III of the Declaration, *The Conference Center*, describes portions of the Building, already submitted to UCA, and then recites that “[e]xcept for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit.” See Declaration in Deed Book 169, at page 7 in *Exhibit A*. The Conference Center is a Unit under UCA and former W. Va. Code § 36B-3-114(b) provides that “[e]xcept for assessments under subsections (c), common expenses shall be assessed against all units in accordance with the common expense liability allocated to each unit.” (Emphasis supplied).

67. On information and belief, Defendant has never paid assessments to Plaintiff, including such assessments as should have been paid pursuant to their share of the Common Expense Liability or related to the use and enjoyment of the Conference Center. Defendant is responsible for their share of the past Common Expense Liability and for those past expenses attributable to the Conference Center.

68. Defendant has a non-waivable obligation under the Declaration and UCA to pay its proportionate share of the Common Expense Liability for the Condominium and to submit to all other obligations not otherwise lawfully inapplicable to Defendant under UCIOA.

69. Moreover, “[e]xcept as expressly provided in [UCA], provisions [in UCA] may not be varied by agreement, and rights conferred may not be waived. A declarant may not act

under a power of attorney, or use any other device, to evade the limitations or prohibitions of [UCIOA] or the declaration.” (Former W. Va. Code § 36B-1-104).

70. “If a conflict exists between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with [UCA].” Former W. Va. Code § 36B-2-103(c).

71. As a direct and proximate result of Defendant’s actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count V – Declaratory Judgment at Common Law

72. The allegations set forth in Paragraphs 1 through 71 are incorporated as if fully rewritten herein.

73. In the alternative, if the Conference Center is exempted from the Condominium and UCIOA or UCA, Defendant is responsible for its fair share of the costs associated with the maintenance and operations of the Condominium under West Virginia law.

74. In the event that the Court does not declare that the Conference Center is a “unit” under either UCA or UCIOA, then Defendant nonetheless under the common law or principles of servitudes is liable for its fair share of costs and expenses incurred by Plaintiff to maintain, operate, repair, or replace the elements shared in common with the unit owners of Mountain Lodge.

75. Under common law, the intent to create a servitude may be expressed or implied. No particular form of expression is required.

76. A servitude may be created to burden or benefit any estate in land or another servitude.

77. The servitudes for the benefit of Defendant in relation to the Conference Center are real, substantial and render value to Defendant the burdens for which are wholly borne by Plaintiff (which means every Unit Owner within the Condominium).

78. The servitudes for the benefit of Defendant in relation to the Conference Center satisfy the requirements of the statute of frauds.

79. Also, it would be a manifest injustice to Plaintiff if Defendant is permitted to evade its fair share of costs incurred by Plaintiff to maintain, operate, repair, or replace the elements shared in common with the unit owners of Mountain Lodge.

80. Defendant is or should be estopped to deny the existence of one or more servitudes for the benefit of Defendant in relation to the Conference Center.

81. Further, one or more servitudes for the benefit of Defendant in relation to the Conference Center were created by implication and thus have corresponding liabilities to Plaintiff therefor, and for which Plaintiff is entitled to be paid or reimbursed for.

82. Further, servitudes are implied for the benefit of Defendant in relation to the Conference Center and thus have corresponding liabilities to Plaintiff therefor, and for which Plaintiff is entitled to be paid or reimbursed for.

83. Whether or not the Conference Center is determined to be part of the Condominium and subject to UCA or UCIOA, the Conference Center is part of the building and enjoys the use thereof, as well as the use and benefits from the building's infrastructure, utility systems, building systems *etc.*

84. The Condominium, which includes the building in which the Conference Center is situate, was created in 1982. On information and belief, Defendant has never paid assessments

or its fair share to Plaintiff, including for costs associated with those elements of the Building shared between the Condominium and the Conference Center.

85. On information and belief, Defendant has enjoyed the use and benefits of the Condominium, the Building, the Common Elements for 38 years without paying its fair share of the costs of maintaining, operating, repairing, and replacing the Condominium, the Building, and the Common Elements.

86. As a direct and proximate result of Defendant's actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count VI – Breach of Contract in the Conference Center Deed

87. The allegations set forth in Paragraphs 1 through 86 are incorporated as if fully rewritten herein.

88. The Conference Center Deed constitutes a contract imposing on Defendant the costs, expenses, obligations, and liabilities for repairing, replacing, restoring, and maintaining “the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.”

89. Under the Conference Center Deed, Defendant has a right of ownership in the “Building and equipment in connection therewith” because Defendant is the dominant estate and owns the dominant rights created thereunder.

90. The ownership of dominant rights in an easement creates a servitude as described in Count V *supra*.

91. Plaintiff for many years has sought Defendant to bear or pay its fair share of the costs, expenses, obligations, and liabilities for repairing, replacing, restoring, and maintaining

“the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.”

92. Defendant has failed or refused to bear or pay its fair share of the costs, expenses, obligations, and liabilities for repairing, replacing, restoring, and maintaining “the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.”

93. Repairing, replacing, restoring, and maintaining the Building and equipment are constant, continuing, and recurring obligations and liabilities attached to the ownership, use and enjoyment of them.

94. Defendant has breached its contract with Plaintiff.

95. Defendant continues to breach its contract with Plaintiff.

96. Defendant’s failure or refusal to bear or pay its fair share of the costs, expenses, obligations, and liabilities for them has directly and proximately caused Plaintiff and its Members damages and injury.

97. Plaintiff is entitled to an award of money because of Defendant’s breach or breaches of the Conference Center Deed.

Count VII – Quantum Meruit

98. The allegations set forth in Paragraphs 1 through 97 are incorporated as if fully rewritten herein.

99. Plaintiff has paid or incurred all of the costs of maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

100. Plaintiff reasonably expected to be paid by Defendant for such goods and services under based on the Conference Center Deed.

101. Plaintiff is entitled to recover from Defendant its share of the costs paid by Plaintiff in relation to maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

102. Plaintiff has conferred upon Defendant significant value over the years in in relation to maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

103. Meanwhile, Defendant refuses to bear its fair share of those costs.

104. As a direct and proximate result of Defendant's actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count VIII – Unjust Enrichment

105. The allegations set forth in Paragraphs 1 through 104 are incorporated as if fully rewritten herein.

106. Defendant, because of its ownership of the Conference Center and the appurtenant easements in and to the Condominium, enjoys the Building and the Condominium without bearing its fair share of the costs of maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

107. Plaintiff has conferred upon Defendant significant value over the years in in relation to maintaining, operating, repairing, and replacing the Building, the Condominium, and the Conference Center.

108. By failing to pay to Plaintiff any Assessments or its fair share of the costs associated with maintaining, operating, repairing, and replacing the Building, the Condominium

and the Conference Center, Defendant has been unjustly enriched at the cost of Plaintiff and its Members.

109. As a direct and proximate result of Defendant's actions, assertions and representations, Plaintiff has suffered and will continue to suffer damages in an unknown amount to be determined by the jury.

Count IX – Reformation of the Conference Center Deed and the Declaration

110. The allegations set forth in Paragraphs 1 through 109 are incorporated as if fully rewritten herein.

111. Under the Conference Center Deed, Defendant is the dominant estate and owns the dominant rights in the easements created thereunder, which ownership and rights impose certain obligations and duties on Defendant to pay the costs associated therewith.

112. In the event that there is an adjudication or declaration under any of the foregoing counts that Plaintiff is not entitled to money damages at law or, in lieu thereof, to equitable relief in the form of reimbursement or a continuing obligation to pay its fair share of the costs of maintaining, operating, repairing and replacing the Building, then Plaintiff is entitled as a matter of law to an adjudication or declaration that that the Conference Center Deed or the Declaration or both of them, or certain clauses or provisions therein, or as enforced together, are or may be unconscionable to Plaintiff and its Members.

113. In the event that there is an adjudication that the Conference Center Deed and the Declaration, or clauses or provisions therein, or as enforced together, are or may be unconscionable, then this Honorable Court should refuse to enforce the same and, further, to reform and enforce the remainder of the Conference Center Deed and the Declaration without the

unconscionable clause or clauses or provision or provisions to avoid the unconscionable result to Plaintiff.

Count X – Rescission of the Conference Center Deed

114. The allegations set forth in Paragraphs 1 through 113 are incorporated as if fully rewritten herein.

115. Under the Conference Center Deed, Defendant is the dominant estate and owns the dominant rights in the easements created thereunder, which ownership and rights imposes certain obligations and duties on Defendant to pay the costs associated therewith.

116. In the event that there is an adjudication or declaration under any of the foregoing counts that Plaintiff is not entitled to money damages at law or, in lieu thereof, to equitable relief in the form of reimbursement or a continuing obligation to pay its fair share of the costs of maintaining, operating, repairing, and replacing the Building, then each party to the Conference Center Deed should be relieved of its rights and obligations thereunder.

117. In the event that there is an adjudication or declaration under any of the foregoing counts that Plaintiff is not entitled to money damages at law or, in lieu thereof, to equitable relief, then the servitude and easement rights and obligations created by the Conference Center Deed should be rescinded and terminated.

Prayer for Relief

Based on the foregoing, Plaintiff, The Mountain Lodge Association, under W. Va. Code § 55-13-1 and other West Virginia law, hereby prays for relief of this Honorable Court to declare, order and decree that:

A. Plaintiff is entitled to declaratory or other relief consistent with its allegations and claims set forth in Counts I, II, III, IV, V, VI, VII, VIII, IX and X of the Second Amended Complaint, whether such relief is sought independently or alternatively;

B. The Conference Center is a “unit” under UCIOA or UCA and thus subject to the Declaration;

C. All provisions of the Declaration and the Conference Center Deed that purport to exclude the Conference Center from the operation of UCIOA or UCA are void and unenforceable under UCIOA, UCA or other West Virginia law;

D. Defendant pay to Plaintiff all assessments or costs related to the Conference Center that should have been paid to Plaintiff since the creation of the Condominium through the date of judgment;

E. On a going forward basis, Defendant pay to Plaintiff all assessments and costs related to the Conference Center that should be paid to Plaintiff after relief is granted to Plaintiff;

F. Defendant pay contract damages commensurate with Defendants’ fair share of the costs to maintain, operate, repair, and replace the Condominium, the Conference Center, or the elements in common between them;

G. Plaintiff is entitled to equitable relief commensurate with the economic value of the benefit conferred upon Defendant with regard to the maintenance, operation, repair, and replacement of the Condominium, the Conference Center, or the elements in common between them.

H. In the alternative, reformation of all provisions of the Declaration and the Conference Center Deed purporting to exempt, exonerate or relieve Defendant from reimbursing or contributing to Plaintiff with regard to Defendant’s share of the costs to operate, maintain,

repair, and replace the elements and components of the Mountain Lodge Building as unconscionable;

I. In the alternative, rescission or termination of the servitude and easement and obligations created by the Conference Center Deed;

J. In the alternative, declaring that all provisions of the Declaration purporting to exclude the Conference Center from the imposition of the Allocated Interests, the Common Expense Liability or liens are void and unenforceable under UCIOA, UCA or other West Virginia law.

K. Defendant pay to Plaintiff damages in an amount to be determined by the jury.

L. Defendant pay Plaintiff its costs and reasonable attorneys' fees for prosecuting this civil action and other remedies, to which it may be entitled under UCIOA, UCA, or other West Virginia law or in equity.

M. Grant Plaintiff such other relief to which it is entitled at law or in equity.

The Mountain Lodge Association demands a trial by jury.

THE MOUNTAIN LODGE ASSOCIATION

By its counsel

/s/ Mark A. Sadd

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EXHIBIT A

Pages 1 through 77

MAILED DELIVERED TO

James Marion

DATE *11-17-1982*

DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
OF A TRACT OF 5.01 ACRES AND CERTAIN IMPROVEMENTS
THEREON AND APPURTENANCES THEREUNTO BELONGING SITUATE
AT SNOWSHOE SKI RESORT, EDRAV TAX DISTRICT, POCAHONTAS
COUNTY, WEST VIRGINIA PURSUANT TO CHAPTER 36B
OF THE CODE OF WEST VIRGINIA OF 1931, AS AMENDED

BY

THE COMMONWEALTH GROUP,
A GENERAL PARTNERSHIP ORGANIZED UNDER THE
LAWS OF THE STATE OF SOUTH CAROLINA
1517 Gregg Street
Columbia, South Carolina 29201

SEE PLAT BOOK 4,
PAGES 8, 9, 10,

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**DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
OF A TRACT OF 5.01 ACRES AND CERTAIN IMPROVEMENTS
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OF THE CODE OF WEST VIRGINIA OF 1931, AS AMENDED**

THE COMMONWEALTH GROUP, a general partnership organized under the laws of the State of South Carolina (hereinafter called the "Declarant"), with its principal office and place of business at 1517 Gregg Street, Columbia, South Carolina 29201, does hereby declare:

I. SUBMISSION OF PROPERTY

The Declarant hereby submits the land together with a portion of the building erected thereon and all easements, rights-of-way and other rights and obligations appurtenant thereto, (hereinafter more specifically described and referred to as the "Property"), to the provisions of Chapter 36B of the Code of West Virginia of 1931, as amended, known as the Uniform Condominium Act and hereinafter referred to as the "Act":

A. The Land. All of that tract of land situate in Edray Tax District of Pocahontas County, West Virginia situate approximately 2.8 miles east of West Virginia Secondary Route 9; being east of Snowshoe Drive extended and roughly 87 feet north of the Treetop Condominium northern boundary as shown on a map recorded in Plat Book 2, Page 21, and Plat Book 2, Page 9, in the Office of the Clerk of the Pocahontas County Commission and being more particularly described as follows:

Commencing at a found iron pin, the northeast corner of Treetop condominium, thence N. 32° 21' 18" E., 117.72 feet, to the beginning, a 5/8" x 30" iron pin, the southeast corner of the hereinafter described tract, thence westerly, 1 line, near the northern boundary of the above referenced and recorded Treetop tracts S. 81° 34' 06" W., 587.30 feet to an iron pin, the southwest corner of the tract, thence, northerly, 4 lines, running near the eastern edge of an existing Snowshoe utility road;

N. 00° 26' 06" E., 91.15 feet, to an iron pin

N. 08° 25' 12" E., 61.00 feet, to an iron pin

N. 13° 55' 12" E., 117.64 feet, to an iron
pin

N. 12° 31' 06" E., 128.28 feet, to an iron
pin

Thence, easterly, 1 line;

N. 64° 27' 30" E., 339.50 feet, to an iron
pin

Thence, southerly, 3 lines;

S. 63° 57' 00" E., 106.78 feet, to an iron
pin

S. 19° 42' 42" E., 211.52 feet, to an iron
pin

S. 11° 25' 12" E., 209.27 feet, to the
beginning, and containing 5.01 acres, more or
less, and as shown on a survey made by Power
Engineering Company, Inc. dated October 13, 1982,
a copy of which is attached hereto as Exhibit No.
1.

There is excepted from this submission and Declaration that
portion of the aforesaid 5.01 acre tract known as the
"Conference Center" conveyed by the Declarant to Snowshoe
Corporation by deed dated November __, 1982, recorded simultaneously
with this Declaration in said Clerk's office, as said
Conference Center is shown on Exhibit 2 attached herewith
which exhibit together with the aforesaid deed are by
reference made a part hereof. Said deed is hereinafter
referred to as the "Conference Center Deed."

The real estate hereby submitted to the Act is
part of the same property conveyed to the Declarant by
Snowshoe Company, a corporation, by deed dated April 12,
1982, and of record in said Clerk's office in Deed Book 164,
at page 628, and by corrective deed dated October 26, 1982,
also of record in said Clerk's office and is a part of the
same real estate conveyed to Snowshoe Company by Mower
Lumber Company, a corporation, by deed dated September 6,
1973, and of record in said Clerk's office in Deed Book 129
at page 650, to which deeds and survey reference is here
made for a further description of said land.

B. Portions of the Building. There is constructed
upon the 5.01 acres a four-story building at a location and
in the configuration as shown on Exhibit 3 attached hereto.
That portion of the building which is hereby submitted to

the provisions of the Act consists of the upper three floors, all sites on the ground for footers and pillars for the structural supports necessary to support the upper three floors of the building together with the footers, pillars, beams and walls (except walls or portions thereof designated on Exhibit A attached to the Conference Center Deed as being part of the Conference Center) situate thereon, all as hereinafter described. The Conference Center which is not a part of the condominium but which has been deeded to Snowshoe Company and will be owned and operated by it and its successors, grantees and assigns is excluded from the submission. The actual description of the Conference Center and its relationship to the condominium are more particularly described in this Declaration and in the Conference Center Deed.

