

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OWNERSHIP OF TRAIN SHARES ("Declaration")

### ARTICLE I - DESCRIPTION AND TRAIN SHARE PLAN

1. This Declaration is for a Train Share Plan that dedicates the train Cars described in **Exhibit "A"** for the use of Train Share Buyers/Owners and Passengers
2. By this Declaration, the Developer does establish a plan ("Plan") for the sale of Train Shares in individual Private Cars and in Cars that travel together as a Train Set. This Declaration describes the degree, quantity, nature, extent, use, enjoyment, maintenance, management and operation of Cars, the Train Shares, the interests therein conveyed or reserved, and for the payment of certain operating, administrative and other expenses pertaining thereto. The Plan shall become effective on the date that this Declaration is executed by the Developer.
3. Cars and Train Share ownership are governed by provisions of the Governing Instruments as administered by the Association. The Association has and will have exclusive rights to and for the possession, use, access, operation, management and control of present, future, Additional and Alternative Cars. During their Initial and/or Perpetual Term of ownership, Train Share Owners do not acquire title ownership to Cars but do receive a right to occupy and use Cars during specific Time Periods as provided for in this Declaration. The Association acts as a fiduciary for Owners and assumes rights to Cars and responsibility for the administration of related Owner rights on their behalf. As members of the Association each Owner has rights to Cars and other assets held by the Association to an extent equal to their Owner Percent Right. If Association assets, including Cars, are subject to liquidation proceedings, Owners have rights to net proceeds subject to prior rights of Car lessors, charterers, lien holders, mortgagees, the Developer or its assign(s) as to any portion of the Train Share Purchase Price that has not yet been received by the Developer, which may include some Train Share Owners pursuant to related specific written agreements.
4. Car owners or their assigns may have a mortgage, lien or other first rights to a Car pursuant to and as limited by Owner non-disturbance and related rights to use and occupy a Car. If a party to Use Rights Agreements, the Developer agrees to related provisions of this Declaration and other Governing Instruments. Continuing changes in the availability of individual types of Cars provides an opportunity for the Association to, from time to time, acquire rights to newly obtainable Alternative Cars that will replace existing Cars permanently or on an interim basis because they offer economic, operational and Passenger service benefits; whether acquired, chartered or leased.
5. Laws and regulations governing the operation, maintenance and occupancy of train passenger Cars, are and will be minimally those of the United States, and shall include laws and regulations of other Countries or jurisdictions where Cars operate or visit. This shall include related compliance with Amtrak in the United States, VIA Rail in Canada, additional future jurisdictions in which Cars operate, and freight or other railroad companies that operate trains that Train Share Cars are a part of.
6. It is hereby declared that rights and interests in Train Shares and for related Car use and occupancy shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, used, occupied, operated and managed subject to the covenants, conditions and restrictions set forth in this Declaration, as they may be amended, and subject to other Governing Instruments, all of which are declared to be in furtherance of the Plan established for the purpose of uniformly enhancing the value, attractiveness, desirability and enjoyment of Train Share rights or interests therein to be conveyed or reserved. The provisions of this Declaration and other Governing Instruments shall attach to Train Shares and shall be binding upon the Developer and any future Developers, the Association and each such Train Share interest conveyed, and upon and for the benefit of all parties having or acquiring any right, title, interest or estate in a Train Share, including, but not limited to, the heirs, executors, administrators, successors and assigns of any such parties and all subsequent Owners or lessees thereof, in whole or in part.
7. Train Share Owners acknowledge and agree that the provisions of this Declaration are an integral part of conditions attached to ownership of Train Shares, whether or not specifically referred to in the purchase agreement.
8. The undersigned Developer, America's Train's Inc., a Wyoming corporation, does hereby submit this Declaration to be the rights and obligations of Owners of Train Share interests in Cars in accordance with the provisions set forth herein.
9. Capitalized text and phrases in this Declaration are further defined in the definitions set forth in Article II of this Declaration and should be referred to as required for clarification and as may otherwise enhance the meaning of Declaration provisions.
10. Unless otherwise stated, all dollar amounts in this Declaration are United States currency.

### ARTICLE II - DEFINITIONS

Contents of this Article constitute and are conditions of and in this Declaration, whether or not further reference to them occurs. The terms used in this Declaration and in its exhibits, including the Articles of Incorporation and Bylaws of the Association, shall be defined and have the meanings as follows unless the context otherwise requires:

1. **Additional Cars** shall mean additional Cars that are added to the already available Cars from time to time, at the option of the Developer or Association, thereby increasing the total number of Cars, Rooms and Train Shares if Additional Cars have Rooms.
2. **Adjusted Journey Use Fees** are Journey Use Fees after adjustments for varying Journey route mileage and layover costs; see Journey Use Fees.
3. **AEI (Automatic Equipment Identification) number.** AEI tags are attached to both sides of every Car that electronically record the location of the Car on tracks throughout the United States, for safety and administrative purposes.
4. **All Train Shares** shall mean the combined total number of Train Shares already sold plus the number of unsold Train Shares remaining and currently being offered for sale by the Developer. The number of All Train Shares may increase at such time as Additional Cars or Alternative Cars with Rooms are introduced.
5. **Alternative Cars** shall mean a Car that the Developer and/or Association acquires to replace an existing or anticipated Car. Because different Cars may become available under preferred terms and conditions, or because they may provide economic, operating or other benefits, the Developer and/or Association have the right, at their sole discretion, to replace a Car with an Alternative Car if actual or expected Owner services, costs and benefits are not diminished.
6. **Alternative Time Period** shall mean a Time Period, other than a Designated Time Period, acquired by an Owner from the Space Available List or otherwise, that includes all or some of the Journey Nights otherwise included in a Designated Time Period.
7. **Amtrak** shall mean the United States National Railroad Passenger Corporation. Amtrak issues a different 800000 number for each privately owned Amtrak approved rail Car.
8. **Annual Report** shall mean an annual financial report prepared by the Association each year describing the financial business and affairs of the Association and Cars for the preceding Fiscal Year.
9. **Annual Train Share** means a Train Share that gives Owners the right to Journeys by Rail every year.
10. **Articles of Incorporation** shall mean the Articles of Incorporation of the Association as they may be amended from time to time.
11. **Assigned Room Category** shall mean the Room Category selected by a Train Share Buyer that such Buyer can occupy during annual or biennial Journeys by Rail on the Buyer's Specified Car during the Buyer's Designated Time Period.
12. **Association** shall mean Train Share Owners Association, Inc., a Texas not-for-profit corporation, having rights to and that is responsible for the operation of Cars and management of a Reservation System, directly or through a Management Company. The Association is the managing entity of the Plan. All Owners automatically become a Member of the Association upon the acquisition of a Train Share. The Developer, for purposes of all unsold Train Shares is a Member of the Association.
13. **Association Management Agreement** shall mean the agreement between the Association and any Management Company which enumerates the parties' respective duties and obligations for the management of the business of the Association and operation or maintenance of Cars, including, without limitation, the Reservation System.
14. **Association Management Company** shall mean an entity with which the Association has signed an Association Management Agreement, if any.
15. **Association Registry or Registry** is a register managed by the Association in which Train Share Deeds and ownership records are maintained. It is overseen by the Registrar. The Association Registry is maintained at the principal place of business of the Association. The Registrar is responsible for maintaining accurate and up to date Owner information in the Registry, which may include the registration or filing of names of Owners with a government agency as the Association deems appropriate or required by government regulations or law. Registry information is confidential and shall not be disseminated in any manner whatsoever except as provided for in this Declaration and as required by law.
16. **Biennial Train Share** means a Train Share that gives Owners the right to Journeys by Rail every odd or even other year.
17. **Board** shall be the Board of Directors of the Association. The Board shall be responsible for and have full authority to perform the responsibilities and obligations of the Association as set forth in this Declaration, Bylaws and other Governing Instruments.
18. **Boarding Time** shall mean the time established by the Association that any Owner or other Passenger can or must board Cars prior to a Journey by Rail and after layovers (stops) during Journeys.
19. **Budget** shall mean an Estimated Operating Budget for expected management and operating costs and expenses and the subsequent calculation of Journey Use Fees, to be prepared by the Association for each Fiscal Year by the 30<sup>th</sup> day of October for the forthcoming Fiscal Year. A Budget may be revised during and for the remainder of the applicable Fiscal Year to reflect reasonable unexpected increased or decreased expenses or costs pursuant to provisions of this Declaration.
20. **Buyer** shall mean an Owner that purchased a Train Share from the Developer, which excludes the Developer as the Owner of unsold Train Shares.

21. Bylaws shall mean the Bylaws of the Association attached hereto as they may be amended from time to time.
22. Cars(s) shall mean any and all Private and other Train'Share rail Cars as described in Exhibit "A" to this Declaration. To better provide Journey by Rail service, improve operating economics, increase the number or change the category of Rooms available for sale as Train'Shares, comply with mechanical requirements, deal with operating limitations, make adjustments based on the availability of Cars, and to further enhance the characteristics of Journeys by Rail, Additional Cars may be acquired and existing Cars may be replaced by Alternative Cars from time to time, on a permanent or temporary basis at the discretion of the Developer and/or Association. Alternative Cars must offer characteristics and service equal or better than former Cars and at no time will the available number of Rooms or Cars be lower than the number sold as Train'Shares.
23. Car Owner shall mean the owner of a Car or other authorized party that assigns use rights to the Association pursuant to a Car Use Rights Agreement.
24. Car Use Rights Agreement shall mean that certain agreement(s) between the Association, Developer and Car suppliers, sources and owners or other authorized providers of cars describing the Association's rights and obligations with respect to the use of Cars. Including, but not limited to, outright Car purchases, financed Car purchases, Car charters, Car leases and Car rentals.
25. Closing Costs shall mean an amount which the Developer is authorized to establish that is paid by Train'Share buyers at the time a Purchase Agreement is signed to cover costs associated with Escrow Company, Deed issuance, ownership registration, contract finalization, sales taxes (if any), and other related administrative and management matters. Distribution of Closing Cost funds shall be governed by the same procedures applied to Purchase Price payments received for the purchase of Train'Shares. Recipients of distributions of Closing Cost funds from shall be determined at the sole discretion of the Developer. Closing Cost payments are deemed earned when paid and are not refundable for any reason.
26. Commercial Journey by Rail, also Individual Journey by Rail, shall mean a vacation taken in Train'Share Cars by a person that does not use a Journey by Rail owned by a Train'Share buyer.
27. Commercial Train Fare shall mean the full brochure, retail price (before discounts) established by the Developer that is paid by non Train'Share Owners (excluding Permitted and Exchange Users) to acquire an Individual Journey by Rail, which is also the full retail fare suggested by the Association for Owners that want to rent their Train'Shares.
28. Commercial Unit shall mean a Train'Share and associated Journeys by Rail, together with all related rights, acquired by a travel industry business, travel club, vacation club, timeshare group or similar entity for a commercial purpose that is first consented to in writing by the Developer at the time that respective Train'Shares are sold/purchased. Commercial Unit Owners shall be entitled to all rights and benefits and be responsible for all obligations applicable to other Owners under this Declaration.
29. Common Areas shall mean all of the public areas on Cars as determined by the Developer. Common Areas exclude Rooms and Restricted Areas.
30. Common Surplus shall mean any excess of all receipts of the Association over the amount of the Journey Use Fees for a Fiscal Year.
31. Conductor shall mean a person designated by Amtrak or other railroad that is providing locomotives (engines) to pull Cars, who is in charge of and responsible for management of related train operations and the overseeing of Cars during Journeys by Rail and otherwise when Passengers or visitors are on board.
32. Conversion Date shall mean the date on which 90% of the cumulative number of all Train'Shares related to original and Additional Cars have been sold by the Developer.
33. Crew shall mean any and all personnel hired by a Management Company or the Association to perform operating, maintenance or Passenger service functions in support of Car operations.
34. Crew Chief shall mean the senior employee in charge of Train Set and Car operations whom is in charge of relates operations during Journeys by Rail operations, in compliance with requirements of Amtrak or other railroads that provide locomotives (engines) to pull Train sets and Cars pursuant to their policies, and guidance from their Conductor, if any.
35. Declaration shall mean this Declaration of Covenants, Conditions and Restrictions for Ownership of Train'Shares, as it may lawfully be amended from time to time, pursuant to the provisions hereof.
36. Deed is that certain Deed of Train'Share Ownership issued by the Association that conveys and grants title in and to a Train'Share. A Deed is not valid unless the ownership thereof is on file at the Association Registry. A Train'Share Deed shall convey rights to use a Room and occupy Cars and does not convey any ownership interest in or title to Cars.
37. Deed Date shall mean the date on which the original buyer of a Train'Share is registered as an Owner in the Association Registry, as provided for in the Purchase Agreement which shall be the date on which the Deed is recorded in the Registry or 14 days after the Closing Date, whichever occurs first.
38. Deed Statement shall mean a written statement executed before a notary public by a Deed transferor and transferee that notifies the Association Registrar of the name and address of a Deed transferee and transferor, the specific date upon which the sale or transfer is to be consummated, to be no less than 14 days after the date that the Deed Statement is delivered to the Registrar, the purchase price to be paid by the transferee for such Train'Share, a statement by the transferee stating that the transferee has received and acknowledges receipt of, from the transferor, a copy of this Declaration and all other Governing Instruments, and a signed confirmation from and stating that the transferee agrees to be bound by all of the provisions of the Governing Instruments.
39. Delayed Journeys or Delayed Journeys by Rail shall mean any Journey by Rail that has been postponed until a future year, if and as permitted.
40. Departure Date shall mean the day and date that a Journey by Rail departs and is normally the same as the first day of the Designated Time Period attached to specific Train'Shares, or an alternative first date of any other Journey that an Owner may reserve.
41. Designated Time Period shall mean the Time Period selected by a Train'Share Buyer (Owner) during which Buyer can take Annual or Biennial Journeys by Rail in an Assigned Room Category on a Specified Car. Designated Time Periods are for and include seven Journey Nights, unless otherwise specifically determined by the Board. There are 48 annual Time Periods during which Journeys by Rail occur. Owners have the right to take Journeys by Rail in other available Time Periods.
42. Detained User shall mean a person prevented from using a Room or Car for any portion of a Journey by Rail due to unauthorized use of or the inhabitation of such Room or any portion of the Common Area.
43. Detaining User shall mean an Owner, or Permitted User that fails to vacate a Room and/or Car at the end of any Journey by Rail or that acts in such manner as to be the cause of a Detained User.
44. Developer shall mean America's Trains Inc. and its successors and assigns.
45. Disembark Time shall mean the time established by the Association when Passengers must leave and disembark Rooms and Cars after a Journey by Rail.
46. Early Use shall mean a Journey by Rail for a future year that is used at an earlier time, in advance of such year, pursuant to Governing Instrument provisions. Early Use Journeys by Rail are selected from the Space Available List. Journey Use Fees for such Journeys by Rail must be paid by the time an Early Use Reservation is made or as otherwise provided for in this Declaration.
47. Engine shall mean the train locomotive/engine having rights on different rail tracks that is pulling and to which a Private Car or Train Set is attached. Engines may be operated by Amtrak, VIA Rail, Short Lines or other railroad companies.
48. Escrow Account shall mean a bank account maintained by an Escrow Company into which Train'Share Purchase Price payments may be deposited.
49. Escrow Agent shall mean the person designated by an Escrow Company to manage Train'Share business matters.
50. Escrow Company shall mean a licensed, bonded escrow entity that complies with applicable laws and regulations in jurisdictions where Train'Share sales are made with whom the Developer has signed an Escrow Agreement and that maintains an Escrow Account.
51. Exchange Company shall mean the company (or companies) that provides an Exchange Program and may be exclusively in the timeshare business, a timeshare organization, vacation club, or equivalent entity.
52. Exchange Program, also referred to as the External Exchange Program, shall mean an independent service provided by one or more designated Exchange Company(ies) as may, or may not, be arranged for by the Association allowing Owners to exchange Train'Shares for land based timeshare, cruise and other vacations, or for other accommodations, goods or services (if available) at the option of Owners. An Exchange Program may provide for the direct exchange of comparable value vacations, a predetermined number of exchange points to Exchange Program use rights, or otherwise provide a means to facilitate exchanges. Owners are solely responsible for all matters related to their association with or participation in an Exchange Program and for payment of all membership fees and costs to the external Exchange Company.
53. Exchange User is a person acquiring and using a Journey by Rail, other than the Train'Share Owner, coming from an external Exchange Program.
54. Exclusive Private Car shall mean a Private Car that is exclusively used by a single Train'Share Owner or permitted passengers.
55. Extended Term shall mean, upon the mutual agreement of Owner and Developer for a fee to be paid by Owner to the Developer, the conversion of an Initial Term to a Perpetual Term of Train'Share ownership that starts at the end of the last day of the Initial Term and when the Extended Term is paid for in full, continuing as a Perpetual Term for the life of a Train Set or Car, or alternative replacement Cars as the Association may determine.
56. Fee(s) shall mean, but is not limited to, Journey Use Fees and other fees that may be charged to Owners as the Association determines from time to time as may be described in the Rules.
57. Fiscal Year shall mean and be each calendar year.
58. Fuel Surcharge, if any, is an amount that may be included in the Journey Use Fee payable to the Association to pay for direct fuel cost and fuel related service charge increases that are in excess of amounts included in a current Budget because of unexpectedly high costs of fuel and petroleum products, including but not limited to, higher costs charged by Amtrak, VIA Rail or Short

Lines for Engines to pull the Car and/or for fuel and oil products used for Car maintenance and in Car electrical generators. A Fuel Surcharge shall be for the period of time that costs remain higher than anticipated or until a new Fiscal Year Budget reflects higher continuing related expenses, in an amount determined at the sole discretion of and by the Board.

59. Furnishings and Equipment shall mean machinery, parts, stores, equipment, recreational items, fixtures and furnishings that are attached to, a part of, on or in Cars.
60. Governing Instruments shall mean this Declaration, the Association Bylaws, the Purchase Agreement and Rules together with exhibits attached thereto and all other documents expressly incorporated therein by reference, as the same may be amended from time to time.
61. Guest Fee shall mean the per person fee paid by Owners for Passengers in excess of the number of Passengers stated in an Owner's Purchase Agreement. Guest Fee amounts are described in the Rules and shall be determined by the Association from time to time.
62. Holding Account shall mean a bank account into which all Initial and Perpetual term Train'Share Purchase Price payments are deposited and held until a Train'Share sale closes. The Holding Account may be and be referred to as an escrow account or purchase account.
63. Holding Account Agent shall mean the person designated to manage Train'Share business matters related to a Holding Account.
64. Individual Journey by Rail, shall mean a single Journey by Rail vacation taken by a person that pays a commercial Train Fare, not a Journey by Rail owned by a Train'Share buyer.
65. ID Number, also Train'Share number, shall be a number that may be assigned to each Train'Share for reference and identification purposes.
66. Individual Remaining Journey Nights shall have the meaning as described in "Owner Percent Right".
67. Initial Term shall mean the period of time that starts on the Deed Date and ends when Buyer uses all of the Journey Nights included in an Owner's Train'Share, or at 11:59 PM on the 7<sup>th</sup> day following the same day and month of and in the 10<sup>th</sup> year after the Deed Date, whichever occurs first.
68. Insurance Trustee shall mean the Trustee designated by the Association, which may be any bank or trust company or the Association, appointed to receive insurance proceeds. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated in this Declaration.
69. Internal Transfer Fee, if any, shall be a fee paid for making a change in a Room, Car and/or Time Period using the Internal Transfer Program. An Internal Transfer Fee is paid to the Association or a Management Company for each such change. This Fee is determined and can be changed by the Board from time to time. It is payable at the time a related reservation is made and is the amount set forth in the then current Rules.
70. Internal Transfer Program shall mean a program which may be created by the Developer and managed by the Association to allow Owners to change and travel in a different Room or during a different Time Period(s), as may be available. An Internal Transfer Fee, if any, is paid to the Association for such transfers. If an Owner changes from an Owner's original Room or Time Period, as described in the Owner's Purchase Agreement, to one having a higher purchase price value or during a preferred Time Period, such Owner may be required to pay an additional "Upgrade Fee" determined by the Association, which may or may not be set forth in the then current Rules. If such change is to a Room or Time Period having a lower value, such Owner receives no related compensation.
71. Journey by Rail, also Journey, shall mean a rail vacation by Train'Share Owners or other passengers on a Train Set or Private Car. A Journey may include three Journey Nights or more depending on the number of consecutive Journey Nights included in a Designated Time Period(s).
72. Journey Documents shall mean documents describing obligations, responsibilities, limitations and restrictions applicable to Passengers Individual Journey Passengers, Owners, Permitted Users or Exchange Users. Journey Documents include the Rules and Rule Terms and Conditions whether or not expressly stated.
73. Journey Fees shall mean amounts not included in and that are added to normal Journey Use Fees to pay increased, special, additional Journey costs and/or individual Passenger expenses that are incurred during more unique Journeys and specific Time Periods; for example, but not limited to, Time Periods 51 and 52 (Christmas and New Year's Eve Journeys).
74. Journey Ticket shall mean a ticket issued to a buyer of an Individual Journey by Rail.
75. Journey Night, also referred to as Night or when used within the appropriate context a night, shall mean one night of occupancy on a Car during a Journey by Rail that occurs during a portion of two consecutive days. A Journey Night includes the afternoon of the first and the morning of the following day.
76. Journey Use Fees are assessments to all Owners for each Fiscal year sufficient to pay each Owner's pro rata share of total Association and Car management and operating expenses and costs. The amount is determined annually by the Association as described in this Declaration and other Governing Instruments and as reflected in the Budget for each Fiscal Year. Journey Use Fees can be revised during a related fiscal year as the Association deems to be in the best interest of Owners, see Revised Journey use Fees. Each Train'Share Owner owes and shall pay the Annual Journey Use Fee on or before 120 days prior to the first day of the Train'Share Designated Time Period or before such other time as an annual Journey is used, whichever occurs first; except that, the Journey Use Fee is not owed if a Train'Share Owner or the Owner's Permitted User does not use and the Owner assigns an annual Journey to the Association. Normal Journey Use Fees assume that Journey routes are all about the same distance (number of miles) with common en-route layover costs or that the cost of more miles on a longer route is offset by a reduced cost from fewer en-route layovers because more overnights are on board while traveling; however, if additional or reduced costs for variable route distances and layover factors cause meaningful cost changes the Association may make nominal adjustments to the Journey Use Fee for a specific Journey route, upwards or downwards, to fairly represent a pro rata sharing of operating costs among all Train'Share Owners. Journey Use Fee adjustments will be applied when the Fee is paid, or if the Fee has already been paid before an adjustment is recognized, a Train'Share Owner will receive a credit or refund or must pay the additional charge as and at the time Personal Charges for the related Journey are payable. Expenses and costs paid from Journey Use Fees include, but are not limited to, Association and Car administration, management, operation, maintenance and repair of all Cars, deferred Car maintenance, reserves, annual inspections and other intermittent Car maintenance, including, but not limited to, the following:
  - (a) Association office, facility, utility and other or related business services.
  - (b) Accounting, legal and other professional services.
  - (c) Business insurance, supplies and other typical general and overhead costs.
  - (d) Repair and maintenance of all Cars machinery, electronics, trucks, wheels, electrical systems, water and waste retention systems and tanks, superstructures and all related exterior areas, devices, Furnishings and Equipment, related items and appurtenances thereto.
  - (e) Repair and maintenance for normal wear and tear of the interior of Rooms.
  - (f) Repair and replacement of interior and exterior Furniture and Equipment, fixtures, decorations, appliances, interior Car surfaces, and floor coverings of Common Areas, Rooms and Restricted Areas.
  - (g) Deferred maintenance and replacement reserves for all items as deemed appropriate by the Association.
  - (h) Insurance coverage relating to Cars, liability and other risks as determined by the Association pursuant to provisions of Governing Instruments.
  - (i) A portion of Car generator fuels and lubricants, to the extent determined by the Association.
  - (j) Certain Car Crew and Association staff.
  - (k) Any valid charge against Cars as a whole, include lease, charter and/or mortgage amounts.
  - (l) All costs and expenses incurred in connection with Cars regulatory compliance.
  - (m) Any taxes assessed against the Association or Cars.
  - (n) Any other expenses incurred in the normal operation and maintenance of Cars and the administration of the Association or which are not attributed to a particular Owner.
77. Maintenance Time Periods shall normally mean four seven night Time Periods selected by the Association that are used each year for the purpose of Car maintenance, repairs and repositioning. Maintenance Time Periods are owned by the Developer or Association and shall not be sold as Train'Shares. Developer reserves the right to at any time transfer ownership of Maintenance Time Periods and all related rights and obligations to the Association. No Journey Use Fees are paid for Maintenance Time Periods or Time Period 53.
78. Management Agreement(s) shall mean either a Car related Management Agreement and/or an Association Management Agreement.
79. Management Company(ies) shall mean either a Car related Management Company and/or an Association Management Company that has entered into a Management Agreement with the Association.
80. Managing Agent shall mean, as contemplated by the context in which the words are used, a Management Company appointed by the Association to manage the business of the Association including the operation of cars and/or an individual agent appointed by a Management Company to oversee and manager its business.
81. Member(s) shall mean each Owner as a member in and of the Association.
82. Normal (or Stated) Number of Passengers shall mean the number of passengers that can occupy a Room during a Train'Share Owner Journey by Rail. An additional passenger may also occupy the same Room if suitable accommodations are available for an additional Guest Fee.
83. Other Owner(s) shall mean any or all Train'Share Owners except the Developer.
84. Other Time Periods, if any, shall mean Time Periods belonging to Owners that are required to reposition Cars or to carry out maintenance and repairs instead of during Maintenance Time Periods. Acquisition of Owner Time Periods for use as Other Time Periods can be required by and at the option of the Association because of limitations, restrictions and requirements arising from unexpected circumstances as the Association may determine in its sole discretion. In this event the Association shall do everything reasonably possible to ensure that minimal disruption and inconvenience of Owners of Designated Time Periods that are used as Other Time Periods occurs. Owners of Designated or their Alternative Time Periods will be advised of the future requirement to