C. Appurtenant Easements and Rights-of-Way. The following easements and rights-of-way are a part of and appurtenant to the land and that portion of the building which are hereby submitted to the Act:

1. Nonexclusive easements and rights-of-way to use the fifty (50) foot right-of-way providing ingress and egress from and to Snowshoe Drive and to use Snowshoe Drive (West Virginia Route 9/3), and the other public roads within Snowshoe Resort to provide unrestricted ingress and egress for all purposes to and from the Condominium.
2. A nonexclusive easement and right-of-way over and across the streets, roads, parking lots, trails and other areas designated by Snowshoe Company for public use, for access to the public recreational facilities of the Snowshoe Resort.
3. Such nonexclusive easements and rights-of-way over, across and through the property of Snowshoe Company, for the purposes of constructing, locating, installing, removing, repairing, operating and maintaining such water, natural gas, sewage, electrical, telephonic and other utility delivery or distribution lines and facilities as may be necessary for the development, use and enjoyment of the 5.01 acre site.
4. A nonexclusive easement to utilize the property immediately surrounding and adjacent to the property hereby conveyed as necessary to provide for the maintenance and fire protection of the Condominium.
5. The nonexclusive right and license to connect onto any water supply lines and sewage discharge lines now located or hereafter constructed on the property of Snowshoe Company, subject only to the obligation to pay a

fair and reasonable user service fee for water and sewage disposal services.

6. An exclusive easement through the Conference Center for all existing pillars, load-bearing walls, beams and other structural members situate therein or abutting thereon:

(i) Exclusive easements for and ownership of all utility chases and lines, including, but not necessarily limited to, drainage, water, sewer, electric, telephone, sprinkler, cable television lines and ducts or lines for the discharge of waste gas, air, smoke and fumes, all as now located and existing through the Conference Center;

(ii) Exclusive easements for and ownership of all existing passenger elevators and mechanical and equipment rooms and personal property and fixtures in connection therewith;

(iii) An exclusive easement for and ownership of portions of the existing main lobby fireplace and stairway;

(iv) An exclusive easement for and ownership of an existing emergency exit stairway;

(v) An exclusive easement for and ownership of an existing trash chute; together with a non-exclusive easement within the Conference Center in the immediate proximity of the trash chute for facilities to collect the trash emanating from the trash chute;

(vi) A right to full support of the Condominium and all parts thereof including without limitation the right to install, maintain, inspect, repair, replace and remove from time to time all footers, pillars, walls, foundations and other structural members, facilities and property as are sufficient at all times to support the Condominium and so long thereafter as the real and personal property and fixtures constituting such Condominium or any part or parts thereof remain in existence, including any reconstruction or replacement thereof in whole or in part in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across corridors, lobbies, shafts, and open spaces and areas sufficient to provide for maintenance, inspection, repair, replacement and removal of the Condominium or any part thereof and (b) non-exclusive easements for and the right to install, maintain, repair, replace and remove from time to time pipes, cables, ducts

and conduits of every kind and nature for drainage, water, sewage, electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Condominium including further the right to temporarily place ladders and equipment against portions of the Conference Center owned by the Company as reasonably necessary in the exercise of the rights hereby reserved and described;

(vii) The right to discharge in a lawful manner from and through the utility chases and ventilation lines owned by the Condominium through the Conference Center all such fresh, exhaust and waste gas, air, smoke, fumes, water, moisture, drainage and sewage as shall be reasonable having due regard and care for the use and enjoyment of the Conference Center and any structure or improvement therein; together with an easement to construct, maintain, inspect, repair and replace when reasonably necessary within the Conference Center pipes, cables, ducts and conduits sufficient to accommodate the easement for the aforesaid discharge for the benefit of the Condominium;

(viii) Subject to the obligations for support and the easements granted by this deed, the right from time to time to reconstruct or replace within the Condominium in the same location, at the sole expense and risk of the Condominium, and after the expiration of the 30th day following the receipt by the Conference Center owner and all holders of mortgages thereon or any portion thereof of written notice of such effect without receipt by the Condominium Association of Unit Owners, of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and structural members maintained entirely or partially for the benefit of the Conference Center;

(ix) A non-exclusive right of ingress, egress and regress through the public areas of the Conference Center for the use of the Condominium and its Association of Unit Owners, unit owners, and their employees, agents, guests and invitees; and

(x) The non-exclusive right to use the existing trash compactor and freight elevator located within the Conference Center and owned by the Company together with the non-exclusive right of ingress, egress and regress through the Conference Center to provide access to the trash chute and freight elevator for the use of the Condominium and its Association of Unit Owners, unit owners and their employees, agents, guests and invitees.

D. Other Rights and Obligations. All other rights vested in the Declarant which are not otherwise set forth herein but which are more particularly described in the Conference Center Deed, which rights are incorporated herein by reference and made a part hereof as if set forth herein verbatim.

All of the foregoing land, portions of the building and the appurtenant easements and other rights and obligations shall be hereinafter referred to as the "Condominium."

II. NAME AND ADDRESS OF THE CONDOMINIUM

The name and address of the Condominium hereby created shall be "Snowshoe Mountain Lodge Condominium," Snowshoe Drive, Snowshoe, West Virginia 26201. The entire condominium is located in Pocahontas County, West Virginia only.

III. THE CONFERENCE CENTER

The building hereinbefore described which contains the Condominium also contains on the first floor thereof the Conference Center which is owned by Snowshoe Company, a corporation, by virtue of the Conference Center Deed. The Conference Center consists of approximately 33,000 square feet, more or less, making up most of the first floor or "basement" under the east or downhill facing wing of the building together with certain walls and portions thereof. The Conference Center is shown on Exhibit 2 attached hereto. Except for certain easements appurtenant to the Condominium as hereinbefore described and to the Conference Center, as hereinafter described, unit owners within the Condominium will have no rights with respect to the Conference Center which will not be a part of the Condominium and the owner of the Conference Center will have no rights with respect to the Condominium and will not be responsible for payment of any portion of the Condominium expenses normally incident to the ownership of a condominium unit. Reference is here made to the Conference Center Deed for a more particular description of the Conference Center.

IV. THE CONDOMINIUM

The Condominium consists of portions of the land, portions of the building and the easements and other rights appurtenant thereto, and contains a total of 229 residential units which shall be the maximum number of units that may be created in the Condominium. The owner of a unit, as hereinafter defined, is herein called a "Unit Owner" and the owners of all units are herein collectively referred to as the "Unit Owners." The Property making up the Condominium shall be

divided into units and common elements as follows:

A. The Units. For purposes of identification, all units in the Condominium are identified by number and are delineated and described in Exhibit 3 attached hereto. No unit bears the same identifying number as any other unit. A graphic description of each of the units within the building is set forth on Exhibit 4 attached hereto. The 229 units in the Condominium consist of eight different types and Unit 139 as follows:

| <u>Unit Type</u> | <u>Number</u> |
|---------------------------|---------------|
| Zermatt (1 Bedroom) | 56 |
| Zermatt R (1 Bedroom) | 70 |
| Innsbruck (2 Bedrooms) | 27 |
| Innsbruck R (2 Bedrooms) | 21 |
| Davos (2 Bedrooms) | 27 |
| Davos R (2 Bedrooms) | 21 |
| St. Moritz (2 Bedrooms) | 3 |
| St. Moritz R (2 Bedrooms) | 3 |
| Unit 139 | 1 |
| | <hr/> |
| | 229 |

The Zermatt and Zermatt R units are 14 feet by 36 feet and contain 504 square feet. Innsbruck and Innsbruck R units are 14 feet by 38 feet with a second bedroom 14 feet by 17 feet and a total square footage of 742 feet. Davos and Davos R units are 14 feet by 36 feet with a second bedroom 14 feet by 19 feet and a total square footage of 770 feet. The St. Moritz and St. Moritz R units are 28 feet by 36 feet and have a total of 1,008 square feet. The basic layout of each of the unit types is shown in Exhibit 4 attached hereto. The boundary of each residential unit consists of the area surrounded by the walls, floors and ceilings and includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other material constituting any part of the finished surfaces thereof together with all door steps, stoops, balconies and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit boundaries as hereinbefore described.

B. Common Elements. The common elements of the Condominium consist of all of the land making up the 5.01 acre tract except that portion which is part of the Conference Center as described and shown on Exhibit 2; the appurtenant easements and other rights as hereinbefore described; everything else within the top three floors of the building that is not included within the individual units themselves, including but not limited to footers, pillars, beams, load-bearing walls and other structural members, air rights, utility

systems, chases, central television antenna systems, roof, perimeter walls, bearing walls, floors and ceilings, hallways, stairs and stairways, atriums, main lobby and fireplace therein, skylights, passenger elevators, trash chute, observation deck, library and fireplace therein, trout ponds, built-in seating, playground (Hipporarium), ski storage area, walkways, freight loading dock, parking areas and all fixtures and personal property used in connection with any of the common elements. All of the major common elements of the Condominium are set forth and shown on Exhibit 3 attached hereto. The only limited common elements as defined by the Act included within the Condominium are the balconies and all exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit boundaries as hereinbefore defined.

V. ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS

Pursuant to the provisions of the Act, each unit Owner shall own, together with his unit, an undivided interest in the common elements and such undivided interest is stated as a percentage of ownership in said common elements with each unit having the percentage of ownership in the common elements as set forth on Exhibit 5 attached hereto. The percentage of undivided interest in the common elements is assigned according to the square feet of living space in each unit as a percentage of the total square feet of living space of all units. The percentage of undivided interest in the common elements for the units in the Condominium is as follows:

| <u>Type of Unit Designation</u> | <u>Percentage of Interest in the Common Elements Assigned to Each Unit</u> |
|-------------------------------------|--|
| Zermatt and Zermatt R | .3534% |
| Innsbruck and Innsbruck R | .5202% |
| Davos and Davos R | .5399% |
| St. Moritz and St. Moritz R | .7067% |
| Unit 139 | .3534% |

VI. COMMON EXPENSES AND SURPLUS

All costs of maintenance, repair and replacement of common elements necessitated by the negligence or misuse by any occupant of a unit shall be borne solely by the unit Owner and the Executive Board of the Association as hereinafter described shall have the right to assess such Unit Owner for such costs. All other costs of maintenance, repair, replacement, preservation and improvement of the common elements shall be unless provided otherwise by the Executive Board as hereinafter defined, Common Expenses. Each Unit Owner shall be liable

for that portion of the Common Expenses equal to his unit's percentage interest in the common elements. Likewise, each Unit Owner's interest in any common surplus shall be equal to his interest in the common elements.

VII. VOTING RIGHTS

Each Unit Owner shall have voting rights in the Association as hereinafter described equal to his unit's undivided percentage interest in the common elements.

VIII. USE OF COMMON ELEMENTS

Every Unit Owner shall have the right to use the common elements except for those areas which are or will be reserved for the use of occupants of certain designated units to the exclusion of others and are or shall be designated as limited common elements. Use of the common elements may otherwise be regulated by rules and regulations promulgated by the Executive Board of the Association. Any person actually occupying any unit may use the common elements and those limited common elements reserved for the use of a particular unit during the time that said occupant is actually in residence in the units, subject, however, to the limitations herein provided and any rules and regulations promulgated by the Executive Board as aforesaid.

IX. LIMITATION ON USE OF UNIT AND RESTRAINTS ON ALIENATION

A. The Unit Owner shall occupy and use his unit for residential purposes for himself and the members of his family and his social guests or designees and for no other purposes; provided, however, nothing herein contained shall prevent any Unit Owner from leasing or renting his unit for residential use and in compliance with this Declaration and its Exhibits, the Act and rules and regulations properly promulgated, if any, nor shall anything herein contained prevent commercial use of Unit number 139 as herein provided. Such renter or lessee may be removed from the Property and/or refused further entrance by the Executive Board of the Unit Owners Association or its designee for non-compliance, and the Unit Owner shall be liable for all damages caused by his lessee or renter and all costs of removal shall be a lien upon his unit the same as the lien for unpaid common expenses. No commercial or business activity shall be carried out in any unit or other part of the Property except that the Declarant, its successors and assigns, may maintain and use Unit number 139 of the Condominium owned by it for management, sales and rental offices, maintenance areas, or for other general commercial purposes. No unit shall be subject to a plan of multiple use, interval ownership or time sharing arrangement by any Unit Owner or a successor in interest.

B. No Unit Owner shall permit or suffer anything to be done or kept in or about his unit or upon the common elements which will obstruct or interfere with the rights of other Unit Owners, their guests or assigns or annoy them by creating any unreasonable noises or otherwise, nor shall any Unit Owner permit or commit any nuisance or illegal act in or about the Property.

C. No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of the units or upon the general or limited common elements; nor shall he plant any type of plants, shrubbery, flower, vine or grass outside a unit; nor shall he cause awnings or storm shutters, screens, enclosures and the like to be affixed or attached to any unit, limited or general common elements; nor shall he place any furniture or equipment outside a unit except with the written consent of the Executive Board of the Unit Owners Association; and further, where provided, subject to the rules and regulations of the Executive Board. No clothesline or similar device shall be allowed on any portion of the Property nor shall clothes be hung anywhere except where designated by the Executive Board. Unit Owners may not screen or enclose any balcony which abuts his unit, where applicable, with any type of material without the prior written consent of the Executive Board.

D. No violations of any law, order, rule or regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property shall be permitted.

E. Each Unit Owner shall maintain the interior temperature of his unit at no lower than such minimum temperature as shall be sufficient to insure that no water pipe or sewer line shall freeze. Any damage caused by the freezing of any water pipe or sewer line which shall result from the failure of any Unit Owner to maintain a sufficient temperature within his unit shall be a liability of such Unit Owner, assessable against the owner of such unit.

F. No person shall use the common elements or any part or parts thereof or a unit or any part of the Property in any manner contrary to, or not in accordance with, such rules and regulations pertaining thereto as may from time to time be promulgated by the Executive Board of the Unit Owners Association, except insofar as such rules and regulations shall conflict with the commercial use of Unit number 139 in which cases such rules and regulations shall not apply to the use and ownership of Unit number 139.

Notwithstanding the provisions hereof, the Declarant, its successors and assigns, shall be allowed to maintain Unit number 139 as a management, sales and rental office; to display and place signs upon the premises to aid in sales or rentals; and to engage in sale or rental activities or other general commercial activities therein.

X. ARCHITECTURAL CONTROL

To preserve the original architectural appearance of the Condominium, no exterior construction of any nature whatsoever except as approved in advance by the Executive Board of the Association shall be commenced or maintained upon any unit or the common elements and any such additions which are permitted shall be architecturally compatible with existing structures. No Unit Owner shall paint, decorate or change the color of any exterior surface, gate, fence, balcony or roof, nor shall any Unit Owner change the design or color of any exterior lighting, nor shall any Unit Owner install, erect or attach to any part of the exterior any sign of any kind whatsoever. No alterations shall be made unless or until plans and specifications showing the nature, kind, shape, height, material, color and location of the same shall have been submitted and approved in writing as to harmony of exterior design, color and location in relation to surrounding structures by the Executive Board, and so long as Declarant, or its successors or assigns, own one or more units in the Condominium the Declarant or its successors and assigns. Failure of the Executive Board and, if appropriate, of the Declarant to approve or disapprove such plans and specifications within sixty (60) days after their being submitted in writing shall constitute approval. A Unit Owner may, however: (i) make any improvements or alterations to the interior of his unit that does not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium; and (ii) after acquiring an adjoining unit may remove or alter any intervening partition or create apertures therein, even if the partition, in whole or in part, is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this provision is not to be considered an alteration of boundaries of the unit.

XI. ENCUMBRANCE ON OR AFFECTING TITLE TO THE CONDOMINIUM

A. Reservations by Mower Lumber Company. The entire 5.01 acre tract is subject to certain covenants, limitations, reservations, exceptions, rights-of-way, leases

and restrictions set forth and contained in a deed from Mower Lumber Company to Snowshoe Company dated September 6, 1973, and of record in the office of the Clerk of the County Commission of Pocahontas County, West Virginia, in Deed Book 129, at page 650. A copy of pertinent portions of said deed is attached hereto as Exhibit 6. In summary, this deed provides for a reservation of all coal, oil and gas under certain portions of the Ski Resort as well as rights-of-way and easements which do not interfere with the Condominium site.

B. Reservations by Snowshoe Company. The deed from Snowshoe Company to the Declarant is made subject to the following covenants, conditions, reservations and restrictions which shall run with and bind the land and which shall inure to the benefit of and be enforceable by Snowshoe Company and its successors and assigns:

(1) All telephone, electric power and other transmission or utility lines shall be installed on the property below ground.

(2) No buildings or other structures shall be erected or maintained on the property, excepting only a hotel or lodge style condominium development and convention center.

(3) No building or other structures shall be erected, placed, changed, altered or remodeled on the property, nor any site preparation begun until the proposed building plans, specifications and plot plans (showing among other things the proposed locations of all buildings and structures, the exterior colors and finishes, building heights, locations of driveways and parking areas, drainage and landscaping plans, and construction schedules) have been approved by Snowshoe Company in writing, it being expressly understood and agreed that any approval or refusal of such plans or specifications may be based upon any reasonable grounds, including purely aesthetic grounds, in the sole discretion of Snowshoe Company. Snowshoe Company's written approval of the building constructed upon the land making up the Conference Center and the Condominium is attached hereto as Exhibit 7.