use their Time Periods for Car repositioning and/or for maintenance and repairs as soon as possible. Owners of a Designated or their Alternative Time Periods used as an Other Time Period can select a replacement Journey by Rail during different Journey Nights that are selected from the Space Available List during a Time Period(s) that starts within 52 weeks from the commencement date of the Time Period that has been replaced by an Other Time Period. Owners shall not be charged any fee in this regard. By accepting a Deed, whether or not it shall be so expressed in the Deed, Owners accept the possibility that an Owner's Designated or Alternative Time Period may be required as an Other Time Period, that this possibility is attached to Train'Share ownership, and that such requirement is in the best interest of all Owners.

84. Owner shall mean the owner of a Train'Share as named in a Deed of Train'Share Ownership or a successor-in-interest to such Owner, and the Developer in regard to unsold Train'Shares.

85. Owner Lien shall mean a lien in favor of the Association to secure the prompt and faithful performance of the obligations of each Owner under the Governing Instruments including, but not limited to, any and all amounts in arrears and owed for Journey Use Fees and Personal Charges levied against any Train'Share or Owner, with interest thereon at the lower of 18% per year or the maximum rate permitted by law from the date of delinquency, plus late charges, costs of collection that may be paid or incurred in connection therewith, reasonable attorneys' fees, and the right of the Association to terminate the use rights associated with the Owner's Train'Share interest.

86. Owner Percent Right shall mean the percentage that a Train'Share Owner's remaining (unused) Journey Nights are of the total of all remaining Journey Nights for all Train'Share Owners. For this purpose Initial Term Train'Shares are for 10 years and, although Train Set Cars would be expected to operate for a longer period of time, a Perpetual Term is assumed to be for 50 years. Owner Percent Rights are subordinate to the rights of any Car lessor, charterer, lien holder or mortgagee, including the Developer or its assign(s) regarding any portion of the Train'Share Purchase price that has not yet been received by the Developer. Owner Percent Rights represent the percentage that an individual Train'Share Owner has of rights to assets or benefits owned by or being distributed to all Train Set Owners by the Association or otherwise. The Developer's Owner Percent Rights are for each unsold Train'Share and Maintenance Time Periods for so long as they are owned by the Developer.

87. Passenger shall mean any individual Journey by Rail passenger; and, any Train'Share Owner, Permitted User, Individual Journey, or Exchange User Passenger on a Car during a Journey by Rail, and each person's heirs and representatives. When used in the Rules, the term "passenger" shall include Train'Share Owners, Permitted Users and Exchange Users.

88. Per Diem Charge shall mean an amount equal to the maximum cost of additional consumable goods and services for a single Passenger to take a Journey by Rail occupying a Room for one night to the extent that such costs exceed costs that would occur if such a Passenger did not take such Journey by Rail. For this purpose, expenses related to consumable goods and services that would occur whether or not the single Passenger was on board are not included, such as but not limited to, generator fuel, Crew, Engine and other Car related trip costs, whether or not they are normally included in Journey Use Fees. Per Diem Charges shall be determined by the Board.

89. Permitted User is any person, excluding Exchange Users and Individual Journey Passengers, occupying Train'Share Rooms with the permission of an Owner pursuant to Governing Instruments, including members of an Owner's family or other invitees.

90. Perpetual Term shall mean a term of Train'Share ownership that continues for the life of a Train Set or Car, or alternative replacement Cars as the Association may determine.

91. Personal Charges shall mean any and all expenses arising because of or from a request, act or omission of an Owner, Permitted User or Exchange User that are not reimbursed from insurance proceeds. In regard to Personal Charges, an act or negligence of a Permitted User is deemed to be an act or negligence by the Owner who allows such Permitted User to use any portion of Cars. Personal Charges include, but are not limited to:

- (a) Any expense to repair damage to or replace Cars or common areas, Restricted Areas, Rooms or Furnishings and Equipment, or portions thereof.
- (b) Any cost to satisfy an expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission when using or occupying Cars.
- (c) Any expense for special services or supplies attributable to the use or occupancy of Cars that are not paid from Journey Use Fees.
- (d) Any cost resulting from the breach of any provision of this Declaration, the Bylaws, Rules or Purchase Agreement.
- (e) Any expense for the purchase, rental or use of goods or services while using or occupying Cars, including, but not limited to, sundry service fees, beverages, gifts, clothing, land tours, use of recreational equipment, telephone calls, gratuities (not mandatory), and any other individual and personal expenses.
- (f) The cost of optional tours, excursion and off Car activities.
- (g) Transient travel, boarding, immigration, and customs taxes not included in and paid from Journey Use Fees.
- (h) Sundry Fees for various optional or requested goods and services [Part III, section 7. b. of this offering Statement].
- (i) Guest Fees.
- (j) Reservation Fees.
- (k) Service Fees.
- (l) Sundry fees as described in the then current Rules.

88. Plan shall mean the Train'Share Plan in which Train'Shares and related rights to a designated number of Journeys by Rail are conveyed for a number of years, but not necessarily for consecutive years, until the termination of the Plan and this Declaration.

89. Points shall mean the number of Points assigned to a Train'Share at the time it is first purchased based on the total number of Journey Nights included in the Train'Share Time Period, Room and Car categories, typical Train'Share purchase prices and other considerations that impact the value of a Train'Shares, as determined by the Developer. Points are used when determining the position of one Train'Share Owner relative to the position of others, including, but not limited to, their Owner Percent Right when used to calculate Pro Rate Lien amounts.

90. Prime Time Surcharge shall mean a Surcharge included in the Journey Use Fee payable by Owners, Permitted Users and Exchange Users who reserve Journeys during Time Periods 51 or 52, or other Time Periods during which significant special events occur as determined by the Association. This Surcharge will be assessed for the purpose of funding the additional costs to upgrade and/or for additional food, beverage, service, entertainment and Car operations during such Time Periods.

91. Private Car shall mean a Car that can operate as a self sufficient single Car, not necessarily as part of a Train Set, because it provides all Rooms, dining, lounge and other facilities required by Passengers. Also see Shared Private Car and Exclusive Private Car.

92. Private Car Train'Shares: See Train'Share – Train'Shares in a Private Car.

93. Pro Rata Lien: Until such time as ownership of a Train'Share terminates, Train'Share Owners shall have a Pro Rata Lien against net insurance proceeds for Cars and a Pro Rata Lien claim to any and all assets or valuable benefits held by the Train'Share Owner's Association or being distributed to all Train'Share Owners by the Association, including the net worth of Cars. An Owner's Pro Rata Lien shall be equal to the Owner Percent Right. Pro Rata Liens and claims are subordinate to the rights of any person or entity in the amount and to the extent that such person or entity has provided funds that have not yet been repaid, pursuant to respective agreements, for the provision, acquisition and or improvement of Cars, including Car lessors, charterers, lien holders, mortgagees, stock investors, commercial lenders, and the Developer or its assign(s) regarding any portion of the Train'Share Purchase price that has not yet been received by the Developer.

94. Purchase Agreement shall mean the agreement executed by the Developer and a Buyer by which a Buyer purchases and becomes a Train'Share Owner.

95. Purchase Price shall mean the price paid by a Buyer for the purchase of a Train'Share for an Initial, Extended or Perpetual Term, as set forth in the Purchase Agreement.

96. RCI means Resorts Condominiums International or a related entity that provides timeshare exchange services for Train'Share Owners, at their option.

97. Registrar shall mean the person responsible for maintaining the Association Registry. The Registrar is appointed by the Board.

98. Repositioning Time Periods, if any, shall mean Time Periods determined by the Developer during which Cars will be moved from one geographic Journey location to another.

99. Reservation is the act of requesting and receiving a confirmation for a Journey by Rail during a specified Time Period in a specified Room or Private Car for use by an Owner, Permitted User, Exchange User or and Individual Journey Passenger.

100. Reservation Fee shall mean a fee that is included in Personal Charges for individual Reservations services not normally used by all Owners, including, but not limited to, Early Use and Reservations.

101. Reservation System shall mean the system and procedure used by Owners and other Passengers to make a Reservation for a Journey by Rail, excluding tours, excursions, land accommodations and other special services that Owners can select at their option. This includes a Reservation System operated by the Association, and may also include an independent Reservation System operated by an approved outside source that may be RCI.

102. Reserve shall mean the act of making a Reservation.

103. Restricted Areas shall mean those areas on Cars designated by the Association or the Crew Chief, permanent or temporary and including, but not limited to, Crew quarters, machinery areas, galley, supply storage areas, and areas where Special Services are being provided. Owners and Passengers are not permitted in Restricted Areas except to participate in Special Services.

104. Revised Journey Use Fee is the Journey Use Fee amount after a change authorized by the Association during any fiscal year for reasons that arise because of, but not limited to, expense and cost changes related to the permanent or temporary introduction of Additional and/or Alternative Cars, or for other reasons for the benefit of Train'Share Owners. Revised Journey Use Fees may be higher or lower than prior existing Journey Use Fees. If a Revised Journey Use Fee is higher than the original Journey Use Fee payment of the difference is due as determined by the Association, which may or may not be by adding the increased amount to the following fiscal year's Budget. If the change represents a Fee reduction, a related credit will be applied to the next fiscal year's Budget. Revised Journey Use Fees shall not exceed the original Journey Use Fee by more than 5%. If a Revised Journey Fee represents a Fee increase, such increase is not included in a Developer guarantee related to Fee payments, if any.

105. Room(s) shall mean a bedroom(s) providing sleeping accommodations on a Car with a private entrance, including furnishings, private bathroom (except Duplex Rooms may have

shared facilities), related fixtures, bedding and linens. There are different Room categories.

106. Room Category refers to different categories of Rooms having varying characteristics and passenger capacities, each being given different descriptive names for reference purposes.
107. Rules shall mean the then current rules, terms and conditions related to payment of Fees and the use and occupancy of Cars, including restrictions on and regulations that govern reservations, Cars, associated travel matters, and related obligations and rights as may be adopted and/or amended from time to time by the Board or the Managing Agent. Variables arising from Owner requests for altered Journeys, the irregular occurrence of special events to be visited, and other Journey changes that can not be foreseen may prevent certain contents of the Rules from being revised to accurately represent all conditions all of the time. In this event the separate Journey Documents provided to Passengers will accurately describe all current conditions.
108. Service Fee shall mean a charge for optional, extra and other goods and services rendered to an individual Owner, Permitted User or Exchange User not included in Journey Use Fees. Service Fees are paid as Personal Charges.
109. Shared Private Car shall mean a Private Car on which Train'Share Owners or permitted passengers have exclusive use of a bedroom and shared use of common areas; shared by other Private Car passengers with a bedroom on the Car and Train Set passengers if the Private Car travels with a Train Set.
110. Short Lines shall mean an independent railroad company that operates on a regional basis over a relatively short distance compared to Amtrak and VIA Rail.
111. Shorter Journey by Rail shall mean a scheduled Journey for less than seven Journey Nights.
112. Space Available List shall mean a list of Rooms, Cars and Time Periods that any Owner or Permitted User can Reserve based on availability and provisions of this Declaration. Reservations are made through the Association Reservation System.
113. Special Assessment shall mean an amount assessed to each Owner, including the Developer for unsold Train'Shares, to pay unexpected amounts not otherwise provided for in Journey Use Fees, and otherwise as determined by the Association in accordance with provisions of this Declaration.
114. Special Reservation Service Fee shall mean a fee payable by Owners for special individual Reservation services not normally provided to or used by all Owners, including but not limited to, a Fee for reserving Shorter Journeys by Rail.
115. Special Services shall include, when available, specific Passenger dining, beverage, leisure, entertainment and recreational activities on a Car that are not paid for from Journey Use Fees for which Passengers pay a Journey Fee or Personal Charge, as determined by the Board. Special Services on Cars may be provided in a Restricted Area only accessible to Passengers using Special Services.
116. Specified Car shall mean the Car selected by a Train'Share Buyer (Owner) on which such Buyer can take annual or biennial Journeys by Rail in the Buyer's Assigned Room Category during the Buyer's Designated Time Period.
117. Start Date shall mean the date on which the first of All Train'Shares is sold by the Developer.
118. Surcharge shall mean Fuel Surcharges, Prime Time Surcharges and such other surcharges as the Association may establish from time to time.
119. Term shall mean the period of time starting on the date that a Train'Share is first recorded in the Registry continuing until the Initial Term or Perpetual Term ends.
120. Time Period shall mean a period of time that includes seven Journey Nights. If a buyer purchases more than seven Journey Nights, the buyer will acquire more than one Time Period. Time Periods are for a number of days equal to the number of Journey Nights plus one. Time periods normally start at about 2:00 p.m. on the first day and end at about 10:00 a.m. on the last day of the Time Period, although these times are subject to change. Determination and revision of the dates and times of day upon which predetermined Time Periods occur is the sole responsibility of and can be revised on a day-to-day basis at the option of the Board. Time Periods shall be numbered 1 through 53 (53 weeks occur on an occasional basis) and begin and end on the same day of the week. Time Period 1 normally starts on the first Saturday in each calendar year, and Time Period 2 includes the seven immediately following nights. Subsequent additional periods up to and including Time Period 52 (or 53 if a 53<sup>rd</sup> Time Period occurs) are computed in a like manner. Time Period 53 shall remain the property of and be used as the Developer determines unless and until such time as the Developer, at its discretion, conveys it to the Association. Time of day references shall mean the local time at the location of Cars.
121. Train shall mean a train consisting of an engine provided by Amtrak, VIA Rail or other railroad company and train cars that may include Train'Share Private Cars or Train Sets, and may also include other non Train'Share cars.
122. Train'Share shall mean a timeshared annual or biennial right to use recurring annual or biennial all-inclusive Journeys by Rail on a Train Set or individual Private Car as described and during the term set forth in a respective Purchase Agreement ("Agreement"), with en-route destination layovers, during a specific designated or other available Time Period that includes a stated number of Journey Nights, in an assigned bedroom (Room) category and with shared use of common lounge, dining and other on board Car facilities. Train'Shares do not include title in or ownership of Cars, although Owners have rights to Car assets as members of and through the Train'Share Owner's Association. Cars will travel as part of Amtrak or other railroad trains on routes throughout the United States and into Canada. Except as otherwise expressly stated in this Declaration, Train'Share Owners must pay annual and other Fees and charges to cover management, operating and personal expenses and costs. Owners may also be able to exchange Journeys by Rail for a land vacation(s) or other available leisure services using and pursuant to conditions of an Exchange Program. A Train'Share on a Private Car may also be governed by related Car provisions as set forth in the respective Purchase Agreement and Private Car Governing Instruments, which take precedence over this Declaration.
123. Transfer Deed shall mean a Deed issued by the Association to reflect the transfer of ownership of a Train'Share.
126. Upgrade Fee shall mean a Fee paid by an Owner that uses the Internal Transfer Program to change a category of Room or a Time Period from an Owner's original Designated Room Category and Time Period, as described in the Purchase Agreement, to a better and/or more expensive category; see Internal Transfer Program above.
127. Use Rights Agreement, see Car Use Rights Agreement.
128. VIA Rail shall mean VIA Rail Canada, the national passenger railroad of Canada.
129. Voting shall mean and be as stated in Article XI paragraph 3 of this Declaration.
130. Waiting Period shall mean that period of time, in days, that Purchase Price payments are held during which a Buyer can cancel a Train'Share purchase and get a refund of moneys paid.

#### ARTICLE III - EXHIBIT(S)

The Exhibits referred to in this Declaration shall include the following: Exhibit "A" - Car Description; and, Exhibit "B", Current Fees.

#### ARTICLE IV - TRAIN'SHARE DESCRIPTION

1. Number of Train'Shares, Total and Offered for Sale. The calculation of the total number of Train'Shares includes the Cars set forth in Exhibit "A". There are 48 annual seven Journey Night Time Periods for each Room on a Train Set or Private Car. A seven night Time Period may be divided to include a three and a four Journey Night Time Period. There are also four seven night Maintenance Time Periods. The number of seven night Train'Shares is 48 times the number of individual Rooms on a Train Set or Private Car. The total number of seven night Private Car Train'Shares is 48 times the number of Cars. The total number of Train'Shares will increase if Time Periods are shorter than seven nights, if Additional Cars with Rooms are acquired to be sold as Train'Shares, and if Alternative Cars have additional Rooms. The total number of Train'Shares will decrease if a single Train'Share has more than seven Journey Nights and includes two Time Periods, one for the first seven Nights and another for the remaining Journey Nights. Unsold Train'Shares are the property of the Developer and are offered for sale as Train'Shares and Individual Journeys by Rail, or otherwise used as the Developer may determine. Every seven or so years there is a 53<sup>rd</sup> Time Period in a calendar year which remains the property of and that the Developer may sell or otherwise use at its option.
2. Term of Train'Share Ownership, Number of Journeys by Rail. Train'Share ownership is for an Initial or Perpetual Term, and provides Journey by Rail rights as follows:
- Initial Term. Train'Share Owners have the right to 10 annual Journeys by Rail within an Initial Term of 10 years pursuant to each Owner's Purchase Agreement and this Declaration, with rights to extend ownership to a Perpetual Term.
  - Extended Term. Owners have the right to continue their Train'Share ownership beyond the Initial Term for and by purchasing an Extended Term from the Developer that converts ownership to a Perpetual Term at a cost and with payments as is set forth in the Purchase Agreement.
  - Perpetual Term. Perpetual Term Owners have rights to Journeys by Rail for the life of Cars or replacement Cars.
  - Repositioning Journeys by Rail. Car Journey locations may change one or more times each year. If necessary, Cars will normally be repositioned (moved from one place to another) and the Association shall use its best efforts to do so during Maintenance Time Periods. To facilitate improved availability and/or services for the benefit of all Owners, unexpected related requirements may require that Car repositioning be carried out during and in accordance with procedures established for Other Time Periods.
  - Number of Journeys by Rail. The number of Journeys varies depending on their length and the related number of Journey Nights included in and length or Related Time Period for each Journey. If all Journeys include seven Journey Nights there are 48 seven Time Periods and Journeys by Rail for each Room or Car. If some Journeys include three or four Journey Nights, the average Time Period will be and there will be more shorter Journeys. If some Journeys include 11 or 14 Journey Nights, the length of the average Journey would be longer and include more than one Time Period.
3. Exchange Program. The Association shall have and is hereby granted the right to enter into and subsequently change an agreement with one or more entities to provide Owners access to an independent external Exchange Program with an Exchange Company. Unless otherwise provided for in the Purchase Agreement, each Owner shall be personally liable to the Exchange Company for any and all initiation or renewal fees and charges, and for any use, activity and participation assessments or other fees related to exchanges that are charged by an Exchange Program in which the Owner is a member. Owner membership in and use of an Exchange Program is at the sole discretion of each Owner and neither the Developer nor Association is responsible or liable for any expense,

actions or consequences arising out of such membership.

4. Developer Warranty Limitation. The Developer does not make any warranty of any kind, express or implied, and hereby disclaims any such warranties, including but not limited to, implied warranties of Cars merchantability and fitness for a particular purpose. Owners and the Association assume all risk and liability resulting from the use of Cars. This Developer warranty limitation will apply during Initial and Perpetual Terms.
5. Rule Changes. The Association shall have the right to amend the Rules from time to time without prior consultation with Owners.
6. Journeys. Cars can not travel outside of the United States or Canada without prior written consent of the Developer and as may be limited by respective Car Use Rights Agreements. Journey locations may change up to several times each year, but there is no obligation to do so. Journeys will be for the number of Journey Nights included in respective Time Periods. Journeys may include visits to and stays at the same place that last more than one night for the benefit of Owner vacation enjoyment as determined at the sole discretion of the Association. However, when selecting Journey routes the Association shall use reasonable efforts to query Owners to determine their desired Journey locations in advance and shall consider Owner input to the extent reasonably possible, taking into consideration operational costs, air fares and connections, and other pertinent issues.