(4) The right and easement to construct, operate, maintain and remove water, sewage, natural gas, electric and telephonic distribution lines and facilities and snowmaking pipelines and hydrants, at

such locations as shall be determined by the party of the second part or its successors or assigns, in, over and through the property hereby conveyed, and the nonexclusive right and easement to interconnect with and use any such utility distribution lines and facilities as may be constructed by either party hereto or others on the property hereby conveyed; provided, however, that no such utility lines or facilities shall be located or used by Snowshoe Company or its successors or assigns so as to prevent, interrupt or interfere with the provision of such utilities to the property hereby conveyed or the development and use of the property of the party of the second part or its successors or assigns.

(5) The right to operate, use and maintain, adjacent to and within the vicinity of the land herein described, ski lifts, snow making equipment and snow grooming equipment, without liability for noise or for damage or injury to said real estate or anything constructed or located thereon caused by the deposit or build-up of ice and/or snow generated by the operation of said equipment.

(6) The right of Snowshoe Company to collect an annual assessment against the property hereby conveyed and any portion thereof, which annual assessment shall be determined as hereinafter provided, for maintenance and care of the roads, streets, alleys, sidewalks, parks and common areas and common facilities in and around and owned by Snowshoe, and for basic fire protection and security services, and for such other services as may be made available to land owners or purchasers by Snowshoe, as follows:

(a) Authority for Assessment. Every person or entity who becomes an owner of an interest in any residence unit or units in the Condominium to be constructed on the above-designated property by accepting delivery of a deed or deeds to such residence unit or units agrees and binds himself, his heirs, personal representatives, successors and assigns, to pay an annual assessment, determined as hereinafter provided, for the maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common facilities within the Snowshoe Resort to which said owner may have a right of use or access, and for basic fire protection and security services, and for such other services as may be made available to the residence unit owners by Snowshoe Company,

or its successor, as the operator of the Snowshoe Resort.

(b) Determination of Assessment.

Until such time as the residence unit or units shall be separately identified and assessed for tax purposes upon the real estate tax rolls of Pocahontas County, West Virginia, the annual assessment for each residence unit, as aforesaid, shall be an amount, as determined by Snowshoe Company, or its successor, as the operator of the Snowshoe Resort, in its absolute and sole discretion but not exceeding a sum equal to three-fourths (3/4) of one percent (1%) of the sales price last paid for such residence unit. Upon the separate identification and evaluation of the residence unit or units for tax purposes upon the real estate tax rolls of said Pocahontas County, the annual assessment for each residence unit shall be the amount as determined by Snowshoe Company, or its successor, as the operator of the Snowshoe Resort, in its absolute and sole discretion, not to exceed however, a sum equal to one and one-half percent (1-1/2%) of the assessed value of the residence unit, as that assessed value shall be determined by the Assessor of Pocahontas County, West Virginia, on the first day of July immediately preceding the year in which the assessment is made hereunder.

(c) Payment of Assessment. The statement or bill for the applicable annual assessment for each calendar year shall be rendered as soon as practical after the first day of July of each year and shall be due and payable, in advance, on the first day of October of such year. Any assessment, or part thereof, not paid within thirty (30) days from and after its due date shall thereafter bear interest at the then highest rate allowable by law. Should the Snowshoe Resort operator and the Executive Board agree, the operator may render to the Association a combined statement or bill covering the total of the annual assessment of the owners of the residence units within the Condominium and otherwise agree with the Executive Board for the payment of such assessments by the Association on behalf of the residence unit owners. No such

agreement, however, shall relieve the individual residence unit owners of liability for the payment of the assessment, nor relieve any residence unit of the lien herein created for assessments which are not paid as herein required.

(d) Liability for and Lien of Assessment.

All sums assessed by the operator of the Snowshoe Resort in accordance herewith shall constitute the personal liability of the owner of the residence unit so assessed, and shall, from the 30th day following the due date of the assessment, constitute a lien against such residence unit, and such personal liability and lien, or either of them, shall be enforceable by appropriate legal proceedings, in the manner provided by law.

(e) Subordination of Lien. The lien

and the annual assessment authorized herein with respect to any residence unit shall be subordinate to the lien of any mortgage placed on such residence unit, except as to such assessments having a due date on or prior to the date such mortgage is filed for record and which have not been paid. Such subordination is merely a subordination, and shall not release the residence unit owner of his personal obligation to pay all assessments coming due at a time when he is the residence unit owner; shall not release such residence unit from the lien or assessment (except to the extent a subordinated lien is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure); and no sale or transfer of such property to the mortgagee or to any person pursuant to foreclosure, or pursuant to any proceedings executed upon the Property shall release the former residence unit owner from the liability for any such assessment or release any subsequent residence unit owner from liability for any assessment coming due after such sale or transfer.

C. Additional Easements Reserved for Snowshoe Company.

1. A non-exclusive right-of-way and utility easement, 50 feet in width, the southern edge of said easement being the southwest corner of the tract and the northern edge being N. 00° 26' 06" E., 50.00 feet from the southwest corner. Said easement bears generally

southerly and westerly from the tract to Snowshoe Drive extended and is located south of the swimming pool site and parking lot and being north and west of the existing water tank. The centerline of this easement generally follows the centerline of an existing Snowshoe utility road and is shown on Exhibits 1 and 2.

2. A non-exclusive easement and right-of-way over and across those portions of the Site constituting common elements of the Condominium outside of the Building (a) for pedestrian access to and from ski slopes, recreational and commercial facilities and other development areas of the Snowshoe Resort; and (b) as necessary to provide pedestrian and vehicular access to and from the Conference Center and the public facilities to be constructed or located within the Conference Center.

3. The right to interconnect with utility lines, which now serve or which may in the future serve the Site, for extension of the utilities to future developments within the Snowshoe Resort.

4. The non-exclusive easement to use the main stairway, the elevators, the main lobby of the Condominium and the main entranceway of the Condominium for the purpose of providing a means of ingress and egress to and from the Conference Center.

5. A non-exclusive easement across those portions of the Site constituting Common Elements of the Condominium to provide a means of ingress and egress to and from the Conference Center, the freight loading dock and the other public areas of the Snowshoe Ski Resort including the public roads serving the Resort.

6. A right of full support of the Conference Center and all parts thereof, including without limitation, the right to install, maintain, inspect, repair, replace and remove from time to time all structural members, footers, pillars, walls, foundations and other members, facilities and property as are sufficient at all times to support the Conference Center so long as such Conference Center or any part or parts thereof remain in existence, including any reconstruction or replacement thereof, in whole or in part, in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across common

elements of the Condominium sufficient to provide for maintenance, inspection, repair, replacement and removal of the Conference Center or any part thereof, and (b) non-exclusive easements through and across the common elements of the Condominium for and the right to install, maintain, repair, replace and remove from time to time existing lines and chases for electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Conference Center, including further the right to temporarily place ladders and equipment against portions of the Condominium as reasonably necessary in the exercise of the rights hereby reserved and described.

7. The right to discharge in a lawful manner from and through existing chases and ventilation facilities, if any, which are part of the common elements of the Condominium all fresh, exhaust and waste air, smoke, fumes and moisture as shall be reasonable having due regard and care for the use and enjoyment of the Condominium and any structure or improvement therein; together with a non-exclusive easement to construct, maintain, inspect, repair and replace when reasonably necessary within the common elements of the Condominium the chases and conduits sufficient to accommodate the easements for the aforesaid discharge for the benefit of the Conference Center.

8. Subject to the obligations of support and the easements granted or reserved by this instrument, the right from time to time to reconstruct or replace within the Conference Center in the same location, at the sole expense and risk of the Conference Center owner, and after the expiration of the 30th day following the receipt by the Condominium Association of Unit Owners, and all holders of mortgages on any unit within the Condominium of written notice of such effect without receipt by the owner of the Conference Center of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and footers, pillars, beams, walls and other structural members owned and maintained entirely or partially for the benefit of the Condominium.

9. The right to attach walls, partitions and other internal construction to various support pillars and load bearing walls running through the Conference Center and owned by the Condominium.

10. A non-exclusive easement to own, operate, install and maintain ceilings, lights, heating,

air conditioning and utility systems within the overhead space lying between the bottom of the lower concrete support beams and the bottom of the concrete floor of the Condominium.

11. A non-exclusive easement to use the freight loading dock which is a common element of the Condominium and is shown on Exhibit 2, to provide ingress, egress and regress to and from the freight elevator owned by Snowshoe Company with the Conference Center.

D. Lien of Real Estate Taxes. Under the Constitution and the statutes of the State of West Virginia, real estate and interests therein are subject to a lien for the payment of real estate taxes as imposed by the County Commissions of each of the respective counties. Property is valued by the county assessor each year and the statutory lien for the payment of real estate taxes for the forthcoming tax year becomes a lien on July 1 of each year. Each unit and the common elements incident thereto will be assessed separately in the name of the recorded owner thereof and the payment of real estate taxes will be the responsibility of said owner. The Constitution and statutes of West Virginia provide that failure to pay real estate taxes within certain prescribed time limits can result in a loss of title to the property through public sales for delinquent taxes.

E. Other Easements. Each person who acquires an interest in a unit shall be deemed thereby to agree that: (i) if any portion of a unit shall encroach upon any portion of the common elements or other unit or any portion of the common elements shall encroach upon any unit, there shall exist a valid easement for such encroachments and for the maintenance and repair of the same so long as it stands; and (ii) in the event the building or a unit is partially or totally destroyed and the reconstruction thereof shall create an encroachment on portions of the common elements or on any unit, there shall exist a valid easement for such encroachment and the maintenance thereof. Each Unit Owner shall have an easement in common with the owners of any other adjoining unit to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any part of the residence units. Each unit shall be subject to an easement in favor of the adjoining unit or units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving each other unit or units and located in such units. The Executive Board shall have the right to grant additional easements and designate the beneficiaries thereof for such time as it determines in its sole discretion. Such rights include, but

are not limited to, the right to grant to others, easements for access and for ingress across portions of the Property as it may be composed from time to time for owners, occupants and users of other properties, facilities, and horizontal property regimes within the Snowshoe Resort or in proximity thereto. No easement shall be granted by the Unit Owners Association if as a result thereof any building or other improvements in the Condominium would be structurally weakened, or within reason, interfere with the use or appearance thereof, or the security of any mortgagee of record would be adversely affected without its written consent.

F. Other Obligations. All other obligations of the Declarant relating to the Condominium which are more particularly described in the Conference Center Deed which obligations are incorporated herein by reference and made a part hereof as if set forth herein verbatim.

XII. MANAGEMENT OF THE CONDOMINIUM

As required by the Act, a Unit Owners Association has been organized to provide for the management of the Condominium. The operation of the Condominium shall be governed by the By-Laws of the Unit Owners Association which are attached to this Declaration as Exhibit 8 and made a part hereof. No modification of, or amendment to, the By-Laws of the Unit Owners Association shall be valid unless set forth in or annexed to a duly recorded amendment. The By-Laws may be amended in the manner provided for therein and in the Act but no amendment to said By-Laws shall be adopted which will affect or impair the validity or priority of any mortgage upon the Property or any portion thereof without written consent of the mortgagee thereof and of all mortgagees of record. No amendment shall change the rights and privileges of the Declarant without written approval of the Declarant or its successors or assigns.

XIII. AMENDMENTS TO THE DECLARATION

This Declaration may be amended at the regular or any special meeting of the Unit Owners Association of the Condominium called and convened in accordance with the By-Laws, upon the affirmative vote of sixty-seven percent (67%) of all Voting Members of the Unit Owners Association; provided, however, that this Declaration may not be cancelled nor any amendment be made hereto having as its effect a termination of the Condominium without the written agreement of all the Unit Owners in the Condominium and all mortgagees holding mortgages of record upon the Condominium or any portion thereof, as provided in the Act. All amendments hereto shall be prepared, executed, certified and recorded as required by the Act, by the Secretary of the Unit Owners

Association. No amendment shall change any unit or the proportionate share of the common expenses or common surplus attributable to each unit, nor the voting rights of any unit, unless all Unit Owners of the Condominium and all mortgagees holding any mortgages or other liens upon the Property or any part thereof shall join in the execution of such amendment. No amendment shall be passed which shall impair or change the provisions of this Declaration with respect to mortgages without the written approval of all mortgagees of record. No amendment shall change the rights and privileges of Declarant, its successors and assigns, without written approval and consent of the Declarant, or its successors or assigns.

XIV. TERMINATION

This Condominium may be voluntarily terminated at any time upon the terms and conditions and in the same manner set forth and prescribed in the Act; provided, however, that unless otherwise required by law or in the Act, before the Condominium may be terminated, all mortgagees of record of any unit or any other part of the Property of the Condominium must agree in writing to accept such termination and to accept as security the undivided portion of the Property owned by the debtor of each. In the event of such termination, all Unit Owners shall become tenants in common of the real property and improvements constituting the unit and common elements. The ownership of each Unit Owner upon such termination as tenant in common shall be the same percentage as his percentage ownership in the common elements at that time.

XV. APPLICATION OF THE ACT

Except as specifically modified by this Declaration and the By-Laws in a manner permitted by the Act, all other applicable provisions of the Act shall govern the creation and management of the Condominium. In the event of any inconsistency between this Declaration or the By-Laws or the provisions of the Act the provisions of the Act shall prevail. This Declaration is intended to comply with all of the applicable provisions of the Act and shall be so interpreted and applied.

IN WITNESS WHEREOF, the Declarant on behalf of itself and to bind itself and its successors in interest has executed this Declaration this 10th day of NOVEMBER, 1982.

THE COMMONWEALTH GROUP, a general partnership organized under the laws of South Carolina

By JOHN T. KRUSE INTERESTS, INC., a corporation

A General Partner

By *John J. Kruse*
Its President

STATE OF West Virginia,

COUNTY OF Kanawha, TO-WIT:

The foregoing instrument was acknowledged before me this 10th day of November, 1982, by John J. Kruse, the President of JOHN J. KRUSE INTERESTS INC. A CORP., a general partner of THE COMMONWEALTH GROUP, a general partnership organized under the laws of South Carolina, on behalf of the corporation and the partnership.

My commission expires April 6, 1991.

Thomas E. Potter
Notary Public
Statewide
PT. 1985

(SEAL)

This instrument was prepared by Thomas E. Potter Attorney at Law, 1500 One Valley Square, Charleston, West Virginia 25301.