#### **ARTICLE V - OWNER RIGHTS AND OWNERSHIP**

1. Owner's Rights. Owners have, by accepting a Deed and starting on the Deed Date, rights to use and access Rooms and Cars during their Journeys by Rail, as described in this Declaration and other Governing Instruments, continuing for the duration of the Initial Term or Perpetual Term.
2. Rights to and Liens on Cars. Owners, the Association, the Developer and Management Company(ies), their agents and employees, are prohibited from placing liens against Cars.
3. Sell, Assign and Transfer Ownership of a Train/Share. Owners have the right to sell, assign or transfer ownership of a Train/Share pursuant to and except as otherwise set forth in provisions of this Declaration and applicable law; however, before the transfer of ownership of a Train/Share occurs the Train/Share Association must approve the new owner in writing based on criterion determined solely by the Association. Such approval shall not be unreasonably withheld. In the event that a Train/Share purchase is not approved and the sale of a Train/Share is prevented, at the option of an Owner the Association must purchase the Train/Share at the same confirmed price offered by the unapproved purchaser.
4. Evidence of Ownership. Ownership of a Train/Share is originally established, reestablished in the event that a Deed is lost or damaged, and transferred as follows:
  - (a) Deed. Rights attached to ownership of a Train/Share shall be conveyed to an Owner, excluding the Developer, by a valid Deed together with registration in the Association Registry. This shall represent and be the only proof of Train/Share ownership. The Developer's ownership and status as an Owner of unsold Train/Shares is assumed and no Deed will be issued to exhibit such ownership. Each Deed shall clearly state that it represents an Owner's right to use, occupy and for the enjoyment of Cars. It does not represent any actual ownership of Cars.
  - (b) Replacement Deed. In the event that a Deed is lost, or damaged to the extent that it becomes illegible, and a replacement Deed is desired by an Owner, such Owner must present to the Association a notarized affidavit attesting to the fact that the Deed has been lost, or in the instance of a damaged Deed a notarized affidavit to which the damaged Deed must be attached attesting to the fact that said damaged Deed is the Deed that was issued by the Association, and upon receipt thereof, the Association shall issue a replacement Deed and register the new Deed's number, if different, in the Registry. A fee in the amount set forth in the then current Rules of the Association may be charged for this service and must be paid by the Owner requesting a new Deed at the time that the request is made.
  - (c) Instrument of Transfer. The sale or transfer of title to a Train/Share shall be evidenced by a Transfer Deed issued by the Association. The Association shall charge a fee for such Transfer Deed as reflected in the then current Rules.
  - (d) Deed Statement. In addition to related requirements, a Deed transferor and transferee shall provide the Association with a Deed Statement on request.
  - (e) Registration. The Association shall, as soon as is reasonably possible after receiving all required documentation, cause a Deed or Transfer Deed to be issued and sent to the initial Owner or transferee at which time the Registrar shall modify the Association Registry to reflect the initial or change in ownership of the subject Train/Share. Owners shall have no rights of use and access to a Room or Cars until a Deed is registered with the Association Registry or the Deed Date occurs, whichever happens first. On a regular basis, but not less than an average of once every week, the Registrar shall update the Registry listing the names of all current Train/Share Owners, including the Developer as to unsold Train/Shares.
  - (f) Fees and Charges. Any outstanding and unpaid Journey Use Fees, Revised Journey Use Fees, Surcharges, Personal Charges or other amounts owed by an Owner to the Association or a Train/Share lien holder shall be paid in full prior to the transfer of a Train/Share. The ownership of a Train/Share and title to a Deed may not be sold or transferred if any such payments are delinquent. If the Developer has not received full payment of the Purchase Price, ownership of a Train/Share may not be transferred or assigned without the express written consent of Developer, which Developer is not obligated to provide.
  - (g) Ownership Transfer Fee. The transfer fee set forth in the then current Rules of the Association shall be paid to the Association prior to the transfer of a Train/Share.
  - (h) Reference Not Required. The transfer of ownership of a Train/Share, as the result of a sale, termination of use rights or otherwise, shall transfer to the person or entity receiving ownership all the transferor's remaining beneficial interest in the title to and to the use rights coupled with a Train/Share without any reference thereto.
  - (i) All Interest Must Be Transferred. No Owner shall sell, assign, transfer, hypothecate or encumber less than all of his interest in a Train/Share; provided, however, that nothing herein contained shall restrict the manner in which title to the Train/Share may be lawfully held (for example joint tenants, tenants-in-common, or the like). Any sale, assignment, transfer, hypothecation or encumbrance by any Owner of less than all of his interest in a Train/Share shall be null, void and of no effect. The transfer of any Train/Share shall operate to transfer to the new Owner of the Train/Share the interest of the prior Owner in all funds in the hands of the Association, if any, even though not expressly mentioned or described in the instrument of transfer and without any further documentation or reference thereto.
  - (j) Sale, Assignment and Transfer Restrictions. Except as otherwise provided for in this Declaration, the right of an Owner to sell, transfer, assign or hypothecate his Train/Share shall not be subject to the approval of the Association. Accordingly, a proper transfer or conveyance of such Train/Share shall not require the written approval of the Association. However, an Owner shall be responsible for notifying the Association upon the transfer or conveyance of a Train/Share and taking related required actions as provided for in this Declaration within 14 days of such transfer or conveyance, at which time the Association shall act to reflect the change of ownership on the Association Registry.
  - (k) Owner Acceptance. Each Owner accepting the conveyance of a Train/Share Deed shall be deemed to have covenanted and agreed to the provisions of this Declaration and other Governing Instruments, including, but not limited to, all of the Association's rights, powers and remedies set forth in this Declaration if an Owner is in default of any of such provisions.
5. Separate Encumbrances. Each Owner shall have the right to encumber all, but not less than all, of his Train/Share. Owners shall advise the Association in writing of any and the terms of such encumbrance. Any loan against the Train/Share shall be noted on the Association Registry and shall be subordinate to the provisions of this Declaration. In the event of an Owner's default under his loan obligations, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. Notwithstanding any other provision of this Declaration, no breach of the provisions contained herein or the enforcement of any lien created pursuant to the provisions hereof shall defeat or render invalid the lien of any prior mortgage of any Owner's Train/Share if such prior mortgage is registered in the Association Registry and is given in good faith and for value. If an Owner does not notify the Association of an encumbrance, a third party has the right to provide evidence that adequately evidences a lien. The Association has no responsibility or liability whatsoever for whether or not liens exist or are reported to the Association or for related or subsequent claims or actions.
6. Non-disturbance. Except as otherwise provided in this paragraph, provided that an Owner is not in default of and remains in good standing with respect to his or her obligations to comply with the terms of the Purchase Agreement and Governing Instruments, and has paid in full all Fees, Personal Charges and other amounts owed as required by the Train/Share Purchase Agreement and this Declaration, such Owner has and shall retain his rights of Room and Car use and occupancy and such rights shall not be diminished, disturbed or interfered with if ownership of or any right to Cars is partially or completely sold, transferred, assigned or otherwise changes, or if claims by a third party ("Third Party[ies]") occur against the Association, a Management Company, the Developer, or Cars, or in the event of a foreclosure or action against Cars by any other party having rights to Cars. These provisions shall be effective as between Owners, their assigns, Permitted Users, the Developer, Car Owners and Third Parties including mortgagees, judgment creditors, lien holders, or any other person claiming to have an interest in, lien or encumbrance against Cars. The Developer, Managing Companies or Association must obtain a signed Nondisturbance Rights Notice setting forth these provisions from all future Third Parties that could and before they are permitted to be in a position to acquire any claim to the title, ownership of, right to manage, or use of Cars. If the term of a Car Use Rights Agreement is less than the Initial or Perpetual Term of Train/Share ownership because it provides for such Car being replaced by an Alternative Car, these non-disturbance provisions only apply during the period(s) of time that the Association has contracted for rights to such Car in the respective Car Use Rights Agreement. If any Car is replaced by an Alternative Car, as provided for in these Declaration, applicable obligations described in this paragraph shall no longer apply to a Car that is being replaced.

#### **ARTICLE VI - RIGHTS TO USE AND ACCESS**

1. Owners and Other Passengers. Owners and other Passengers have the non-exclusive right to occupy Car Common Areas, not Restricted Areas, and exclusive right to occupy a Room during such Owner's Journeys by Rail, including related utilities, services and amenities. Such use and access to and of Cars and Rooms is subject to the terms and provisions of this Declaration, the Rules and other Governing Instruments, including, but not limited to, payment of all Fees, Personal Charges, Reservation, check-in, boarding, check-out, disembarking, other and additional procedures or requirements as may from time to time be established by the Association, or be required by applicable government regulations. A description of the Car Owner, Car use rights by Association representatives, Owner and other Passengers shall be posted and displayed on Cars, including limitations on the placing of liens against Cars.
2. Association. The Association, itself and by its agents, shall have easement rights set forth below in this Article including the right to authorize use, access and entry of and into Car

Common Areas or Rooms, whether occupied or not, for the purpose of cleaning, maid service, repair and maintenance, and for any other reasonable purpose and at any reasonably necessary time, whether or not in the presence of an Owner, for the purpose of making emergency repairs therein or abating any nuisance, dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Common Area or Room, or to protect property rights and the welfare of any Passenger, or for any other purpose reasonably related to the performance by the Association of its duties and obligations under the terms of this Declaration. Such right of entry shall be exercised in a manner that avoids unreasonable or unnecessary interference with the possession, use and enjoyment by the rightful occupant of a Room and shall be preceded by reasonable notice to such occupant whenever the circumstances permit.

3. Developer. The Association acknowledges that Developer reserves unto itself for so long as it holds any interest in any Train'Share, easement rights set forth below in this Article, including specific rights of use and access to Car Common Areas, Restricted Areas and unoccupied Rooms, as it may deem necessary for its use from time to time, including, but not limited to, the following marketing, sales and other purposes:

- (a) Maintaining customer relations and providing post-sales service to Owners.
- (b) Erection, maintenance and operation of signs and displays, with or without attending staff, for sales, public relations and related administrative purposes.
- (c) Use of unoccupied Rooms as model Rooms and presentation areas.
- (d) Making announcements over sound systems.
- (e) Setting up sales desks and conjunctive presentation facilities.
- (f) Showing Cars, Common Areas and unoccupied Rooms to prospective Train'Share buyers.
- (g) Occupying and using otherwise unoccupied Rooms not occupied by Owners, Permitted Users, Exchange Users or Individual Journey Passengers when payment of the Per Diem Charge occurs, as provided for in Article VII paragraph 16 of this Declaration.
- (h) As Developer otherwise deems appropriate for the marketing and sale of Train'Shares.

4. Crew, Car and Management Company. Crew and Car Management Company personnel shall have the right to access and enter all Common Areas and Restricted Areas at any time, including unoccupied bedrooms at their discretion as required for them to perform their designated responsibilities for cleaning, housekeeping, maintenance, repair, improving, and protecting the condition of the Car.

5. Emergency Use and Access. Crew and Car Management Company personnel have the right to access and enter all Common Areas, Restricted Areas and Rooms, occupied or unoccupied, at any time without notice for emergency maintenance, repair, damage control, and to deter or prevent nuisances pursuant to this Declaration.

6. Easements. Owners, the Association, Developer, Crew, Car Management Company and Association Management Company, their successors, assigns and agents shall have the right and they are hereby granted an exclusive easement in gross in, over and through the Common Areas to the extent necessary and for so long as shall be required for them to enjoy, meet and perform their rights, obligations and responsibilities as set forth above in this Declaration, provided, however, that use of such easement shall not unreasonably interfere with or diminish the rights of Owners or other Passengers to occupy and use Cars, Common Areas and Rooms.

7. Occupancy per Room. The maximum occupancy of a Room shall be as set forth in the Purchase Agreement, except that and only if regular sleeping accommodations provide for more than two persons in a Room, up to two additional Passengers are permitted to occupy a Room, the maximum number of persons for each Room being that number determined by the Car Management Company or the Association. A Guest Fee must be paid by such additional Passengers, as set forth in the Rules.

8. 3<sup>rd</sup> and 4<sup>th</sup> Passengers. In the event that more than two persons occupy a Room, the Owner shall be required to pay a Guest Fee in the amount set forth in the then current Rules of the Association for each person in excess of two persons. The Board has the right to reasonably increase this Guest Fee from time to time as it deems appropriate. The Guest Fee shall be payment in full for accommodations in the same Room Reserved by and for meals and other on board services similar to those provided to such Owner. The Owner shall pay the Guest Fee to the Association prior to the confirmation of the Reservation for 3<sup>rd</sup> and 4<sup>th</sup> Passengers. Notification to Owner's regarding the amount of the Guest Fee shall be given at the time a Journey by Rail Reservation is made.

9. Use by Permitted Users. An Owner may assign or authorize the use of a Journey by Rail by a Permitted User pursuant to provisions of this Declaration and the then current Rules. Such Owner is obligated to advise and make such Permitted User aware of the restrictions, limitations, liabilities and Rules appurtenant to the use and occupancy of Cars. Developer, the Association, Management Companies and Crew have no responsibility whatsoever for advising Permitted Users in this regard. Such Owner shall be and remain liable for such acts of a Permitted User as if such Owner were using and occupying Cars and pursuant to the provisions of Governing Instruments, including, but not limited to, responsibility for any loss, damage or destruction of Cars, the Room or the Common Areas, or violations of this Declaration or the then current Rules that occur during such occupancy.

10. Use by Exchange Users. In the event that an Exchange User acquires rights to a Journey by Rail, such Exchange User shall be responsible for any loss, damage or destruction of Cars, the Room or the Common Areas, or expense arising from a violation of Rules that occur during occupancy of Cars and a Room.

11. Boarding and Disembark Times. Notwithstanding contemplated predetermined Time Period starting and ending times, as required for the convenience of all Owners and to provide for the safe economical operation, maintenance and repair of Cars, the predetermined Boarding Time in the first and a Disembark Time in the last day of Journeys by Rail may vary as determined by the Developer or Association, or on a day to day basis by the Crew Chief.

12. Early Use of Journeys by Rail. Owners have the right to a Journey by Rail each year. Earlier use ("Early Use") is permitted using the Internal Transfer Program (also known as the Internal Exchange program), or an Exchange Program if and as the Association may determine, to the extent that space is available on the Space Available List. In this event Journey Use Fees for each such Early Use Journey by Rail(s) must be paid at the time a Reservation is made, or sooner as required by this Declaration, Journey Use Fees must be paid as provided for in this Declaration, and other payments must be current if and as set forth in the applicable Train'Share Owner's Purchase Agreement, including payment of the Train'Share Purchase Price. For each Early Use Journey by Rail taken, the number of included Journey Nights shall be subtracted from the number of Journey Nights in the following year or from the next available Journey Nights, whichever occurs earlier. The Association shall make reasonable efforts to provide immediate Early Use Journey by Rail Reservation confirmation but reserves the right to withhold confirmation until a required number of days prior to the respective Departure Dates depending on availability. Early Use Reservations are made according to the then-current Rules of the Association. The total number of normal and Early Use Journeys by Rail used by Perpetual Term Train'Share Owners shall not exceed 50 during the first 50 year period starting on the date that the related Initial Term (if a subsequent Extended Term is purchased) or Perpetual Term is first purchased.

13. Delayed Journey by Rail. Journeys by Rail and related Journey Nights must be taken by and cannot be delayed or deferred by an Owner beyond a Designated Time Period each year, except that use of Journey Nights may be postponed for up to one year by obtaining the prior written consent of the Association. If requested from the Association, such request for a delay must be made in writing at least 120 days before the start of a respective Designated Time Period. Association and approval shall depend on anticipated availability during the year in which the postponed Journey by Rail may be used and may be withheld without explanation. Delayed Journeys by Rail must be selected from the Space Available List and reservations are dependent on space being available. If an Owner has not obtained a right for a Delayed Journey by Rail and fails to use all Journey Nights before the end of the applicable Designated Time Period, such Journey Nights shall be deemed to have been used and the Owner shall have no right to a replacement(s) or any other form of reimbursement, and shall be required to pay the full annual Journey Use Fee for the related Train'Share. If an Exchange Program is the source of acquiring a Delayed Journey by Rail, the procedures of the related Exchange Company shall apply.