EXHIBIT 5

EACH UNIT'S PERCENTAGE INTEREST IN THE COMMON ELEMENTS, SHARE OF COMMON EXPENSES AND SURPLUS AND VOTING RIGHTS

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|-------------|--|
| 101 | Innsbruck R | .5202% |
| 102 | Davos R | .5399% |
| 103 | Davos R | .5399% |
| 104 | Innsbruck R | .5202% |
| 105 | Davos | .5399% |
| 106 | Zermatt R | .3534% |
| 107 | Innsbruck | .5202% |
| 108 | Zermatt | .3534% |
| 109 | Zermatt R | .3534% |
| 110 | Zermatt R | .3534% |
| 111 | Zermatt | .3534% |
| 112 | Zermatt | .3534% |
| 114 | Innsbruck | .5202% |
| 115 | Zermatt R | .3534% |
| 116 | Davos | .5399% |
| 117 | Zermatt | .3534% |
| 119 | Zermatt R | .3534% |
| 120 | Zermatt R | .3534% |
| 122 | Zermatt | .3534% |
| 123 | Davos | .5399% |
| 124 | Zermatt R | .3534% |
| 125 | Innsbruck | .5202% |
| 126 | Zermatt | .3534% |
| 127 | Davos | .5399% |
| 128 | Zermatt R | .3534% |
| 129 | Innsbruck | .5202% |
| 130 | Zermatt R | .3534% |
| 131 | Zermatt R | .3534% |
| 132 | Zermatt | .3534% |
| 133 | Davos | .5399% |
| 134 | Zermatt R | .3534% |
| 135 | Innsbruck | .5202% |
| 136 | Zermatt | .3534% |
| 137 | Zermatt | .3534% |
| 138 | Zermatt | .3534% |
| 139 | | .3534% |
| 140 | Zermatt | .3534% |
| 141 | Davos | .5399% |

Exhibit 5 (Page 2 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|--------------|--|
| 142 | Zermatt R | .3534% |
| 143 | Innsbruck | .5202% |
| 144 | Zermatt R | .3534% |
| 145 | Zermatt | .3534% |
| 146 | St. Moritz R | .7067% |
| 147 | Zermatt R | .3534% |
| 148 | St. Moritz | .7067% |
| 149 | Davos | .5399% |
| 150 | Zermatt | .3534% |
| 151 | Innsbruck | .5202% |
| 152 | Zermatt R | .3534% |
| 154 | Zermatt | .3534% |
| 155 | Davos | .5399% |
| 156 | Zermatt R | .3534% |
| 157 | Innsbruck | .5202% |
| 158 | Zermatt | .3534% |
| 159 | Davos | .5399% |
| 160 | Zermatt R | .3534% |
| 161 | Innsbruck | .5202% |
| 162 | Zermatt | .3534% |
| 163 | Zermatt | .3534% |
| 164 | Zermatt R | .3534% |
| 165 | Innsbruck R | .5202% |
| 166 | Zermatt | .3534% |
| 168 | Davos R | .7067% |
| 169 | Davos R | .7067% |
| 170 | Innsbruck R | .5202% |
| 172 | Zermatt R | .3534% |
| 174 | Zermatt | .3534% |
| 176 | Zermatt R | .3534% |
| 178 | Davos R | .5399% |
| 182 | Innsbruck R | .5202% |
| 184 | Davos R | .5399% |
| 186 | Innsbruck R | .5202% |
| 188 | Zermatt R | .3534% |
| 190 | Davos R | .5399% |
| 194 | Innsbruck R | .5202% |
| 201 | Innsbruck R | .5202% |
| 202 | Davos R | .5399% |
| 203 | Davos R | .5399% |
| 204 | Innsbruck R | .5202% |
| 205 | Davos | .5399% |
| 206 | Zermatt R | .3534% |
| 207 | Innsbruck | .5202% |
| 208 | Zermatt | .3534% |
| 209 | Zermatt R | .3534% |
| 210 | Zermatt R | .3534% |
| 211 | Zermatt | .3534% |

Exhibit 5 (Page 3 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|--------------|--|
| 212 | Zermatt | .3534% |
| 214 | Innsbruck | .5202% |
| 215 | Zermatt R | .3534% |
| 216 | Davos | .5399% |
| 217 | Zermatt | .3534% |
| 219 | Zermatt R | .3534% |
| 220 | Zermatt R | .3534% |
| 222 | Zermatt | .3534% |
| 223 | Davos | .5399% |
| 224 | Zermatt R | .3534% |
| 225 | Innsbruck | .5202% |
| 226 | Zermatt | .3534% |
| 227 | Davos | .5399% |
| 228 | Zermatt R | .3534% |
| 228A | Zermatt | .3534% |
| 229 | Innsbruck | .5202% |
| 230 | Zermatt R | .3534% |
| 231 | Zermatt R | .3534% |
| 232 | Zermatt R | .3534% |
| 233 | Zermatt | .3534% |
| 234 | Davos | .5399% |
| 235 | Zermatt R | .3534% |
| 236 | Innsbruck | .5202% |
| 237 | Zermatt | .3534% |
| 238 | Zermatt | .3534% |
| 239 | Zermatt | .3534% |
| 240 | Zermatt | .3534% |
| 241 | Davos | .5399% |
| 242 | Zermatt R | .3534% |
| 243 | Innsbruck | .5202% |
| 244 | Zermatt R | .3534% |
| 245 | Zermatt | .3534% |
| 246 | St. Moritz R | .7067% |
| 247 | Zermatt R | .3534% |
| 248 | St. Moritz | .7067% |
| 249 | Davos | .5399% |
| 250 | Zermatt | .3534% |
| 251 | Innsbruck | .5202% |
| 252 | Zermatt R | .3534% |
| 253 | Zermatt R | .3534% |
| 254 | Zermatt | .3534% |
| 255 | Davos | .5399% |
| 256 | Zermatt R | .3534% |
| 257 | Innsbruck | .5202% |
| 258 | Zermatt | .3534% |
| 259 | Davos | .5399% |

Exhibit 5 (Page 4 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|-------------|--|
| 260 | Zermatt R | .3534% |
| 261 | Innsbruck | .5202% |
| 262 | Zermatt | .3534% |
| 263 | Zermatt | .3534% |
| 264 | Zermatt R | .3534% |
| 265 | Innsbruck R | .5202% |
| 266 | Zermatt | .3534% |
| 268 | Davos R | .5399% |
| 269 | Davos R | .5399% |
| 270 | Innsbruck R | .5202% |
| 272 | Zermatt R | .3534% |
| 274 | Zermatt | .3534% |
| 276 | Zermatt R | .3534% |
| 278 | Davos R | .5399% |
| 282 | Innsbruck R | .5202% |
| 284 | Davos R | .5399% |
| 286 | Innsbruck R | .5202% |
| 288 | Zermatt R | .3534% |
| 290 | Davos R | .5399% |
| 294 | Innsbruck R | .5202% |
| 301 | Innsbruck R | .5202% |
| 302 | Davos R | .5399% |
| 303 | Davos R | .5399% |
| 304 | Innsbruck R | .5202% |
| 305 | Davos | .5399% |
| 306 | Zermatt R | .3534% |
| 307 | Innsbruck | .5202% |
| 308 | Zermatt | .3534% |
| 309 | Zermatt R | .3534% |
| 310 | Zermatt R | .3534% |
| 311 | Zermatt | .3534% |
| 312 | Zermatt | .3534% |
| 314 | Innsbruck | .5202% |
| 315 | Zermatt R | .3534% |
| 316 | Davos | .5399% |
| 317 | Zermatt | .3534% |
| 319 | Zermatt R | .3534% |
| 320 | Zermatt R | .3534% |
| 322 | Zermatt | .3534% |
| 323 | Davos | .5399% |
| 324 | Zermatt R | .3534% |
| 325 | Innsbruck | .5202% |
| 326 | Zermatt | .3534% |
| 327 | Davos | .5399% |
| 328 | Zermatt R | .3534% |
| 328A | Zermatt | .3534% |

Exhibit 5 (Page 5 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|--------------|--|
| 329 | Innsbruck | .5202% |
| 330 | Zermatt R | .3534% |
| 331 | Zermatt R | .3534% |
| 332 | Zermatt | .3534% |
| 333 | Davos | .5399% |
| 334 | Zermatt R | .3534% |
| 335 | Innsbruck | .5202% |
| 336 | Zermatt | .3534% |
| 337 | Zermatt | .3534% |
| 338 | Zermatt R | .3534% |
| 339 | Zermatt R | .3534% |
| 340 | Zermatt | .3534% |
| 341 | Davos | .5399% |
| 342 | Zermatt R | .3534% |
| 343 | Innsbruck | .5202% |
| 344 | Zermatt R | .3534% |
| 345 | Zermatt | .3534% |
| 346 | St. Moritz R | .7067% |
| 347 | Zermatt R | .3534% |
| 348 | St. Moritz | .7067% |
| 349 | Davos | .5399% |
| 350 | Zermatt | .3534% |
| 351 | Innsbruck | .5202% |
| 352 | Zermatt R | .3534% |
| 353 | Zermatt R | .3534% |
| 354 | Zermatt | .3534% |
| 355 | Davos | .5399% |
| 356 | Zermatt R | .3534% |
| 357 | Innsbruck | .5202% |
| 358 | Zermatt | .3534% |
| 359 | Davos | .5399% |
| 360 | Zermatt R | .3534% |
| 361 | Innsbruck | .5202% |
| 362 | Zermatt | .3534% |
| 363 | Zermatt | .3534% |
| 364 | Zermatt R | .3534% |
| 365 | Innsbruck R | .5202% |
| 366 | Zermatt | .3534% |
| 368 | Davos R | .5399% |
| 369 | Davos R | .5399% |
| 370 | Innsbruck R | .5202% |
| 372 | Zermatt R | .3534% |
| 374 | Zermatt | .3534% |
| 376 | Zermatt R | .3534% |
| 378 | Davos R | .5399% |

Exhibit 5 (Page 6 of 6 Pages)

| <u>Unit No.</u> | <u>Type</u> | <u>Percentage of Interest in the Common Elements, Expenses and Surplus and Voting Rights</u> |
|-----------------|-------------|--|
| 382 | Innsbruck R | .5202% |
| 384 | Davos R | .5399% |
| 386 | Innsbruck R | .5202% |
| 388 | Zermatt R | .3534% |
| 390 | Davos R | .5399% |
| 394 | Innsbruck R | .5202% |

EXHIBIT 6

PERTINENT PROVISIONS OF THE DEED FROM THE MOWER LUMBER COMPANY, A WEST VIRGINIA CORPORATION, TO SNOWSHOE COMPANY, A WEST VIRGINIA CORPORATION, RECORDED IN THE OFFICE OF THE CLERK OF THE COUNTY COMMISSION OF POCAHONTAS COUNTY, WEST VIRGINIA IN DEED BOOK 129 AT PAGE 650.

Mower hereby excepts and reserves for itself, its licensees, invitees, lessees, contractors, grantees, successors, and assigns the right to use all or any part of the roads hereinabove described in common with Snowshoe, its successors and assigns and others having the right to use the same, as a means of ingress and egress to and from other and adjoining lands now owned by Mower, regardless whether said roads be located within or without the boundaries of the 6,696 acre tract herein conveyed by Mower to Snowshoe.

Snowshoe covenants and agrees that said roads will hereafter be maintained by Snowshoe, but it is agreed by and between Mower and Snowshoe that the cost of maintenance of said roads shall be apportioned between Snowshoe and Mower according to the degree of use made by each during each calendar year. It is further understood and agreed that Mower shall not be liable for any part of the cost of widening, paving or otherwise improving said roads.

There is excepted and reserved from this conveyance and operation of this deed all the coal, oil and gas excepted and reserved by Mower's predecessors in title in and underlying Mower Tract No. 5 (530 acres, more or less) and Mower Tract No. 22 (44-3/4 acres, more or less), both wholly included in this conveyance, and Mower Tract No. 23 & 25 (60 acres, more or less), and Mower Tract No. 24 (347 acres, more or less) parts of each of which are included in this conveyance, but any coal, oil, gas or other minerals owned by Mower in and underlying said 6,696 acres of land herein described is hereby conveyed by Mower to Snowshoe.

This conveyance is made expressly subject to all rights-of-way and easements, recorded or unrecorded, heretofore granted to others by Mower or its predecessors in title, and to all easements and rights-of-way, public or private, which are visible upon the ground, including but not limited to the following:

1. Permanent easement and right-of-way granted by Mower to Wallace Galford and Pauline Galford, husband and wife, by Easement and Right-of-Way Easement Agreement dated the 23rd day of November, 1962, duly recorded in the office of the Clerk of the County Court of Pocahontas County, West Virginia, in Deed Book 110, at page 359.

2. Right-of-way for general business use and hauling of timber granted by Mower to Beckwith Lumber Company across Mower Tract 3 (herein referred to as Mower Tract 28) by that certain unrecorded Easement and Right-of-Way Agreement dated the 3rd day of October, 1972, which right-of-way expires October 3, 1973.

3. Right-of-way and easement for use of Black Run Road in connection with the unrecorded contract for purchase, cutting and removing of timber dated the 14th day of June, 1973, between Mower and Forest Lumber Company.

This conveyance is made expressly subject to all the limitations and restrictions affecting the property hereby conveyed set forth in that certain Deed and Bill of Sale dated the 7th day of June, 1962, by and between Mower and the State of West Virginia for the use and benefit of the Department of Natural Resources duly recorded in the office of the Clerk of the County Court of Pocahontas County, West Virginia, in Deed Book 108, at page 314.

This conveyance is made expressly subject to the terms and provisions of that certain Agreement (Oil and Gas Lease) dated the 6th day of December, 1971, by and between Mower as Lessor and C. E. Beck as Lessee, duly recorded in the office of the Clerk of the County Court of Pocahontas County, West Virginia, in Deed Book 126, at page 516.

EXHIBIT 7

The Commonwealth Group
1517 Gregg Street
P. O. Box 11193
Columbia, SC 29211

Gentlemen:

This letter is to evidence the approval of Snowshoe Company to all of the improvements erected on the 5.01 acre site owned by The Commonwealth Group at the Snowshoe Ski Resort, Snowshoe, West Virginia. This approval is given pursuant to the provisions of Article XI, Subparagraph (B) (3) of the Declaration Establishing a Plan for Condominium Ownership for the Snowshoe Mountain Lodge Condominium, dated November 10, 1982, and recorded or to be recorded in the office of the Clerk of the Pocahontas County Commission.

Very truly yours,

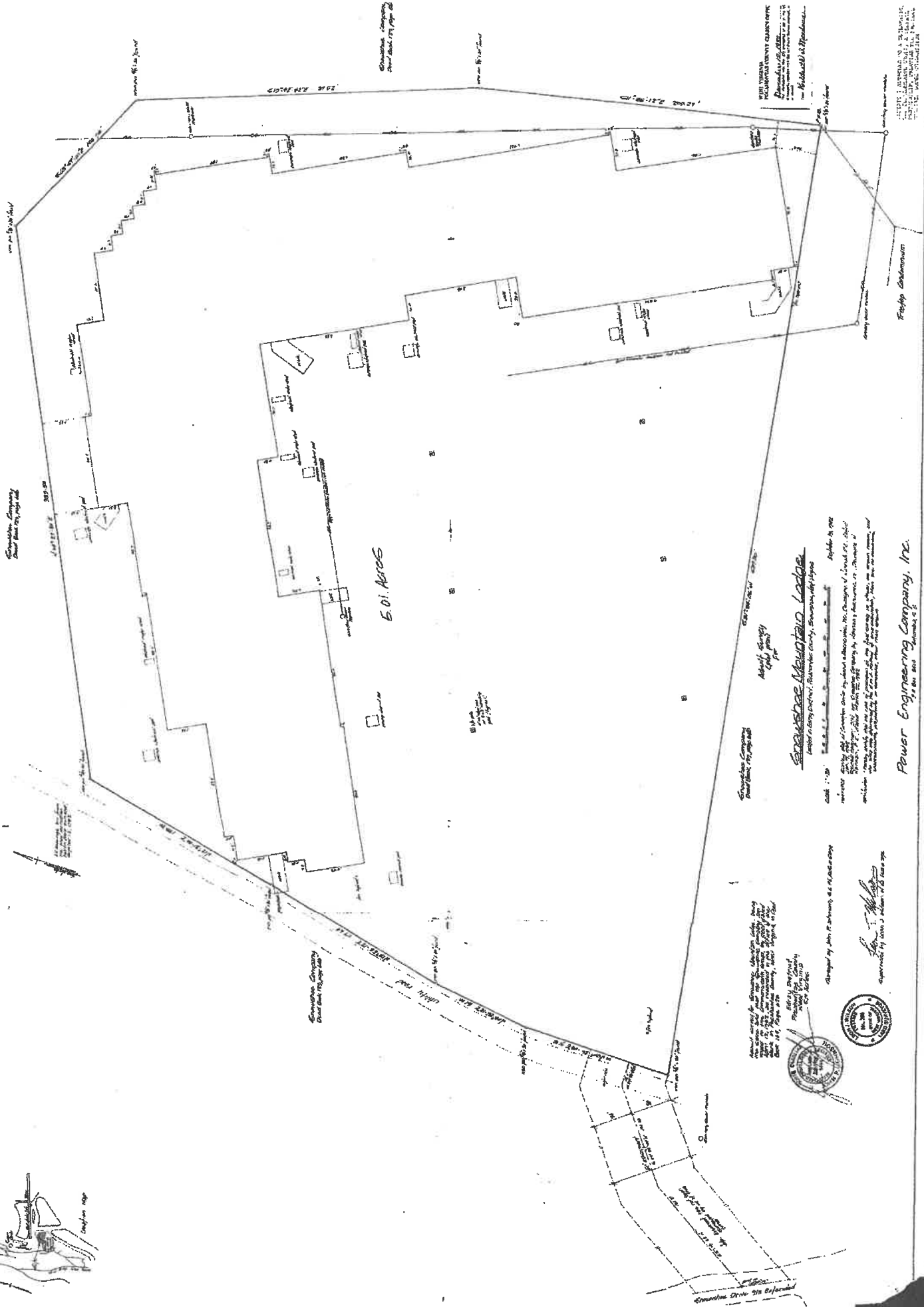
SNOWSHOE COMPANY, a corporation

By

[Signature]
Its Executive Vice President
11-10-1982

EXHIBIT A-1

THIS DRAWING IS THE PROPERTY OF POWER ENGINEERING COMPANY, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF POWER ENGINEERING COMPANY, INC.



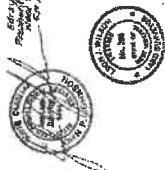
WITH THESE PLANS, THE CLIENT AGREES TO HOLD POWER ENGINEERING COMPANY, INC. HARMLESS FROM ALL LIABILITY, INCLUDING ATTORNEY'S FEES, IN THE EVENT THAT THE CLIENT OR ANY OTHER PARTY SUES POWER ENGINEERING COMPANY, INC. FOR NEGLIGENCE OR OTHERWISE IN CONNECTION WITH THESE PLANS.

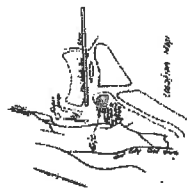
Spruce Mountain Lodge

Project: Spruce Mountain Lodge
Location: Spruce Mountain, Colorado
Client: Power Engineering Company, Inc.
Date: 1/1/2020
Scale: 1" = 20'

Power Engineering Company, Inc.
1234 Main Street
Denver, CO 80202

Approved by: [Signature]
Checked by: [Signature]
Date: 1/1/2020



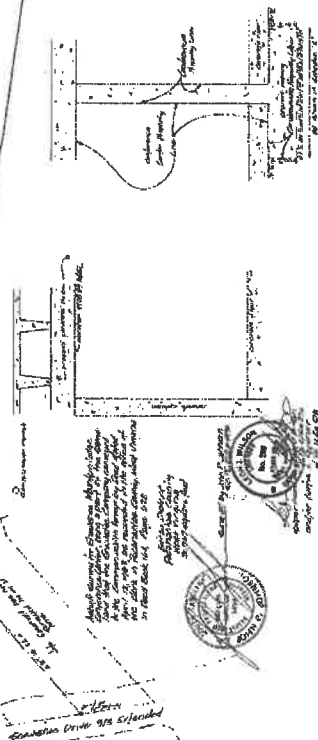


| Refugee Case | Refugee Name | Refugee Address | Refugee Phone |
|--------------|--------------------------|----------------------|---------------|
| 6-10-5 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-5 |
| 6-10-6 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-6 |
| 6-10-7 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-7 |
| 6-10-8 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-8 |
| 6-10-9 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-9 |
| 6-10-10 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-10 |
| 6-10-11 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-11 |
| 6-10-12 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-12 |
| 6-10-13 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-13 |
| 6-10-14 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-14 |
| 6-10-15 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-15 |
| 6-10-16 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-16 |
| 6-10-17 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-17 |
| 6-10-18 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-18 |
| 6-10-19 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-19 |
| 6-10-20 | Mr. and Mrs. J. B. Smith | 1234 Main St., N. W. | 6-10-20 |

| Year | Area | Production (kg) | Production (kg) |
|------|-------|-----------------|-----------------|
| 1954 | 1,000 | 1,000 | 1,000 |
| 1955 | 1,000 | 1,000 | 1,000 |
| 1956 | 1,000 | 1,000 | 1,000 |
| 1957 | 1,000 | 1,000 | 1,000 |
| 1958 | 1,000 | 1,000 | 1,000 |
| 1959 | 1,000 | 1,000 | 1,000 |
| 1960 | 1,000 | 1,000 | 1,000 |
| 1961 | 1,000 | 1,000 | 1,000 |
| 1962 | 1,000 | 1,000 | 1,000 |
| 1963 | 1,000 | 1,000 | 1,000 |
| 1964 | 1,000 | 1,000 | 1,000 |
| 1965 | 1,000 | 1,000 | 1,000 |
| 1966 | 1,000 | 1,000 | 1,000 |
| 1967 | 1,000 | 1,000 | 1,000 |
| 1968 | 1,000 | 1,000 | 1,000 |
| 1969 | 1,000 | 1,000 | 1,000 |
| 1970 | 1,000 | 1,000 | 1,000 |
| 1971 | 1,000 | 1,000 | 1,000 |
| 1972 | 1,000 | 1,000 | 1,000 |
| 1973 | 1,000 | 1,000 | 1,000 |
| 1974 | 1,000 | 1,000 | 1,000 |
| 1975 | 1,000 | 1,000 | 1,000 |
| 1976 | 1,000 | 1,000 | 1,000 |
| 1977 | 1,000 | 1,000 | 1,000 |
| 1978 | 1,000 | 1,000 | 1,000 |
| 1979 | 1,000 | 1,000 | 1,000 |
| 1980 | 1,000 | 1,000 | 1,000 |
| 1981 | 1,000 | 1,000 | 1,000 |
| 1982 | 1,000 | 1,000 | 1,000 |
| 1983 | 1,000 | 1,000 | 1,000 |
| 1984 | 1,000 | 1,000 | 1,000 |
| 1985 | 1,000 | 1,000 | 1,000 |
| 1986 | 1,000 | 1,000 | 1,000 |
| 1987 | 1,000 | 1,000 | 1,000 |
| 1988 | 1,000 | 1,000 | 1,000 |
| 1989 | 1,000 | 1,000 | 1,000 |
| 1990 | 1,000 | 1,000 | 1,000 |
| 1991 | 1,000 | 1,000 | 1,000 |
| 1992 | 1,000 | 1,000 | 1,000 |
| 1993 | 1,000 | 1,000 | 1,000 |
| 1994 | 1,000 | 1,000 | 1,000 |
| 1995 | 1,000 | 1,000 | 1,000 |
| 1996 | 1,000 | 1,000 | 1,000 |
| 1997 | 1,000 | 1,000 | 1,000 |
| 1998 | 1,000 | 1,000 | 1,000 |
| 1999 | 1,000 | 1,000 | 1,000 |
| 2000 | 1,000 | 1,000 | 1,000 |
| 2001 | 1,000 | 1,000 | 1,000 |
| 2002 | 1,000 | 1,000 | 1,000 |
| 2003 | 1,000 | 1,000 | 1,000 |
| 2004 | 1,000 | 1,000 | 1,000 |
| 2005 | 1,000 | 1,000 | 1,000 |
| 2006 | 1,000 | 1,000 | 1,000 |
| 2007 | 1,000 | 1,000 | 1,000 |
| 2008 | 1,000 | 1,000 | 1,000 |
| 2009 | 1,000 | 1,000 | 1,000 |
| 2010 | 1,000 | 1,000 | 1,000 |
| 2011 | 1,000 | 1,000 | 1,000 |
| 2012 | 1,000 | 1,000 | 1,000 |
| 2013 | 1,000 | 1,000 | 1,000 |
| 2014 | 1,000 | 1,000 | 1,000 |
| 2015 | 1,000 | 1,000 | 1,000 |
| 2016 | 1,000 | 1,000 | 1,000 |
| 2017 | 1,000 | 1,000 | 1,000 |
| 2018 | 1,000 | 1,000 | 1,000 |
| 2019 | 1,000 | 1,000 | 1,000 |
| 2020 | 1,000 | 1,000 | 1,000 |
| 2021 | 1,000 | 1,000 | 1,000 |
| 2022 | 1,000 | 1,000 | 1,000 |
| 2023 | 1,000 | 1,000 | 1,000 |
| 2024 | 1,000 | 1,000 | 1,000 |
| 2025 | 1,000 | 1,000 | 1,000 |
| 2026 | 1,000 | 1,000 | 1,000 |
| 2027 | 1,000 | 1,000 | 1,000 |
| 2028 | 1,000 | 1,000 | 1,000 |
| 2029 | 1,000 | 1,000 | 1,000 |
| 2030 | 1,000 | 1,000 | 1,000 |
| 2031 | 1,000 | 1,000 | 1,000 |
| 2032 | 1,000 | 1,000 | 1,000 |
| 2033 | 1,000 | 1,000 | 1,000 |
| 2034 | 1,000 | 1,000 | 1,00 |

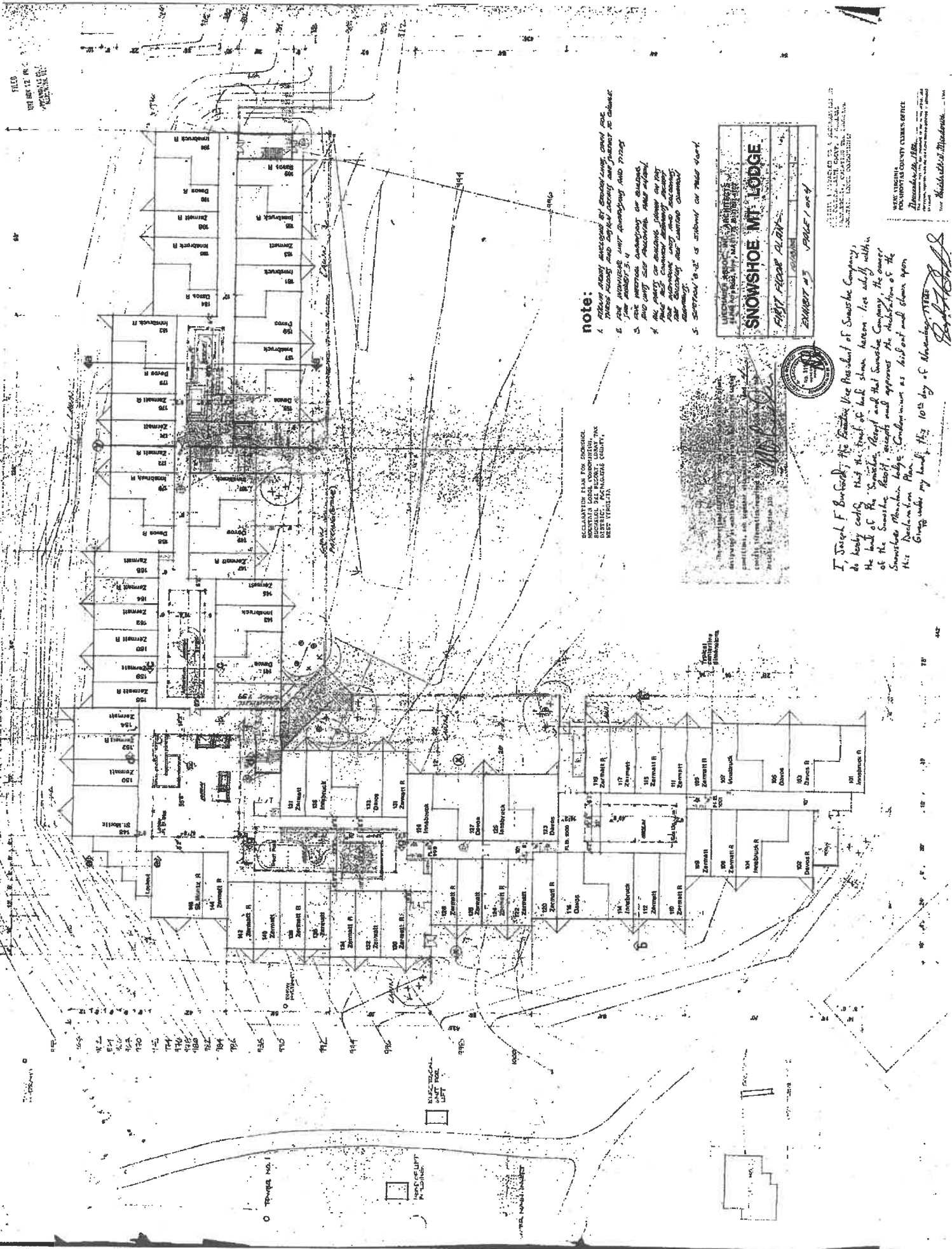
[illegible]

A small, tilted rectangular diagram with dashed lines and a central label 'C'.

[illegible][illegible]Power Engineering Company, Inc.
P.O. Box 1000, New York, N.Y. 10001

2017-18-19-20

[illegible]



note:

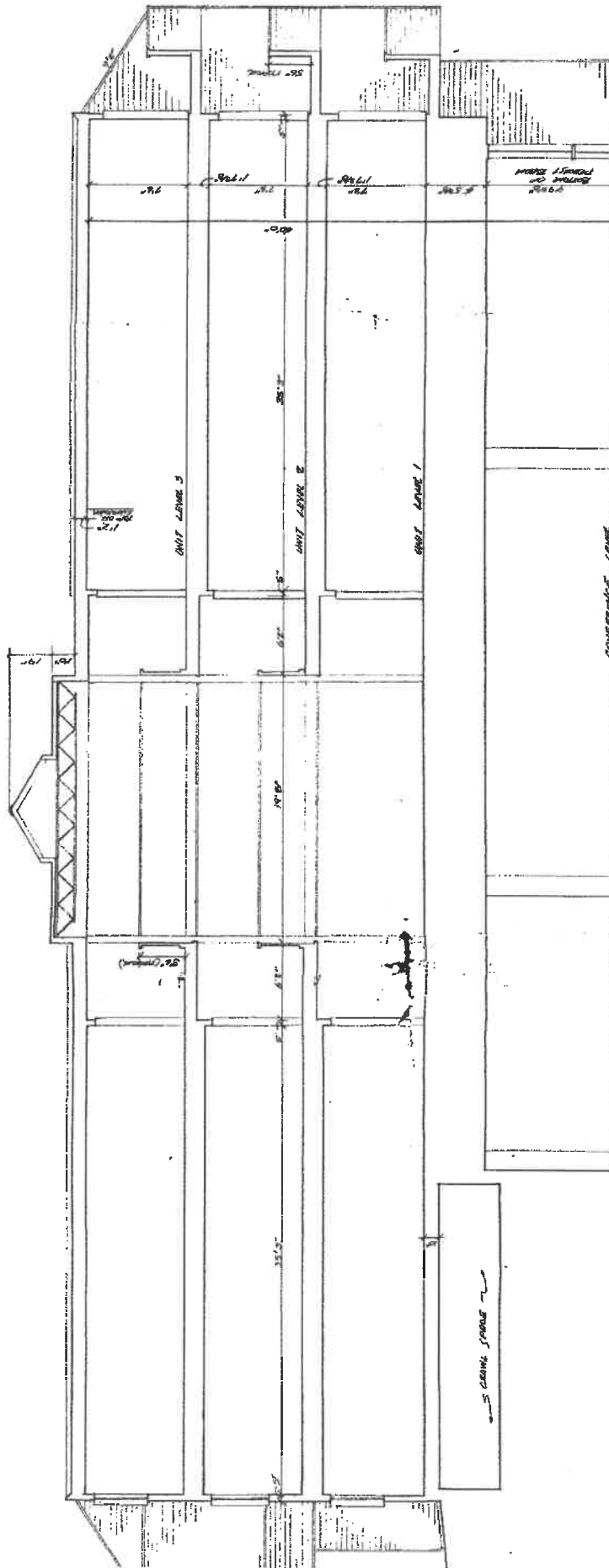
1. All work shall be completed by September 1st, 1964.
2. The building shall be completed and ready to occupy by September 1st, 1964.
3. The building shall be completed and ready to occupy by September 1st, 1964.
4. The building shall be completed and ready to occupy by September 1st, 1964.
5. The building shall be completed and ready to occupy by September 1st, 1964.

| | |
|--|-------------|
| LUDWIG ARCO, INC. ARCHITECTS 1000 15th Street, N.W. Washington, D.C. 20004 | |
| SNOWSHOE MT. LODGE | |
| FIRST FLOOR PLAN | |
| EXHIBIT #3 | PALE 1 of 4 |

I, Joseph F. Burdick, Vice President of Snowshoe Company, do hereby certify that the plan of the building shown herein is a true and correct copy of the plan of the building as approved by the Board of Directors of the Snowshoe Company, and that the building is being constructed in accordance with the plan shown herein. This Declaration is made this 10th day of May, 1964.