14. Loss of a Journey by Rail due to Act of God, Terrorism, Natural Disaster, Weather or Mechanical Failure. In the event that a Train'Share Owner has complied with Reservation procedure requirements and the Rules and is unable to be on board a Car for at least 75% of the Journey Nights in a Journey by Rail, whether a Car is traveling or parked at the same place, because a Car is unable to operate due to an Act of God, terrorism, severe weather or for mechanical reasons, an Owner's recourse is limited to the right to replacement Journey Nights in the amount of nights that were lost, to be selected from the Space Available List. Replacement Nights can be used to extend a subsequent Journey by Rail or at any other time, based on availability. The right to a replacement Journey Nights shall expire if unused within two years of the commencement date of the Time Period during which an Owner was unable to be on board. Owners shall not be entitled to any other form of reimbursement or compensation from the Developer or the Association.

15. Loss or Delay of a Journey by Rail, General. In the event that a Train'Share Owner Journey by Rail is delayed or terminated and an Owner's recourse is not otherwise provided for in this Declaration, the provisions of the then current Rules will apply. In the event that there is a conflict between the terms of this Declaration and the Rules, the provisions of this Declaration shall prevail.

16. Partition and Subordination of Tenancy-in-Common. This Declaration and other Governing Instruments, as the same may be amended from time to time, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Train'Shares and use and access to and of Rooms and Cars. Accordingly, all rights with respect to the use, possession, enjoyment, management or disposition of a Train'Share and the Journeys by Rail that an Owner might or might otherwise have (including, but not limited to, any common law or statutory right jointly to use, possess or manage commonly owned property) are hereby unconditionally and irrevocably subordinated to this Declaration for so long as this Declaration shall remain in effect. No Owner or person or entity acquiring any right, lien or interest in Train'Shares shall seek or obtain, through any legal procedures, judicial partition of Train'Shares or the sale thereof in lieu of partition. If, however, any Train'Share is owned by two or more persons as tenants-in-common or as joint tenants or as community property, nothing herein contained shall prohibit a judicial sale of the Train'Share in lieu of partition as between such co-tenants or joint tenants.

17. Protection of Interests. Except as otherwise provided for in this Declaration, no Owner shall permit his Train'Share to be subject to any lien, claim or charge, the enforcement of which may result in a sale or threatened sale of the Train'Share of any other Owner or any part thereof or in any interference in the use or enjoyment thereof by any other Owner. In the event of a threatened sale of the Train'Share of any Owner, or any part thereof, or should the use and enjoyment of any portion thereof by any Owner be threatened by reason of any lien, claim or charge against the Train'Share of any other Owner, or should proceedings be instituted to effect any such sale or interference, any Owner acting on his own behalf (if promptly indemnified to his satisfaction) or through the Association or the Association acting on behalf of any one or more Owners may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in such event, the Owner whose interest was subjected to such lien, claim or charge shall forthwith pay the amount so paid or expended to the Owner or the Association, whosever shall have paid or compromised the lien, claim or charge, together with such reasonable attorneys' fees and related costs as he, she or it may have incurred. No Owner shall permit his interest in any funds from time to time in the possession of the Association to be subjected to any attachment, lien, claim, charge or other legal process and each Owner shall promptly restore any funds held by the Association with respect to his Train'Share to the extent depleted by reason of the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Association for all

reasonable attorneys' fees or other costs incurred in respect thereof.

18. Mix and Substitution of Cars. A Private Car by itself or a Train Set with multiple Cars provide(s) a variety of Passenger services, including bedrooms ("Rooms"). TrainShare ownership includes a right to sleeping accommodations in a designated Room category. To better provide a desirable vacation experience that best supports the timely interests of Passengers, and otherwise for the intended benefit of Owners, the Developer and/or Association reserves the right to substitute any Car for a single, frequent or continuing Journeys by Rail with an Alternative Car that offers equal or better Rooms and services on a permanent or interim basis. See Article II to and Exhibit "A" of this Declaration. The Association has this capability if and as rehabilitated Cars become available and by entering into Car Use Rights Agreements that in some instances include a right to use one of a selection of Cars that are available. In this instance, the combined facilities of all Cars available to Owners will always include an equal or greater number of Rooms than the number attached to all sold TrainShares.

19. Conflict with Rules. In the event that provisions in this Declaration or other Governing Instruments are in conflict with provisions of the Rules or other procedures regarding the operation, use, occupancy or rights to and of Cars or Journeys by Rail, provisions of this Declaration will prevail. However, the Board on behalf of the Association has the right to change and make different determinations to otherwise resolve such conflict(s) on an individual basis or to resolve repetitive differences.

#### ARTICLE VII - USE RESTRICTIONS

The use of Rooms and Cars shall be in accordance with the following provisions:

1. Personal Use Restriction. Except as expressly provided for in this Declaration, or by a written prior approval from the Developer until the Conversion Date, and from the Association thereafter, TrainShares shall be for the purpose of individual Journeys by Rail and related occupancy. Use of Cars or Rooms for commercial purposes or any reason other than the personal use described herein is prohibited. No TrainShare or any portion of Cars shall be used for any trade, business or other commercial purpose by an Owner, Permitted User or Exchange User while on board or not on board Cars. "Commercial purpose" shall include, but not be limited to, a pattern of rental activity or other occupancy by or permitted by an Owner that the Board, in its reasonable discretion, could conclude constitutes a commercial enterprise or practice. TrainShares owned by the Developer may be utilized for commercial purposes as provided for in this Declaration. Other commercial or business use of Cars can be carried out only with the prior written express authorization of the Board.

2. Common Areas and Cars Facilities. Owner use and occupancy of Cars, Common Areas, Rooms, Car facilities and recreational services during a Journey by Rail shall only be during a properly Reserved Time Period.

3. Nuisances. No nuisance, noxious or offensive activity or conduct, use or practice that is the source of annoyance or nuisance to other Owners or Crew, or that interferes with the peaceful occupancy and use of Cars by a Passenger shall be carried on or allowed within any part of Cars including a Room. The Crew Chief has the authority to act as he deems necessary to avoid and prevent such activity, including but not limited to, denying any Passenger entry to a Car or Room, having Passengers removed and ejected from Cars, physically restraining Passengers while on board Cars, and asking for the related assistance of government and other enforcement agencies in jurisdictions where Cars may be operating. Every act or omission whereby any provision of the Governing Instruments are violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated whether or not the relief sought is for negative or affirmative action. Smoking on board Cars is only permitted in designated areas, if any, and is expressly prohibited in Rooms according to the Rules of the Association.

4. Care of Cars. All areas and parts of Cars including Rooms shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. Each Owner, and other Passengers as enforced by actions of the Association, Management Companies and Crew Chief, shall keep Cars, Common Areas and Rooms in good condition and repair during the use and occupancy thereof, vacate Cars and the Room used at the expiration of his Journey by Rail, remove all persons and personal property, and leave Cars, Rooms, Furnishings and Equipment thereon and therein in good and sanitary condition and repair. No Owner or other Passenger shall permit any use of Cars or a Room or make or permit any use of the Common Areas that will increase the cost of insurance upon Cars.

5. Changes to Cars. Except as required to prevent damage or injury to persons or property in an emergency, no Owner or other Passenger shall make or authorize any alterations, additions, changes or improvements to Cars, Common Areas or Rooms, or any portion thereof, including, but not limited to, Furnishings and Equipment, painted areas, decorations, surfaces of walls, ceilings and floors, windows, structure, doors or any appurtenances thereto, or remove, alter or replace any portion of the Furnishings and Equipment without the prior written consent of the Association. The foregoing prohibitions, however, shall not modify or affect the obligation of each Owner and other Passengers for the prudent care and ordinary maintenance and upkeep of all property subject to such Owner and Passenger use.

6. Lawful Use. No unlawful use shall be made of Cars, Common Areas or related amenities, and all valid laws and regulations of all governmental bodies having jurisdiction shall be observed by Owners and other Passengers.

7. Signs. Except as otherwise provide for in this Declaration, no Owner other than the Developer shall cause or permit the display of any signs or advertising within Cars unless first approved in writing by the Car Management Company or Board or by the Crew Chief if a need arises and is only applicable during a single Journey by Rail.

8. Rental of Journeys by Rail by Owners. So long as an Owner's use of a Room is not deemed to be a commercial business by the Association, Owners can rent and retain income from the rental of their Journeys by Rail to a Permitted User pursuant to the provisions of Governing Instruments. Owners expressly acknowledge that the Developer is not in the business of and has made no promises regarding the rental of Journeys by Rail. Owners shall be liable for all costs related to the rental of Journeys by Rail, including, without limitation, any sales, occupancy or similar expense and taxes.

9. Use and Rental of Developer Rooms. The Developer shall have, among other related rights, the exclusive right to use and occupy Rooms owned by the Developer and to sell them to the public as Individual Journeys by Rail. Income received from the sale of such Individual Journeys by Rail shall be the sole property and for the exclusive benefit of the Developer.

10. Rules. All Passengers must at all times comply with the then current Rules adopted by the Association, as amended from time to time.

11. Pets. Except as otherwise described in the Rules, as may be revised from time to time, no animals shall be allowed or kept in or upon Cars other than animals who assist people with disabilities, which must, prior to the Journey by Rail, be approved in writing by the Car Management Company or Board.

12. Antennas. Passengers shall not be allowed to have any antennas on Cars except for built in antennas for portable radios and communication devices.

13. Weapons. No Passenger shall carry, have or allow any type of firearm or other weapon to be brought on board Cars, including, but not limited to, guns, explosive devices and knives. It is the express responsibility of every Owner and Passenger to immediately advise the Crew Chief of any known firearm or weapon that is on board a Car.

14. Security. All persons boarding Cars must adhere to and accept and abide by any and all security measures and precautions as determined by the Board and government agencies, as enforced by the Car Management Company, Crew Chief and Conductor.

15. Failure to Vacate. In the event of a Passenger's failure to vacate a Car or Room, in addition to other provisions of this Declaration and other Governing Instruments, the following provisions shall apply:

- (a) A Detaining User shall be subject to immediate removal, eviction or ejection from and the Crew Chief shall take such steps as may be necessary to remove a Detaining User from Cars and/or Rooms.
- (b) A Detaining User shall reimburse the Association and a Detained User for all costs and expenses incurred by them as a result of the conduct of the Detaining User, including, but not limited to, costs of alternative accommodations, travel, meal and court costs and reasonable attorneys' fees incurred in connection with removing, evicting or ejecting the Detaining User from Cars, and collecting such reimbursement(s). The Association shall detail such costs in and submit a bill to the Detaining User as a Personal Charge of the Detaining User. In the event the Detaining User disputes such charges, he or she shall have the right to present his or her position to the Chairman of the Board who shall make a determination regarding what costs the Detaining User should pay. Before the Association may levy a lien against a Detaining User's TrainShare for non-payment of such charges, the Association must afford the party reasonable notice of the levy and a right to a hearing if and as required by law, to occur within not less than 14 or more than 90 days.
- (c) Other provisions of this Declaration shall not abridge the Association's right to take such other action against a Detaining User as is permitted by law.
- (d) If an Owner or his Permitted User, by intentional or negligent act renders a Car or Room uninhabitable for all or any portion of any Time Period, then such Owner shall be deemed a Detaining User. The act of negligence by a Permitted User shall be deemed to be the act of the Owner of the TrainShare Journey by Rail used by such Permitted User.
- (e) A Detaining User shall be deemed to have waived notice required by law within the United States and Canada with respect to any legal proceedings regarding removal, eviction or ejection, to the extent that such notices may be waived under the laws of any venue having jurisdiction where a Car is located.
- (f) A Detaining User shall pay to the Detained User entitled to use and occupy Cars during such Detaining User's wrongful occupancy, as damages for emotional distress (in addition to costs and expenses set forth above), a sum equal to 25% of the Journey Use Fee for the current Fiscal Year for each day or portion thereof, including the day of surrender, during which the Detaining User prevents use and occupancy of Cars or Room.
- (g) If the Detaining User is an Exchange User, the Owner whose TrainShare was used by the Exchange User shall have no liability pursuant to the provisions of this Article VII, paragraph 15.

16. Unoccupied Room Use. Until the Conversion Date, the Developer first and subsequently the Association, has the right but no obligation to Reserve and use any TrainShare Owner Room during a Journey by Rail for which no Reservation has been made before 14 days prior to the first day of the related Journey Time Period ("Use Date"). Such use shall be automatically permitted starting on the Use Date. Unoccupied Room Use has no influence whatsoever on and all of an Owner's obligations pursuant to the Governing Instruments, including an Owner's payment of Fees, remain unchanged and in full force and effect. If the Developer or Association so uses a Room during a Journey, they shall reimburse the Owner an amount equal to 50% of the Journey Use Fee that the Owner has paid.

17. Other Timeshare Plans or Vacation Clubs. No TrainShare shall be permitted to be a part of or subjected to any other timeshare plan, vacation club, non-equity club, equivalent or similar organization, as a Commercial Unit or otherwise used for commercial purposes without the prior written consent of the Developer until the Conversion Date, and without the prior written consent



of the Association thereafter.

18. Occupancy During Day #1. Notwithstanding the actual time of day that a Time Period may begin, to permit the proper cleaning, repair and maintenance of Common Areas and Rooms between Journeys by Rail and occupancies, the right of Passengers to occupy a Room during a Reserved Time Period shall be subject to whatever reasonable Car boarding and Room check-in time may be set by the Board from time to time, or as required on a day to day basis, by the Car Management Company or the Crew Chief. Specifically, the Board, or the Management Company or Crew Chief acting on the Board's behalf, have the sole discretion to determine boarding and check-in times in order to further the collective enjoyment of the use of Cars by Owners as a whole.

19. Compliance with Laws. No Owner or Passenger shall permit anything to be done or kept on any Car that violates any law, ordinance, statute, rule or regulation of any government or lawful agency thereof.

20. Indemnity and Hold Harmless. By virtue of Train'Share ownership and acceptance of a Deed, whether or not it shall be so expressed in the Deed, each Owner hereby does, and any other person claiming the right to a Journey by Rail by or through an Owner does, agree to release, acquit, satisfy, defend, indemnify and hold harmless, to the fullest extent permitted by law, Developer, its respective successors, assigns, affiliates, joint ventures, representatives, principals, agents and employees, and any other person affiliated with the Developer, of and from any and all liability, loss, damage or injury which has occurred or may occur, including, but not limited to, all claims, causes, causes of action, damages, demands, costs, losses or expenses, and reasonable attorneys' fees, in law or in equity, which arise from, or are in any way connected with, directly or indirectly, use and occupancy of Rooms and Cars. This release and indemnification is intended to exist whether or not the indemnified event is caused in whole or in part by any negligent act or omission of anyone directly or indirectly employed by the Developer, or anyone for whose acts the Developer may otherwise be liable, unless it is primarily caused by the gross negligence or intentional act of a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

#### **ARTICLE VIII - RESERVATIONS**

1. Requirement. Journey by Rail reservations are made through either the Association's reservation system, or through a reservation system managed by an external Exchange Program with which the Association may, from time to time, have a contractual relationship. Owners who use the Reservation System managed by an external Exchange Program should refer to the disclosure materials provided by the Exchange Program for a complete description of its Reservation System. In the event no Exchange Program affiliation exists, or the Owner is not a member of the affiliated Exchange Program, reservations shall be made as detailed in the then current Rules of the Association, as the same may be amended from time to time. Unless otherwise provided for in this Declaration, reservations for use of all Journey Nights must be made at least 90 days prior to the start of a Designated or approved Alternative Time Period. If such a reservation(s) is not made 90 days before the start of the applicable Time Period, the related Journey Nights will be deposited into the Space Available List without further notice being given to the Owner and the Designated Time Period shall automatically be available for use by other persons. In this event, as a replacement of such Journey Nights the Owner may request a reservation for any equivalent Journey by Rail during Journey Nights that are available on the Space Available List. Additional fees, as determined by the Association, will apply if the Room Reserved by an Owner is of a Room category that has a higher standard Fare than the Room category the Owner would ordinarily be entitled to Reserve.

2. Unpaid Amounts Due. A Reservation confirmation shall not be given to an Owner, Permitted User or Exchange User if Journey Use Fees, Personal Charges and other assessments for the related Train'Share and Journey by Rail are not paid in full as required by this Declaration, or if any payment of the Train'Share purchase price owed to the Developer or a Train'Share Mortgagee is in arrears.

3. Space Available List Reservations. Reservations for Journeys by Rail from the Space Available List are made through the Association Reservation System and are confirmed based on availability of Rooms, Cars and Time Periods. The Association shall make reasonable efforts to provide immediate confirmation but reserves the right to withhold confirmation of such Reservations until related Journey Nights can be confirmed to be available.

#### **ARTICLE IX - CARS MAINTENANCE, REPAIRS, IMPROVEMENTS AND SECURITY**

Responsibility for the maintenance of Cars, and rights and restrictions regarding Car alteration and improvement, shall be as follows:

1. Car Owner. Maintenance and repair of Cars as described in this Article shall be governed by provisions of respective Car Use Rights Agreements in compliance with Car Owner requirements.

2. Association. Unless damage is caused by the specific abuse of an Owner or Permitted User, the Association shall maintain, repair and replace damaged Furnishings and Equipment at the Association's expense, except as otherwise provided in this Declaration and other Governing Instruments. The Association, through the Management Company, has the irrevocable right of access to Cars and Rooms whenever necessary to carry out maintenance, repairs and replacements, to make emergency repairs, or to prevent damage to Common Areas and Rooms.

3. Owners. Further to other provisions of this Declaration, the responsibility of and restrictions applicable to Owners for maintenance, repair and replacement shall include the prompt reporting to the Association of any defect or need for repairs for which the Association is responsible. Owners shall bear in their entirety any expenses of repairs or replacements to Common Areas, Furnishings and Equipment, Rooms or their furnishings, carpeting, appliances, or other property, real, personal or mixed, occasioned by the specific use or abuse by any Owner or Permitted User.

4. Developer. In accordance with other related provisions of this Declaration including compliance with respective Car Use Rights Agreements, until the Conversion Date the Developer reserves the right to modify Cars, including, but not limited to, changes in Common Area configuration, number and configuration or category of Rooms, recreational equipment and devices, machinery improvements and otherwise as the Developer may determine in its sole discretion to be for the benefit of Owners and in compliance with respective Car Use Rights Agreements, except that no such changes shall be made that diminish the rights of an Owner unless first approved by the Board.

5. Management Companies. Pursuant to this Declaration, the Association may enter into such management agreements, from time to time, as it deems necessary to engage the services of a qualified management company to carry out all or part of the operation, services, maintenance and repairs for Cars.

6. Car Safety and Security. The Association, Car Management Company(ies), and others as the Association determines to be in the best interests of Cars and Passengers, shall be responsible for ensuring that Cars comply with applicable government and railroad safety regulations and law, including related certification to be kept and made available to Owners at the offices of the Association.

7. Maintenance Time Periods. The Developer shall designate four seven Journey Night Maintenance Time Periods per year to be used for Car inspection, maintenance, repair and repositioning purposes; that may be changed to include more Time Periods having fewer but a total of 28 annual Journey Nights at the option of the Developer. The Developer shall convey all rights associated with such Maintenance Time Periods to the Association at such time as the Developer may determine appropriate in its sole discretion, and the Association must accept such conveyance and continue to use such Time Periods for Car maintenance and repair or Car repositioning. No Journey Use Fees shall be paid for Maintenance Time Periods. In the event that maintenance and repairs are not carried out during a Maintenance Time Period because none is required or for other reasonable reasons, the use of Cars during such Time Periods and related Journey Nights shall be determined by and at the sole discretion of the Developer or Association, whichever owns rights to the Time Periods. To facilitate improved repair and maintenance opportunities for the benefit of all Owners, unexpected related requirements may require that maintenance and repairs be carried out during and in accordance with procedures related to Other Time Periods.

#### **ARTICLE X - EXPENSES, FEES AND COSTS**

1. Journey Use Fees. Except as otherwise provided for in this Declaration, each Owner, including the Developer for its unsold Train'Shares, shall owe an annual Journey Use Fee, Adjusted Journey Use Fee or Revised Journey Use Fee. Journey Use Fees for Train'Shares are paid each year, or as otherwise provided for in the Declaration. Current Journey Use Fees are set forth in Exhibit "B", "Current Fees". At the discretion of the Association, the Journey Use Fee per Journey Night might be lower for longer or consecutive Time Periods if any exist.

(a) Payment of Journey Use Fees. The payment and collection of Journey Use Fees shall be subject to this Declaration and the provisions of other Governing Instruments. Journey Use Fees shall be payable in full by Annual Train'Share Owners each year and by Biennial Train'Share Owners each odd or even year prior to 120 days before the first day of an Owner's Designated Time Period described in an Owner's Train'Share Purchase Agreement, whether or not the related Journey by Rail is expected to be or is used by an Owner, Permitted User, Exchange User or Individual Journey Passenger; or, prior to the Reservation of each and every Journey by Rail or Early Use Journey by Rail being confirmed, whichever occurs first; or at such other time for individual or all Owners as the Board may authorize. In the event that the first Designated Time Period for a Train'Share in the "Initial Journey by Rail Year" set forth in the Purchase Agreement occurs within 120 days following the "Closing Date" as described in the Agreement, the first year Journey Use Fee is payable by the Closing Date. In the event that a Journey Use Fee is not paid at the times required by this Declaration, the Owner shall be in default of related obligations under this Declaration and other Governing Instruments and the Board shall have the right, but not the obligation, to subsequently place the respective Train'Share Journey by Rail for the related year on the Space Available List without further notice to the Owner. In this event, upon payment of the Journey Use Fee prior to 90 days before the first day of the related Designated Time Period, plus a late payment charge of \$200.00, the Owner may request a reservation for any equivalent Journey by Rail during Journey Nights that are available on the Space Available List. Journey Use Fees are considered unpaid until the full amount currently due has been paid. In the event that an Owner is a member of an Exchange Program that requires earlier payment of Journey Use Fees, the Exchange Program requirement shall prevail. If a Fee is owed for a Journey by Rail in a forthcoming year for which the Board has not yet calculated the Fee, Owners shall pay the Journey Use Fee for the current year and within 30 days after the Fee for the forthcoming year has been determined Owners shall pay any additional amount for new Fees if they are higher or be paid a refund if new Fees are lower. If adjusted Journey Use Fees are identified after an Owner has paid the normal Journey Use Fee, any additional amount owed shall be paid as and at the time that related Journey by Rail Personal Charges are due; if the adjustment reduces the normal Journey Use Fee the Train'Share owner shall be owed a credit or refund.

(b) Purpose of Journey Use Fees. Journey Use Fees shall be used exclusively to pay for and to promote the recreation, safety and welfare of the Owners, the management, operation, maintenance and improvement of Cars, the administration of the Association and Train'Share Plan, and for other expenses incurred by the Association in the performance of its responsibilities, as described in the Budget and set forth in this Declaration, excluding expenses included as and paid for by Fees that include Surcharges, and Personal Charges.

(c) Journey Use Fee Calculation. Individual Owner Journey Use Fees for Train Set Train'Shares are calculated by dividing total annual management and operating expenses and costs for all Train Set Cars by the total number of all Train'Shares, with subsequent adjustments to reflect differences between the categories of Room. Journey Use Fees for Private Car Train'Shares are calculated by dividing total annual expenses and costs for each Car by the total number of seven night Time Periods times the number of bedrooms in and for each Car, with subsequent adjustments made at the sole discretion of Developer or a Private Car Association to reflect differences between the relatively short seven Journey Night term of Private Car Train'Shares compared to

multiple week Fractional Interest ownership in the same Car. Journey Use Fees shall include a reserve or reserves to pay unexpected costs and expenses. Journey Use Fees are calculated on or before the 30<sup>th</sup> day of October each year for the forthcoming Fiscal Year.