Joseph F. Burdick

NOTARY PUBLIC
JAMES H. BURDICK
Notary Public for the State of Maryland
My Commission Expires 12/31/64



BUILDING SECTION "2-2"

NOTE:

1. CONFERENCE LEVEL ADJACENT TO
SNOWSHOE CORP. IS LOCATED IN
BUILDING W. BUREAU 104.

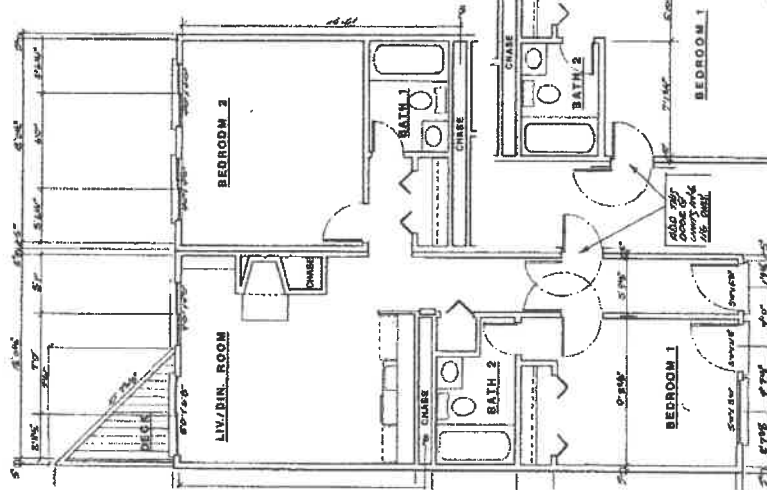
UNIVERSITY MICROFILMS
SERIALS ACQUISITION
300 N. ZEEB RD.
ANN ARBOR MI 48106-1500

SNOWSHOE MT. LODGE
PO BOX 100
SNOWSHOE MT. WY 82449

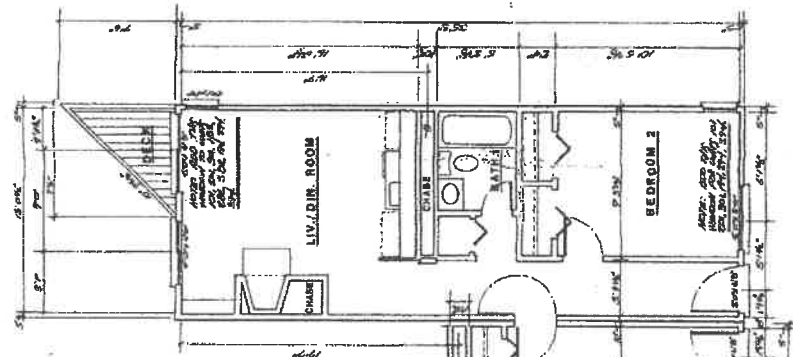
RECEIVED
JUN 10 1984

UNIVERSITY MICROFILMS
SERIALS ACQUISITION
300 N. ZEEB RD.
ANN ARBOR MI 48106-1500

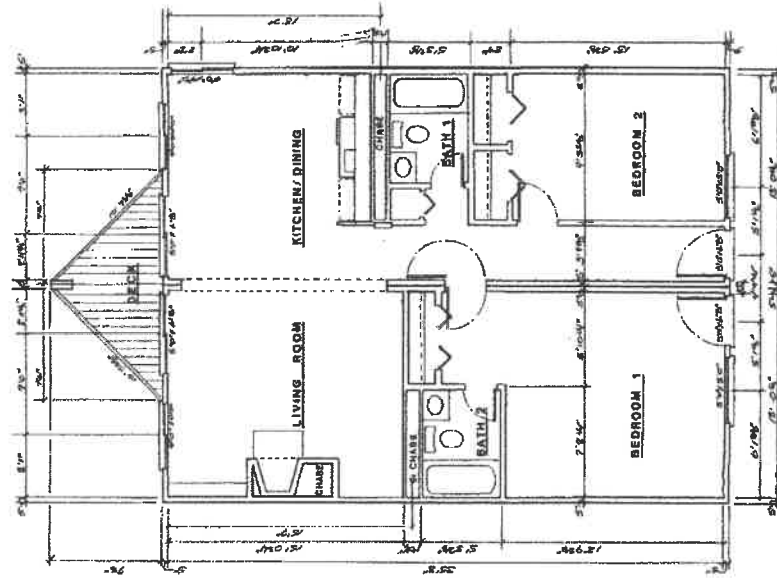
1. RESEARCHING MEANS TO GATHER
AND ANALYZE DATA. RESEARCH IS
2. ANALYSIS OF DATA
AND FORMING OF CONCLUSIONS. RESEARCH
3. CONCLUSIONS OF RESEARCH ARE SUBJECT TO
4. CRITICISM AND REVISION. RESEARCH IS
5. AN Ongoing Process.



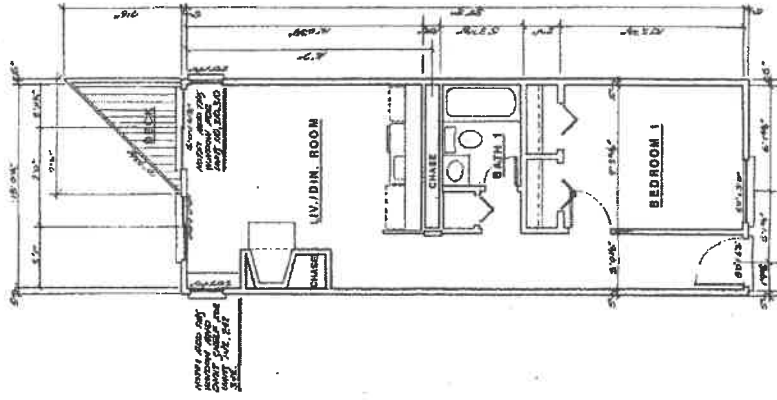
DAVOS - R



DECLARATION PLAN FOR SMOKEHOUSE
MOUNTAIN LODGE CONDOMINIUM.
FURNISHING AND RESORT, FORTY-TWO
DISTRICT, POLK COUNTY,
WEST VIRGINIA



ST. MORITZ - R



ZERMATT

LUGSWORTH, ALBERT, 1862, WICHITA, KS.
 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539,

The undersigned certifies that the attached plate or plates, designated as exhibits 1, accurately depict all existing conditions, and together with exhibits 2 and 3, contain information required by Rule 17(c)(1) of the Federal Rules of Criminal Procedure.

Article 2 - Section 10.

[Signature]

UNITED STATES OF AMERICA
THE CONSTITUTIONAL GROUP, A GENERAL
PARTNERSHIP, CREATING THE SUBSISTENCE
MOUNTAIN LODGE CONDOMINIUM

WEST VIRGINIA
POCAHONTAS COUNTY CLERK'S OFFICE

November 16, 1950.
This catalogue was last day prepared to fill my order, and
"strongly" impregnated with the perfume I have ordered, & shipped
to report.

Your Verdict? W. Meadows: - con

1. SEE EXHIBIT #2, PAGE 4 AND FOR HETEROZYGOTE DIMORPHISM OF ENZYME.
2. ALL ENZYMES ARE SUBJECT TO ESTIMATION AND CONTROL AND ALLOW TO VARIATE OTHER ENZYME AS HETEROZYGOTE.
3. LACKS, EXTREME CLOTTING AND HINDING AND LIMITED CARRIER ALLELES.

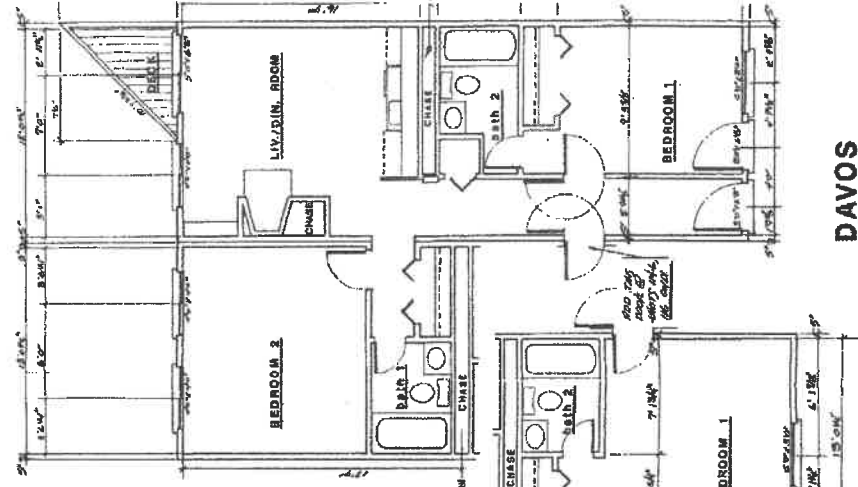
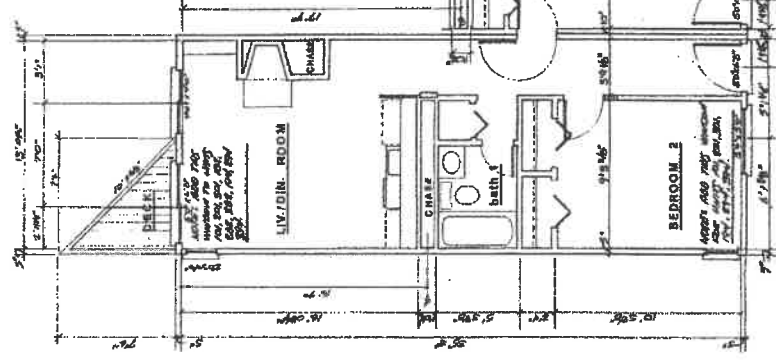
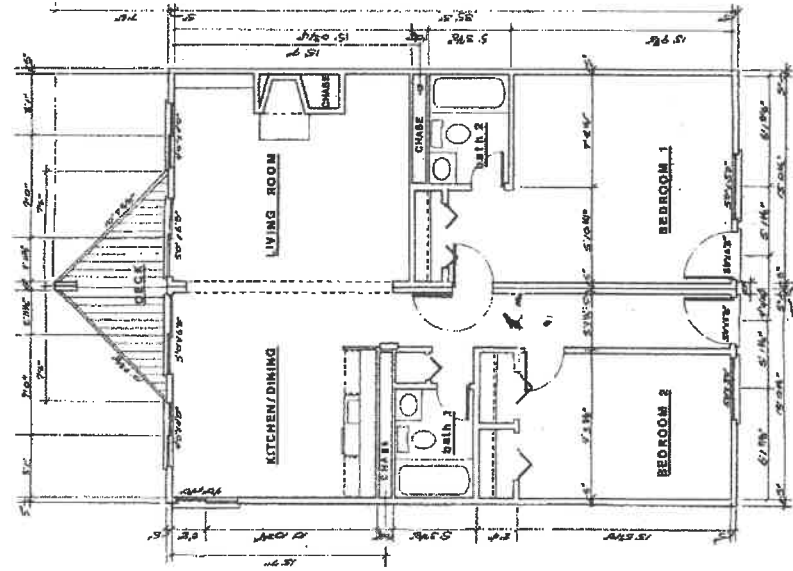
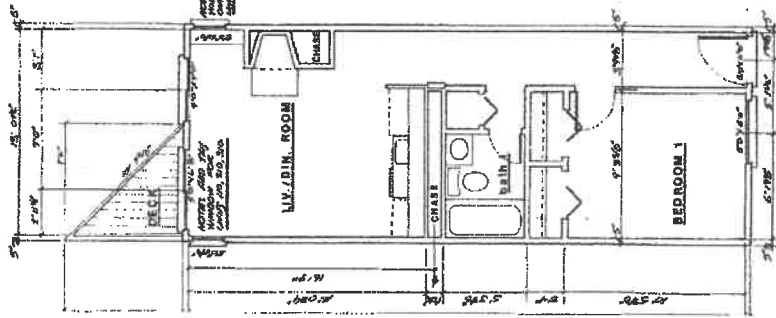


EXHIBIT B

111082

THIS DEED AND AGREEMENT, Dated this 10th day of November, 1982, by and between THE COMMONWEALTH GROUP, a general partnership under the laws of the State of South Carolina, hereinafter called "Commonwealth" and SNOWSHOE COMPANY, a West Virginia corporation, hereinafter called the "Company."

SEE PLAT
BOOK 4,
PAGE 6

R E C I T A L S:

By instrument dated December 1, 1981, the Company and Commonwealth entered into an agreement (the "Agreement") whereby in return for the conveyance by the Company to Commonwealth of a tract of 5.01 acres, more or less, situate at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia (hereinafter called the "Site"), Commonwealth committed to construct upon the Site a major meeting/conference center and luxury condominium development.

Pursuant to the Agreement, by deed dated April 12, 1982, and of record in the office of the Clerk of the Pocahontas County Commission in Deed Book 164, at page 628, and Corrective Deed dated October 26, 1982, also of record or to be recorded in said Clerk's office (the "Deeds"), the Company conveyed the Site to Commonwealth and thereafter Commonwealth proceeded with the construction thereon of a four-story building (the "Building") consisting of a ground floor area, a part of which is referred to herein as the

11-12-82
\$330.00
STATE & COUNTY
H 020176

11-12-82
\$330.00
STATE & COUNTY
H 020174

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STATE & COUNTY
H 020173

11-12-82
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STATE & COUNTY
H 020175

11-12-82
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H 021150

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H 021147

11-12-82
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STATE & COUNTY
H 021146

11-12-82
\$330.00
STATE & COUNTY
H 021145

11-12-82
\$330.00
STATE & COUNTY
H 021144

"Conference Center," and three additional floors or stories consisting of 229 apartment units and other improvements which together with portions of the ground floor area are to be submitted to a condominium form of ownership pursuant to the provisions of Chapter 36B of the Code of West Virginia (the "Act") and to be known as the "Snowshoe Mountain Lodge Condominium" all as provided in that certain Declaration of even date herewith of record or to be recorded in said Clerk's office, which portions of the Building are hereinafter sometimes referred to as the "Condominium."

With the substantial completion of the construction of the Conference Center, Commonwealth, pursuant to the terms of the Agreement, and in further consideration of the agreements of the Company hereinafter set forth, is now prepared and does hereinafter convey the Conference Center to the Company subject to all of the terms, conditions, agreements, exceptions and restrictions hereinafter provided.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Commonwealth does hereby GRANT and CONVEY to the Company the Conference Center, being all of

that real property situate within the Site at the Snowshoe Ski Resort in Edray Tax District of Pocahontas County, West Virginia, which lies below (but not above), a horizontal plane, the elevation of which is 4,708.89 feet as measured vertically above sea level as established by the United States Coast and Geodetic Survey and which is bounded by 26 vertical planes which are respectively formed by projecting vertically downward the boundaries of that certain plot or polyhedron bounded and described as follows:

Beginning at a point numbered 123 as shown and designated on that certain plat entitled "As Built Survey for Snowshoe Mountain Lodge Condominium Conference Center Space," dated October 13, 1982, revised November 9, 1982, made by Power Engineering Company, Inc., a copy of which is designated as Exhibit A attached hereto and by reference made a part hereof; which said point number 123 is located the following three calls and distances from the northeast corner of Treetop Condominium located at the Snowshoe Ski Resort, as the same is shown on various plats of record in the Office of the Clerk of the Pocahontas County Commission in Plat Book 2, at pages 9 and 21:

- (1) N. 32° 21' 18" E. 117.72 feet to the beginning point of the site also shown on Exhibit A; thence
- (2) S. 81° 34' 06" W. 17.6 feet to a point in the southerly line of said 5.01 acres; thence
- (3) N. 08° 25' 54" W. 26.1 feet to point number 123 as shown on Exhibit A, being the place of beginning;

Thence, leaving point number 123 S. 63° 44' 54" W. 55.07 feet to point number 66; thence

N. 26° 15' 42" W. 155.49 feet to point number 90; thence

N. 26° 15' 42" W. 14.49 feet to point 91; thence

N. 26° 15' 42" W. 137.88 feet to point 67; thence
 S. 63° 44' 18" W. 16.21 feet to point 68; thence
 N. 26° 15' 42" W. 56.83 feet to point 69; thence
 N. 63° 44' 18" E. 16.29 feet to point 70; thence
 N. 26° 15' 42" W. 55.84 feet to point 71; thence
 N. 63° 44' 18" E. 53.15 feet to point 106; thence
 S. 26° 14' 42" E. 11.02 feet to point 107; thence
 N. 63° 44' 18" E. 8.20 feet to point 108; thence
 S. 26° 06' 54" E. 7.95 feet to point 109; thence
 N. 63° 52' 54" E. 8.00 feet to point 110; thence
 S. 26° 07' 06" E. 8.02 feet to point 111; thence
 N. 64° 09' 12" E. 8.00 feet to point 112; thence
 S. 26° 24' 18" E. 8.00 feet to point 113; thence
 N. 63° 34' 54" E. 8.00 feet to point 114; thence
 S. 26° 08' 06" E. 8.66 feet to point 115; thence
 N. 63° 44' 18" E. 9.71 feet to point 116; thence
 S. 26° 15' 42" E. 69.36 feet to point 117; thence
 S. 63° 44' 18" W. 10.00 feet to point 118; thence
 S. 26° 12' 48" E. 83.96 feet to point 119; thence
 S. 63° 44' 18" W. 8.02 feet to point 120; thence
 S. 26° 15' 42" E. 125.96 feet to point 121; thence
 S. 63° 49' 01" W. 21.90 feet to point 122; thence
 S. 26° 14' 18" E. 97.59 feet to point 123, the
 place of beginning; together with certain walls
 and portions thereof designated on Exhibit A as
 being part of the Conference Center.

Excepting, reserving and excluding therefrom the
 parcels, footers, pillars, beams, walls and other areas as

shown shaded or cross-hatched on Exhibit A and hereinafter described.

For the consideration aforesaid and as appurtenances to the Conference Center hereinbefore conveyed, Commonwealth does further GRANT and CONVEY unto the Company and its successors, grantees and assigns, ownership of the following:

1. A non-exclusive easement and right-of-way over and across those portions of the Site constituting common elements of the Condominium outside of the Building (a) for pedestrian access to and from ski slopes, recreational and commercial facilities and other development areas of the Snowshoe Resort; and (b) as necessary to provide pedestrian and vehicular access to and from the Conference Center and the public facilities to be constructed or located within the Conference Center.

2. The right to interconnect with utility lines, which now serve or which may in the future serve the Site, for extension of the utilities to future developments within the Snowshoe Resort.

3. The non-exclusive easement to use the main stairway, the elevators, the main lobby of the Condominium and the main entranceway of the Condominium for the purpose of providing a means of ingress and egress to and from the Conference Center.

4. A non-exclusive easement across those portions of the Site constituting Common Elements of the Condominium

to provide a means of ingress and egress to and from the Conference Center, the freight loading dock and the other public areas of the Snowshoe Ski Resort including the public roads serving the Resort.

5. A right of full support of the Conference Center and all parts thereof, including without limitation, the right to install, maintain, inspect, repair, replace and remove from time to time all structural members, footers, pillars, walls, foundations and other members, facilities and property as are sufficient at all times to support the Conference Center so long as such Conference Center or any part or parts thereof remain in existence, including any reconstruction or replacement thereof, in whole or in part, in the event of damage or destruction by casualty or other cause, together with (a) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across common elements of the Condominium sufficient to provide for maintenance, inspection, repair, replacement and removal of the Conference Center or any part thereof, and (b) non-exclusive easements through and across the common elements of the Condominium for and the right to install, maintain, repair, replace and remove from time to time existing lines and chases for electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary

and convenient for use in connection with the Conference Center, including further the right to temporarily place ladders and equipment against portions of the Condominium as reasonably necessary in the exercise of the rights hereby reserved and described.

6. The right to discharge in a lawful manner from and through existing chases and ventilation facilities, if any, which are part of the common elements of the Condominium all fresh, exhaust and waste air, smoke, fumes and moisture as shall be reasonable having due regard and care for the use and enjoyment of the Condominium and any structure or improvement therein; together with a non-exclusive easement to construct, maintain, inspect, repair and replace when reasonably necessary within the common elements of the Condominium the chases and conduits sufficient to accommodate the easements for the aforesaid discharge for the benefit of the Conference Center.

7. Subject to the obligations of support and the easements granted or reserved by this instrument, the right from time to time to reconstruct or replace within the Conference Center in the same location, at the sole expense and risk of the Conference Center owner, and after the expiration of the 30th day following the receipt by the Condominium Association of Unit Owners, and all holders of mortgages on any unit within the Condominium of written notice of such effect without receipt by the owner of the

Conference Center of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and footers, pillars, beams, walls and other structural members owned and maintained entirely or partially for the benefit of the Condominium.

8. The right to attach walls, partitions and other internal construction to various support pillars and load bearing walls running through the Conference Center and owned by the Condominium.

9. A non-exclusive easement to own, operate, install and maintain ceilings, lights, heating, air conditioning and utility systems within the overhead space lying between the bottom of the lower concrete support beams and the bottom of the concrete floor of the Condominium.

10. A non-exclusive easement to use the freight loading dock which is a common element of the Condominium and as shown on Exhibit A, to provide ingress, egress and regress to and from the freight elevator owned by the Company.

The real property heretofore described by metes and bounds and the appurtenant easements and rights set forth in the preceding paragraphs numbered 1 through 10 constitute the "Conference Center."

The property herein conveyed is a part of the Site conveyed to Commonwealth by the Company by the Deeds, reference to which is here made for further description of said real estate.

This conveyance is made subject to all of the reservations, conditions and restrictions set forth in the Deeds and to the following exceptions, reservations, conditions, agreements and restrictions:

A. Commonwealth EXCLUDES, RESERVES and EXCEPTS from this conveyance of the Conference Center hereinbefore described, for itself and its successors, grantees and assigns, ownership of (i) all of those certain parcels of land within or abutting the Conference Center shown shaded or cross-hatched on Exhibit A as sites for the footers for the structural supports necessary to support the upper three stories and other improvements making up that part of the Condominium; (ii) the footers, pillars, beams and walls (except walls or portions thereof designated on Exhibit A as being a part of the Conference Center) situate thereon running through and abutting upon the Conference Center; and (iii) easements through the Conference Center for all existing pillars, load-bearing walls, beams and other structural members situate therein or abutting thereon.

B. Commonwealth reserves for the benefit of itself and its successors, grantees and assigns, and for the benefit of the Condominium ownership of all of the following property, rights and easements in, on, through and abutting the Conference Center which shall constitute a burden thereon:

(1) For the purpose of facilitating construction and total completion of all of the Conference Center and all improvements therein which are the responsibility of Commonwealth,

under the terms of the Agreement, such temporary easements and rights of ingress, egress, passage and movement and storage of materials as may, in the sole discretion of Commonwealth, be necessary or desirable are hereby established and declared to exist until the Conference Center is completed.

(2) Exclusive easements for and ownership of all utility chases and lines, including, but not necessarily limited to, drainage, water, sewer, electric, telephone, sprinkler, cable television lines and ducts or lines for the discharge of waste gas, air, smoke and fumes, all as now located and existing through the Conference Center;

(3) Exclusive easements for and ownership of all existing passenger elevators and mechanical and equipment rooms and personal property and fixtures in connection therewith;

(4) An exclusive easement for and ownership of portions of the existing main lobby fireplace and stairway;

(5) An exclusive easement for and ownership of an existing emergency exit stairway;

(6) An exclusive easement for and ownership of an existing trash chute; together with a non-exclusive easement within the Conference Center in the immediate proximity of the trash chute for facilities to collect the trash emanating from the trash chute;

(7) A right to full support of the Condominium and all parts thereof including without limitation the right to install, maintain, inspect, repair, replace and remove

from time to time all footers, pillars, walls, foundations and other structural members, facilities and property as are sufficient at all times to support the Condominium and so long thereafter as the real and personal property and fixtures constituting such Condominium or any part or parts thereof remain in existence, including any reconstruction or replacement thereof in whole or in part in the event of damage or destruction by casualty or other cause, together with (i) a non-exclusive easement or easements for ingress, egress and regress, for pedestrian traffic and by mechanical or similar means for equipment, material and personnel over, through and across corridors, lobbies, shafts, and open spaces and areas sufficient to provide for maintenance, inspection, repair, replacement and removal of the Condominium or any part thereof and (ii) non-exclusive easements for and the right to install, maintain, repair, replace and remove from time to time pipes, cables, ducts and conduits of every kind and nature for drainage, water, sewage, electricity, energy, telephone, sprinkler, cable television and communications and utilities of whatsoever nature which may be necessary and convenient for use in connection with the Condominium including further the right to temporarily place ladders and equipment against portions of the Conference Center owned by the Company as reasonably necessary in the exercise of the rights hereby reserved and described;

(8) The right to discharge in a lawful manner from and through the utility chases and ventilation

lines owned by the Condominium through the Conference Center all such fresh, exhaust and waste gas, air, smoke, fumes, water, moisture, drainage and sewage as shall be reasonable having due regard and care for the use and enjoyment of the Conference Center and any structure or improvement therein; together with an easement to construct, maintain, inspect, repair and replace when reasonably necessary within the Conference Center pipes, cables, ducts and conduits sufficient to accommodate the easement for the aforesaid discharge for the benefit of the Condominium;

(9) Subject to the obligations for support and the easements granted by this deed, the right from time to time to reconstruct or replace within the Condominium in the same location, at the sole expense and risk of the Condominium, and after the expiration of the 30th day following the receipt by the Conference Center owner and all holders of mortgages thereon or any portion thereof of written notice of such effect without receipt by the Condominium Association of Unit Owners, of notice of any objection, any then existing pipes, cables, ducts and conduits, enclosures, machinery, equipment, pedestrian and mechanical means and structural members maintained entirely or partially for the benefit of the Conference Center;

(10) A non-exclusive right of ingress, egress and regress through the public areas of the Conference

Center for the use of the Condominium and its Association of Unit Owners, unit owners, and their employees, agents, guests and invitees; and

(11) The non-exclusive right to use the existing trash compactor and freight elevator located within the Conference Center and owned by the Company together with the non-exclusive right of ingress, egress and regress through the Conference Center to provide access to the trash chute and freight elevator for the use of the Condominium and its Association of Unit Owners, units owners and their employees, agents, guests and invitees.

C. The parties hereby further AGREE:

1. Commonwealth and its successors, grantees and assigns, including the Condominium Association of Unit Owners, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Condominium which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

2. Company and its successors, grantees and assings, shall, subject to the terms and conditions hereof, promptly restore or cause to be restored substantially to the former condition, all or any portion of the Conference Center, which may be destroyed, injured, damaged, physically impaired or dislocated which are subject to any of the rights and easements established by this instrument.

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3. The parties agree to the following casualty insurance coverages:

(a) The Company shall, at its sole cost and expense, keep and maintain in force policies of insurance covering the Conference Center insuring against all risks of direct physical loss commonly insured against fire and extended coverage perils, the total amount of which insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Commonwealth, through the Association of Unit Owners of the Condominium, shall, at its sole cost and expense, keep and maintain in force policies of insurance on the common elements and units within the Condominium, exclusive of improvements and betterments installed in units by unit owners, insuring against all risks of direct physical loss commonly insured against fire coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(c) The parties agree that all such insurance shall be secured and maintained in a company or companies licensed to do business in the State of West Virginia and that each policy shall contain an agreed amount endorsement and waivers of subrogation as against the other

party and shall name both the owner of the Conference Center and the Unit Owners Association of the Condominium as additional insureds to the extent their interest may appear. The parties further agree to furnish each other with originals or copies of all such policies and to furnish at all times and maintain with each other at all times a certificate or certificates of the insurance carrier or carriers showing that such insurance is in full force and effect and certifying that the same will not be cancelled without at least 30 days advance written notice to each of the parties.

4. All easements established hereby and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the purposes for which such easements are granted or reserved. Any easements, rights and rights-of-way established hereunder shall be appurtenant to the estate benefited thereby, provided, however, that such easements, rights and rights-of-way shall be non-exclusive but shall also be for the benefit and the use of the burdened estate unless otherwise specified herein to the contrary.

5. In no event shall any reconstruction or replacement or other structural work which may be permitted hereunder upon notice (with the right to objection or otherwise) permanently and materially interfere with or impair or endanger the continuing rights to full support, access and essential or convenient services established by

this instrument.

6. Nothing in this instrument shall be deemed to permit any diminution or impairment of the area of or any right or title or ownership in and to any unit, or any portion thereof, by any unit owner of the Condominium now or hereafter vested by deed in any such unit owner without the consent of such unit owner; provided, changes in and to common elements or limited common elements (as defined in the Act) may be effected subject to the terms and conditions hereof. Subject only to the foregoing sentence, and notwithstanding anything to the contrary contained in this instrument or elsewhere to the contrary, the Executive Board of the Unit Owners Association of the Condominium containing any unit affected hereby shall be the only entity empowered to act and shall so act for and on behalf of any and all unit owners and holders of mortgages in the Condominium in matters pertaining to this instrument and the rights, remedies, duties and obligations established hereby.

7. Each party hereto agrees to repair, replace, restore and maintain all those portions of the Building and equipment in connection therewith owned by it unless otherwise mutually agreed upon.

8. The recording by Commonwealth of a declaration of condominium in accordance with the Act shall be deemed to be an assignment and transfer of Commonwealth's rights, privileges, duties, liabilities and obligations

herein established; provided, however, that this provision shall in no way affect or impair the obligations of Commonwealth to the Company under the provisions of the Agreement.

9. All rights, easements, covenants, obligations and restrictions set forth in this instrument are intended to run with the real estate consisting of the Conference Center and Condominium and pertain respectively and inure to the benefit of the estate and the owner intended to benefit thereby and to bind and charge the estate and owner intended to be bound thereby.

The conveyance of the Conference Center as aforesaid is made subject to the restriction that it will be used as a meeting/conference center with necessary kitchen, bar, restaurant and restroom facilities and for other lawful commercial purposes not inconsistent with the use of the Condominium as a residential apartment complex. This restriction shall be a covenant running with the land and improvements thereon.

Subject to the matters hereinbefore set forth and to the lien of real estate taxes for the year 1983, Commonwealth hereby WARRANTS GENERALLY the property hereby conveyed and covenants that the same is free and clear of all liens and encumbrances.

This conveyance is made as an exchange in kind for the conveyance made by the aforementioned Deeds.

Commonwealth hereby declares that the actual value

of the property transferred by this document is One Million
One Hundred Thousand Dollars (\$1,100,000).

IN WITNESS WHEREOF, The Commonwealth Group, a
partnership, has caused its name to be signed by John J. Kruse,
INTERESTS, INC., A CORP., a general partner, and to evidence
its agreement of its obligations undertaken hereunder,
Snowshoe Company, a corporation, has caused its corporate
name to be hereunto signed by its EXECUTIVE VICE PRESIDENT thereunto
duly authorized.

THE COMMONWEALTH GROUP

By John J. Kruse INTERESTS, INC.,
a corporation

A General Partner

By John J. Kruse
Its President

SNOWSHOE COMPANY, a West Virginia
corporation

By [Signature]
Its EXECUTIVE VICE PRESIDENT

STATE OF West Virginia,

COUNTY OF KANAWHA, To-Wit:

The foregoing instrument was acknowledged before
me this 10th day of NOVEMBER, 1982, by JOHN J.
KRUSE, the President of JOHN J. KRUSE
INTERESTS, INC., A CORP., a general partner, on behalf of the
corporation and the partnership.

My commission expires APRIL 6, 1991.

Thomas J. Feller
Notary Public
at-large

(SEAL)

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STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, To-Wit:

The foregoing instrument was acknowledged before
me this 10th day of November, 1982, by Joseph F.
President, the Executive Vice President
of SNOWSHOE COMPANY, a corporation, on behalf of the corporation.

My commission expires December 5, 1987


Notary Public

This instrument was prepared by Thomas E. Potter,
Attorney at Law, 1500 One Valley Square, Charleston, West
Virginia 25301.

WEST VIRGINIA
POCAHONTAS COUNTY CLERK'S OFFICE

November 12, 1982

This instrument was this day presented to me in my office, and
thereupon, together with the certificate thereto annexed, is admitted
to record.

Teste: Hildreth J. Meadows Clerk

FILED

1982 NOV 12 PM 2:08

POCAHONTAS CO. CLERK
MARLINTON, WEST VA.

692

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION
a West Virginia unincorporated non-profit association,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 20-C-24
The Honorable Robert A. Richardson

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant/Counterclaim Plaintiff.

CERTIFICATE OF SERVICE

I, Mark A. Sadd, counsel for the Mountain Lodge Association, hereby certify that on the 29th of January, 2021, I caused the foregoing **THE MOUNTAIN LODGE ASSOCIATION'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** to be served electronically *via* West Virginia E-Filing to the following:

Seth P. Hayes, Esq.
Dale H. Harrison, Esq.
JACKSON KELLY PLLC
150 Clay Street, Suite 500
Morgantown, WV 26501
shayes@jacksonkelly.com
Counsel for Defendant/Counterclaim Plaintiff

/s/ Mark A. Sadd
Mark A. Sadd

EXHIBIT 6

Case Docket Entries

CC-38-2020-C-24

| | | | |
|------------------------------------|--------------------------------|--|-------------------------------|
| Court: Circuit | County: 38 - Pocahontas | Created Date: 7/17/2020 | Security Level: Public |
| Judge: Robert E. Richardson | Case Type: Civil | Case Sub-Type: Declaratory Judgment | Status: Open |

Related Cases:

Style: **THE MOUNTAIN LODGE ASSOCIATION v. SNOWSHOE MOUNTAIN INC.**

| | <u>Entered Date</u> | <u>Event</u> | <u>Ref. Code</u> | <u>Description</u> |
|----|-----------------------|--|------------------|---|
| 1 | 7/17/2020 | Conversion | | CIVIL COMPLAINT FOR DECLARATORY RELIEF FILED BY MARK SADD, ESQ. |
| | 1-1 7/17/2020 | Other | | |
| 2 | | Conversion | | SUMMONS/COMPLAINT FWD TO MR. SADD'S OFFICE PER HIS REQUEST FOR |
| 3 | | Conversion | | SERVICE BY S.O.S. |
| 4 | 7/17/2020 | Conversion | | CLK'S RECEIPT #35856 ISSUED TO LEWIS GLASSER PLLC IN THE AMT |
| | 4-1 7/17/2020 | Other | | |
| 5 | | Conversion | | OF \$200.00 FOR FILING FEE. |
| 6 | 7/30/2020 | Conversion | | ACCEPTANCE OF SERVICE RCVD FROM S.O.S. DATED 7/24/20. |
| | 6-1 7/30/2020 | Other | | |
| 7 | 8/7/2020 | Conversion | | PROOF OF SERVICE PRINTED OFF OF THE S.O.S. SITE FOR SNOWSHOE |
| | 7-1 8/7/2020 | Other | | |
| 8 | | Conversion | | MOUNTAIN INC. |
| 9 | 8/19/2020 | Conversion | | AGREED STIPULATION FILED BY SETH P. HAYES, ESQ. |
| | 9-1 8/19/2020 | Other | | |
| 10 | 9/11/2020 9:05:53 AM | Attorney Listed | D-001 | A-10381 - Seth Patrick Hayes |
| 11 | 9/11/2020 12:34:28 PM | E-Filed | | Motion - Other |
| | 11-1 9/11/2020 | Motion - to Dismiss | | |
| | 11-2 9/11/2020 | Transmittal | | |
| 12 | 9/11/2020 12:36:36 PM | E-Filed | | Supporting Documents - Memorandum of Law in Support of Motion to Dismiss |
| | 12-1 9/11/2020 | Supporting Document - Memorandum of Law in Support | | |
| | 12-2 9/11/2020 | Transmittal | | |
| 13 | 9/11/2020 12:47:12 PM | E-Filed | | Supporting Documents - Exhibit A to Memo of Law in Support of Motion to Dismiss |
| | 13-1 9/11/2020 | Exhibit - Exhibit A | | |
| | 13-2 9/11/2020 | Transmittal | | |
| 14 | 9/11/2020 12:48:46 PM | E-Filed | | Supporting Documents - Exhibit B to Memo of Law in Support of Motion to Dismiss |
| | 14-1 9/11/2020 | Exhibit - Exhibit B | | |
| | 14-2 9/11/2020 | Transmittal | | |
| 15 | 9/11/2020 12:55:21 PM | E-Filed | | Supporting Documents - Exhibit C to Memo of Law in Support of Motion to Dismiss |
| | 15-1 9/11/2020 | Exhibit - Exhibit C Part 1 | | |
| | 15-2 9/11/2020 | Transmittal | | |
| 16 | 9/11/2020 12:58:05 PM | E-Filed | | Supporting Documents - Exhibit C Part 2 of 2 to Memo of Law in Support of Motion to Dismiss |
| | 16-1 9/11/2020 | Exhibit - Exhibit C Part 2 of 2 | | |
| | 16-2 9/11/2020 | Transmittal | | |
| 17 | 9/23/2020 1:23:59 PM | E-Filed | | Notice of Motion Hearing - Notice of Hearing on Defendant's Motion to Dismiss |

Case Docket Entries

CC-38-2020-C-24

| | <u>Entered Date</u> | <u>Event</u> | <u>Ref. Code</u> | <u>Description</u> |
|----|------------------------|---|------------------|--|
| | 17-1 9/23/2020 | Notice of Motion Hearing - Hearing Notice on Defendant's Motion to Dismiss | | |
| | 17-2 9/23/2020 | Transmittal | | |
| 18 | 10/6/2020 3:34:59 PM | E-Filed | | Supporting Documents - Mountain Lodge Association's First Amended Complaint |
| | 18-1 10/6/2020 | Other - Mountain Lodge Association's First Amended Complaint | | |
| | 18-2 10/6/2020 | Exhibit - Exhibit A-1 | | |
| | 18-3 10/6/2020 | Exhibit - Exhibit A-2 | | |
| | 18-4 10/6/2020 | Exhibit - Exhibit B | | |
| | 18-5 10/6/2020 | Transmittal | | |
| 19 | 10/16/2020 11:09:53 AM | E-Filed | | Motion - Other |
| | 19-1 10/16/2020 | Motion - Exceed Page Limit | | |
| | 19-2 10/16/2020 | Transmittal | | |
| 20 | 10/16/2020 11:26:08 AM | E-Filed | | Motion - Motion to Dismiss |
| | 20-1 10/16/2020 | Motion - To Dismiss Amended Complaint | | |
| | 20-2 10/16/2020 | Transmittal | | |
| 21 | 10/16/2020 11:28:38 AM | E-Filed | | Supporting Documents - Memorandum of Law in Support of Motion to Dismiss Amended Complaint |
| | 21-1 10/16/2020 | Supporting Document - Memorandum of Law in Support | | |
| | 21-2 10/16/2020 | Transmittal | | |
| 22 | 10/16/2020 11:30:59 AM | E-Filed | | Supporting Documents - Exhibit A |
| | 22-1 10/16/2020 | Exhibit - Exhibit A to MOL in Support of Motion to Dismiss Amended Complaint | | |
| | 22-2 10/16/2020 | Transmittal | | |
| 23 | 10/16/2020 11:32:53 AM | E-Filed | | Supporting Documents - Exhibit B |
| | 23-1 10/16/2020 | Exhibit - Exhibit B to MOL in Support of Motion to Dismiss Amended Complaint | | |
| | 23-2 10/16/2020 | Transmittal | | |
| 24 | 10/16/2020 12:25:36 PM | E-Filed | | Order - Motion - ORDER GRANTING DEFENDANT'S MOTION TO EXCEED PAGE LIMIT |
| | 24-1 10/16/2020 | Order - ORDER GRANTING DEFENDANT'S MOTION TO EXCEED PAGE LIMIT | | |
| | 24-2 10/16/2020 | Transmittal | | |
| 25 | 10/16/2020 1:42:18 PM | E-Filed | | Supporting Documents - Agreed Stipulation Regarding Service |
| | 25-1 10/16/2020 | Other - Stipulation | | |
| | 25-2 10/16/2020 | Transmittal | | |
| 26 | 10/22/2020 1:51:51 PM | E-Filed | | Motion Response - Response |
| | 26-1 10/22/2020 | Motion Response - Pl Mountain Lodge In Opposition to Def MTD | | |
| | 26-2 10/22/2020 | Supporting Document - Out of Jurisdiction case | | |
| | 26-3 10/22/2020 | Supporting Document - Out of Jurisdiction Case | | |
| | 26-4 10/22/2020 | Supporting Document - Out of Jurisdiction Case | | |
| | 26-5 10/22/2020 | Transmittal | | |
| 27 | 10/22/2020 1:56:18 PM | E-Filed | | Motion - Other |
| | 27-1 10/22/2020 | Motion - Rule 56(f) Motion | | |
| | 27-2 10/22/2020 | Supporting Document - Exhibit A | | |
| | 27-3 10/22/2020 | Transmittal | | |
| 28 | 10/23/2020 10:44:20 AM | E-Filed | | Supporting Documents - Notice of Hearing for Rule 56(F) Motion |
| | 28-1 10/23/2020 | Other - Notice of Hearing Rule 56(F) Motion | | |
| | 28-2 10/23/2020 | Transmittal | | |
| 29 | 10/26/2020 1:38:31 PM | E-Filed | | Notice of Motion Hearing - Rule 56(F) Affidavit and Motion for Additional Discovery |
| | 29-1 10/26/2020 | Notice of Motion Hearing - Notice of Hearing Rule 56(F) Affidavit and Motion for Additional Discovery | | |
| | 29-2 10/26/2020 | Transmittal | | |
| 30 | 11/11/2020 3:12:57 PM | E-Filed | | Order - Case - Agreed Scheduling Order |
| | 30-1 11/11/2020 | Order - Agreed Scheduling Order | | |
| | 30-2 11/11/2020 | Supporting Document - Agreed Scheduling Order | | |

Case Docket Entries

CC-38-2020-C-24

| | <u>Entered Date</u> | <u>Event</u> | <u>Ref. Code</u> | <u>Description</u> |
|----|------------------------|--|------------------|--|
| | 30-3 11/11/2020 | Transmittal | | |
| 31 | 11/16/2020 12:44:32 PM | E-Filed | | Answer - Complaint Denied |
| | 31-1 11/16/2020 | Civil Case Information Statement | | |
| | 31-2 11/16/2020 | Answer - Answer to Amended Complaint and Counterclaim | | |
| | 31-3 11/16/2020 | Counterclaim - Answer to Amended Complaint and Counterclaim | | |
| | 31-4 11/16/2020 | Transmittal | | |
| 32 | 11/16/2020 12:47:21 PM | E-Filed | | Certificate of Service - Re: Defendant's First Set of Discovery Requests to Plaintiff |
| | 32-1 11/16/2020 | Certificate of Service - Defendant's First Set of Discovery Requests to Plaintiff | | |
| | 32-2 11/16/2020 | Transmittal | | |
| 33 | 11/30/2020 2:47:14 PM | E-Filed | | Supporting Documents - Plaintiff's Fact Witness Disclosure |
| | 33-1 11/30/2020 | Other - Plaintiff's Fact Witness Disclosure | | |
| | 33-2 11/30/2020 | Transmittal | | |
| 34 | 11/30/2020 2:47:14 PM | Attorney Listed | P-001 | A-12663 - Andrew Winkler Holbrook |
| 35 | 12/2/2020 3:09:47 PM | E-Filed | | Certificate of Service - COS-Plaintiffs First Set of Interrogatories, RFP & RFA to Defendant |
| | 35-1 12/2/2020 | Certificate of Service - COS-Plaintiffs First Set of Interrogatories, RFP & RFA to Defendant | | |
| | 35-2 12/2/2020 | Transmittal | | |
| 36 | 12/3/2020 3:07:23 PM | E-Filed | | Supporting Documents - Stipulation for Extension of Time |
| | 36-1 12/3/2020 | Other - Stipulation for Extension of Time | | |
| | 36-2 12/3/2020 | Transmittal | | |
| 37 | 12/3/2020 3:07:23 PM | Attorney Listed | P-001 | A-6927 - Ramonda C. Marling |
| 38 | 12/3/2020 3:07:23 PM | Attorney Listed | D-001 | A-6927 - Ramonda C. Marling |
| 39 | 12/15/2020 10:25:45 AM | E-Filed | | Supporting Documents - Defendant's Fact Witness Disclosure |
| | 39-1 12/15/2020 | Other - Defendant's Fact Witness Disclosure | | |
| | 39-2 12/15/2020 | Transmittal | | |
| 40 | 12/16/2020 1:53:24 PM | E-Filed | | Certificate of Service - COS-Plaintiff Mountain Lodge Association's Responses to Snowshoe Mountain First Set of Discovery Requests |
| | 40-1 12/16/2020 | Certificate of Service - COS-Plaintiff Mountain Lodge Association's Responses to Snowshoe Mountain First Set of Discovery Requests | | |
| | 40-2 12/16/2020 | Transmittal | | |
| 41 | 12/18/2020 3:25:49 PM | E-Filed | | Certificate of Service - COS-Plaintiff The Mountain Lodge Association's Supp Resp to Def Snowshoe Mountain, Inc.'s First Set of Discovery Requests |
| | 41-1 12/18/2020 | Certificate of Service - COS-Plaintiff The Mountain Lodge Association's Supp Resp to Def Snowshoe Mountain, Inc.'s First Set of Discovery Requests | | |
| | 41-2 12/18/2020 | Transmittal | | |
| 42 | 12/18/2020 5:16:15 PM | E-Filed | | Supporting Documents - Discovery Responses |
| | 42-1 12/18/2020 | Other - MLA's Responses and Objections to Discovery Requests | | |
| | 42-2 12/18/2020 | Transmittal | | |
| 43 | 12/18/2020 5:26:08 PM | E-Filed | | Supporting Documents - Notice of Hearing on Discovery Objections |
| | 43-1 12/18/2020 | Other - Notice of Hearing on Discovery Objections | | |
| | 43-2 12/18/2020 | Transmittal | | |
| 44 | 12/21/2020 10:41:03 PM | E-Filed | | Motion - Motion to Dismiss |
| | 44-1 12/21/2020 | Motion - Motion to Dismiss Counterclaim | | |
| | 44-2 12/21/2020 | Transmittal | | |
| 45 | 12/21/2020 10:42:44 PM | E-Filed | | Supporting Documents - Exhibit 1 to Motion to Dismiss Counterclaim |
| | 45-1 12/21/2020 | Exhibit - Exhibit 1 to Motion to Dismiss Counterclaim | | |
| | 45-2 12/21/2020 | Transmittal | | |

Case Docket Entries

CC-38-2020-C-24

| | <u>Entered Date</u> | <u>Event</u> | <u>Ref. Code</u> | <u>Description</u> |
|----|------------------------|--|------------------|--|
| 46 | 12/21/2020 10:44:02 PM | E-Filed | | Supporting Documents - Exhibit 2 to Motion to Dismiss Counterclaim |
| | 46-1 12/21/2020 | Other - Exhibit 2 to Motion to Dismiss Counterclaim | | |
| | 46-2 12/21/2020 | Transmittal | | |
| 47 | 12/22/2020 10:37:16 AM | E-Filed | | Motion - Motion to Dismiss |
| | 47-1 12/22/2020 | Motion - Plaintiff The Mountain Lodge Association's MTD Defendant Snowshoe Mountain Inc.'s Counterclaim | | |
| | 47-2 12/22/2020 | Transmittal | | |
| 48 | 12/23/2020 12:08:36 PM | E-Filed | | Supporting Documents - Notice of Cancellation of Hearing |
| | 48-1 12/23/2020 | Other - Notice of Cancellation of Hearing | | |
| | 48-2 12/23/2020 | Transmittal | | |
| 49 | 1/4/2021 3:15:16 PM | E-Filed | | Certificate of Service - Snowshoe's Responses to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admissions |
| | 49-1 1/4/2021 | Certificate of Service - Snowshoe's Responses to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admissions | | |
| | 49-2 1/4/2021 | Transmittal | | |
| 50 | 1/5/2021 4:18:25 PM | E-Filed | | Certificate of Service - Defendant Snowshoe Mountain, Inc.'s Notice of 30(b)(7) Deposition of The Mountain Lodge Association |
| | 50-1 1/5/2021 | Certificate of Service - Notice of 30(b)(7) Deposition | | |
| | 50-2 1/5/2021 | Transmittal | | |
| 51 | 1/6/2021 4:03:40 PM | E-Filed | | Certificate of Service - Defendant Snowshoe Mountain, Inc.'s Second Set of Discovery Requests to Plaintiff The Mountain Lodge Association |
| | 51-1 1/6/2021 | Certificate of Service - Def's 2nd Set of Discovery Requests to Plaintiff | | |
| | 51-2 1/6/2021 | Transmittal | | |
| 52 | 1/15/2021 11:03:12 AM | E-Filed | | Certificate of Service - COS -Pls Disclosure of Expert Witnesses & a Summary of Opinions |
| | 52-1 1/15/2021 | Certificate of Service - COS -Pls Disclosure of Expert Witnesses & a Summary of Opinions | | |
| | 52-2 1/15/2021 | Transmittal | | |
| 53 | 1/19/2021 5:48:56 PM | E-Filed | | Order - Case - AGREED PROTECTIVE ORDER |
| | 53-1 1/19/2021 | Order - AGREED PROTECTIVE ORDER | | |
| | 53-2 1/19/2021 | Supporting Document - AGREED PROTECTIVE ORDER | | |
| | 53-3 1/19/2021 | Transmittal | | |
| 54 | 1/21/2021 11:11:04 AM | E-Filed | | Certificate of Service - Defendant Snowshoe Mountain, Inc.'s First Supplement to Plaintiff's First Set of Interrogatories and Request for Production |
| | 54-1 1/21/2021 | Certificate of Service - Def's 1st Supplement to Pl's 1st Set of Discovery Requests | | |
| | 54-2 1/21/2021 | Transmittal | | |
| 55 | 1/26/2021 11:25:39 AM | E-Filed | | Motion - Strike |
| | 55-1 1/26/2021 | Motion - Motion to Strike Experts | | |
| | 55-2 1/26/2021 | Transmittal | | |
| 56 | 1/26/2021 11:28:57 AM | E-Filed | | Supporting Documents - Exhibit 'A' to Motion to Strike Experts |
| | 56-1 1/26/2021 | Exhibit - A | | |
| | 56-2 1/26/2021 | Transmittal | | |
| 57 | 1/28/2021 11:24:56 AM | E-Filed | | Notice of Case Hearing - Notice of Hearing re: Snowshoe's Motion to Strike Plaintiff's Experts |
| | 57-1 1/28/2021 | Notice of Case Hearing - Notice | | |
| | 57-2 1/28/2021 | Transmittal | | |

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

THE MOUNTAIN LODGE ASSOCIATION
a West Virginia unincorporated non-profit association,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 20-C-24
The Honorable Robert A. Richardson

SNOWSHOE MOUNTAIN, INC.,
a West Virginia corporation,

Defendant/Counterclaim Plaintiff.

CERTIFICATE OF SERVICE


I, Ramonda C. Marling, counsel for the Mountain Lodge Association, hereby certify that on the 29th of January, 2021, I caused the foregoing **MOTION TO REFER TO THE BUSINESS COURT DIVISION** to be served electronically *via* West Virginia E-Filing and by U.S. Mail to the following:

Seth P. Hayes, Esq.
Dale H. Harrison, Esq.
JACKSON KELLY PLLC
150 Clay Street, Suite 500
Morgantown, WV 26501

Judge Robert E. Richardson
Greenbrier County Courthouse
912 Court Street North
Lewisburg, WV 24901

Connie Carr
Pocahontas County Circuit Clerk
900 Tenth Avenue
Marlinton, WV 24954

Lorri Stotler, Administrative Assistant
Business Court Division
Berkeley County Judicial Center
380 W. South Street, Suite 2100
Martinsburg, WV 25401


Ramonda C. Marling