(d) Journey Use Fee Amounts. The amount of the Journey Use Fee for the period of time through the first full Fiscal Year after Train Set or Private Cars begin operating shall be determined by the Developer and will thereafter be determined by the respective Association. There is no Journey Use Fees attributable to the four Maintenance Time Periods or Time Period 53. The current Journey Use Fees per Train Share are described in the operating Budget for the current year and are summarized in Exhibit "B", "Current Fees", to this Declaration. The Journey Use Fee for a Fiscal year may be changed by up to 5% to a Revised Journey Use Fee if Additional or Alternative Cars are introduced during and only for such Fiscal Year. Owners shall be notified of such increase or decrease by regular mail addressed to each Owner at his last known address at least 30 days before any such change becomes effective. Any surplus Journey Use Fee income is held by the Association and used to reduce future Fees or enhance subsequent Journey services as the Board determines at its sole discretion.

(e) Journey Use Fee Adjustments. Normal Journey Use Fees assume that Journey routes are all about the same distance (number of miles) with common en-route layover costs or that the cost of more miles on a longer route is offset by a reduced cost from fewer en-route layovers because more overnights are on board while traveling; however, if additional or reduced costs for variable route distances and layover factors cause meaningful cost changes the Association may make nominal adjustments to the Journey Use Fee for a specific Journey route, upwards or downwards, to fairly represent a pro rata sharing of operating costs among all Train Share Owners. Journey Use Fee adjustments will be payable when the Fee is paid, or if the Fee has already been paid before an adjustment is recognized, a Train Share Owner will receive a credit or refund or must pay the additional charge as and at the time Personal Charges for the related Journey are payable.

(f) Revised Journey Use Fees. In the event that an unexpected significant or ongoing additional Journey Use Fee expense or cost arises during any fiscal year, the Association can revise the current Journey Use Fee accordingly. See Revised Journey Use Fee in Article II of this Declaration.

(g) Payment of Journey Use Fees for Unsold Train Shares. Developer pays Journey Use Fees as the Owner of and for all Train Share Time Periods that have not yet been sold as Train Shares. Excluding unforeseen increased Amtrak charges for hauling Cars and providing support services, Developer has guaranteed that annual Journey Use Fees required to pay other costs included as part of Journey Use Fees will not increase by more than 4% of the preceding year's Fee through December 31, 2021 ("Guarantee"). As consideration for the Guarantee, the Developer is not required to pay Journey Use Fees as the Owner of and for unsold Train Shares, but instead must, during the time that such Guarantee exists, pay all operating and management expenses and costs that are included in Normal Journey Use Fees in excess of the total Journey Use Fees owed by all Train Share Owners other than the Developer. The Guarantee does not apply to and excludes unforeseen additional charges caused by Amtrak service delays or disruptions, or for unusual Amtrak or other railroad support services, if insurance proceeds pay additional costs, or if an Assessment is required to fund Fee increases because of or if additional costs occur due to natural disasters, acts of terrorism, strikes, Acts of God, and force majeure events, including, but not limited to, en-route train and Car accidents, or amounts arising because of extreme unusual circumstances as the Association Members (see Section 15 below) may determine by a majority vote. The Developer has the option, in its sole discretion, to extend the Guarantee period for one or more continuing additional consecutive years, any and all such extensions to be effective at such time as Developer gives notice to the Association that an extension for the forthcoming year is being activated, such notice to be delivered at least three months prior to the end of the then current year.

(h) Waiver (non payment) of Journey Use Fees. Buyer has the option to and if Buyer does assign the right to use a single Journey by Rail to the Association at least 120 days before a Journey's departure date, the Association shall refund the related Journey Use Fee to Buyer if already paid, be responsible for payment of the Journey Use Fee, have the right to use and/or sell the Journey and retain all related income, and otherwise have the right to dispose of such Journey as the Association determines at its sole discretion.

3. Journey Fees. Journey Fees shall be included as part of Journey Use Fees. Journey Fees include and are calculated based on increased and additional individual Owner, Train Set or Private Car Journey by Rail costs and expenses that may not apply to all Journeys or be included in Journey Use Fees. Journey Fees may be charged and added to Journey Use Fees at any time up to 90 days before the Departure Date or thereafter if any Journey expense is increased because of a subsequent request by a Owner or passenger. Journey Fees shall, if they occur, include local, State or Federal taxes related to Journey by Rail passengers or passenger travel.

4. Personal Charges. At the option of the Developer until the Conversion Date, and of the Association thereafter, all on board purchases of services and goods must be paid for in a manner other than with cash money. A single final payment by debit or credit card is acceptable. Before or at the time they board a Car, Passengers shall be required to make arrangements for the manner in which they will pay for Personal Charges incurred during a Journey by Rail. No on board Personal Charges shall be made or accepted until such arrangements have been made to the satisfaction of the Car Management Company or Crew Chief. Except as otherwise provided for in this Declaration, Passengers shall pay or make arrangements agreed to by the Association or Crew Chief to pay Personal Charges related to a specific Journey by Rail prior to the Disembark Time for such Journey by Rail. If Personal Charges incurred during a Journey by Rail cannot be determined prior to the Disembark Time, or if Personal Charges are incurred for any reason not related to a specific Journey by Rail, Personal Charges shall be paid on or before 10 days following the date on which the Association advises an Owner of and delivers a bill for such charges.

5. Fuel Surcharges. Fuel Surcharges shall be assessed as an Journey Use Fee in the event that fuel costs exceed those estimated in the current year's Budget if Budget reserves do not provide adequate contingency funds to pay for unexpected and higher continuing fuel expense, or if fuel costs spike upwards for a less prolonged period of time. The Fuel Surcharge shall be in an amount determined at the sole discretion of and by the Board and may be applied at any time up to 90 days before departure of a Journey by Rail. Owners or others using a Journey by Rail must pay the Fuel Surcharge 10 days after notification from the Association of the amount of the Surcharge if the scheduled Journey by Rail departs within 60 days or a Reservation has already been made, or at the time the Journey Use Fee is paid, whichever occurs first. Fuel Surcharges may or may not be evenly spread among all Train Share Owners, and at the discretion of the Association can be applied to individual Train Shares Journeys by Rail during which fuel costs cause higher Car operating expenses.

6. Reservation System Improvements. Normal Reservation System costs to make a Journey by Rail Reservation are included in Journey Use Fees. The Association reserves the right to refine and enhance the Reservation System to provide additional benefits to Owners beyond normal Reservation System services. In this event, the cost of additional related services shall be in addition to Journey Use Fees and paid as Personal Charges including, at the option of the Association, a Reservation Fee, if and as set forth in the Rules, to be charged to Owners or other Passengers as payment for costs arising from their use of such additional Reservation System services.

7. Personal Obligations for Journey Use Fees and Personal Charges. From and after the date that a Purchase Agreement is executed, each Owner, by accepting a Deed, whether or not it shall be so expressed in the Deed, shall be deemed to have covenanted and agreed, for each Train Share owned, to pay to the Association all Journey Use Fees and Personal Charges that shall be established, made and collected as provided for in this Declaration. These Fees and Personal Charges, together with interest thereon, costs and reasonable attorneys' fees shall be the personal obligation of each and every Owner at the time they become due and payable and shall be a lien and charge upon the Train Share of any Owner that is delinquent in payment thereof. No Owners may waive or otherwise avoid liability for Fees or Personal Charges by non-use of all or any part of Train Share rights, Journey by Rail services, by assigning use to a Permitted User, or any abandonment thereof.

8. Withholding Payments. No Owner may withhold payment of any Journey Use Fee, Personal Charges or any portion thereof because of any dispute which may exist between such Owner and the Association, the Board, a Management Company or the Developer or among any of them. Each Owner must pay all Journey Use Fees and Personal Charges when due pending resolution of any dispute.

9. Interest, Application and Collection of Payments. Journey Use Fees and Personal Charges paid on or before 10 days after the date when due shall not bear interest, but all sums not paid on or before ten days after the date when due shall bear interest at the rate of 18% per annum or the highest possible interest rate permitted by law, whichever is lowest, from the date when due until paid. In addition to such interest, the Association may charge an "Administrative Late Fee" on delinquent accounts in the amount set forth in the then current Rules for each delinquent payment. The Association is further authorized to utilize the services of a collection agency for collection of delinquent accounts and to charge and impose a lien against the delinquent Owner's Train Share for related costs. All payments on accounts shall be first applied to any interest that has accrued, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection, and then to the Journey Use Fee or Personal Charge payment first due. The Association shall have the discretion to increase or decrease the amount of the administrative late fee and/or interest rate within the limits imposed by law; provided, however, that such increase or decrease shall be made effective by amending the Rules and notifying the Owners of same by regular mail addressed to each Owner at his last known address. Notwithstanding any provision of this paragraph to the contrary, the Association shall have the right to waive any late Fees or interest that accrue as a result of delinquent payments.

10. Common Surplus Ownership and Refund. Each Owner of a Train Share shall own a share of the Common Surplus. Any Common Surplus shall, at the discretion of the Association, be used to further enhance the Journey by Rail experience or be credited towards future Journey Use Fees payable by Owners, prorated among Owners to represent a relative amount compared to the amount of current annual Journey Use Fees owed by them.

11. Special Assessments. Except as otherwise expressly provided for in this Declaration, in the event that the Journey Use Fees collected from the Owners are at any time inadequate to meet the costs and expenses incurred by or imposed upon the Association for any reason, including but not limited to the nonpayment by any Owner of any Journey Use Fee or Personal Charge, the Board shall immediately determine the approximate amount of such inadequacy, prepare a supplemental budget and levy a Special Assessment upon each Owner in such amount(s) as the Board determines to be necessary in order to pay the Association's costs and expenses. Such Special Assessment shall be allocated among the Owners based upon each Owner's proportionate share of the Journey Use Fees.

In accordance with provisions of Car Use Rights Agreements, funding of any capital improvements for Cars might become the obligation of and the Association may choose to levy Special Assessments to pay for such capital improvements to the extent that the Association's reserves fall short of the amount necessary to pay them.

Any Special Assessment shall be due and payable within 30 days after the date upon which a written notice of such Special Assessment is mailed to the Owner, unless the Board determines that installment payments shall be permitted and provides each Owner with an approved payment schedule, in which case each Owner's payments must be made no later than as specified in such payment schedule. In the event that the Board authorizes the payment of any Special Assessment in installments, no notice of the due date of each individual installment payment shall be required to be given, other than the aforesaid Special Assessment notice.

Special Assessments shall be used only for the specific purpose(s) set forth in the above described written notice. Upon completion of such specific purpose or purposes, any excess funds shall be considered Common Surplus and may, in the Board's sole discretion, either be returned to the applicable Owners or applied as a credit towards future Journey Use Fees owed.

12. Payment Address. Except as otherwise required by the provisions of this Declaration or the then current Rules, payments of Journey Use Fees and any other amounts shall be payable

to and at the office of the Association.

#### ARTICLE XI - THE ASSOCIATION

1. General Authority. The Association is empowered to enforce the rights and obligations of and to protect the interests of Train'Share Owners as provided for in this Declaration and the Bylaws.
2. Membership. Each Owner shall automatically become a Member in the Association on the respective Deed Date. The Developer shall have Membership for each unsold Train'Share. If ownership of a Train'Share is transferred, the new Owner shall become a Member at such time as all transfer requirements occur as provided for in this Declaration.
3. Voting. All Owners become Members of the Association with voting rights pursuant to provisions of this Declaration and Bylaws. The Association shall have two classes of voting membership, A and B. Class A Members shall consist of all Owners of Train'Shares, except the Developer. Class A Members shall be entitled to one vote for each Journey Night that is included in Train'Shares that are initially or subsequently purchased. Class B Members shall include the Developer or the Developer's assigns. Class B Members shall be entitled to four votes for each Journey Night until the Conversion Date. After the Conversion Date, Class B Members shall be entitled to one vote for each Journey Night.
4. Articles of Incorporation, Association. A copy of the present Articles of Incorporation of the Association is on file at the office of the Association and is provided to all Owners at the time of purchase or on request.
5. Bylaws. A copy of the present Bylaws of the Association is on file at the office of the Association and is provided to all Owners at the time of purchase or on request.
6. Board. The Board shall initially consist of persons selected by the Developer and subsequently as set forth in the Bylaws, and shall include at least one non Developer Owner by such time as 100 Train'Shares have been sold.
7. Board Authority. The Board shall have full authority to act on behalf of the Association to manage, enact and enforce provisions of this Declaration as it deems to be in the best interests of Owners, as provided for in this Declaration and other Governing Instruments.
8. Limitation Upon Liability of Association. By accepting a Deed, whether or not it shall be so expressed in the Deed, Owners acknowledge that the Association and Board members shall not be liable to Owners for injury or damage to their personal property caused by any latent condition of the Rooms, Cars, a Train Set or by Owners or other Passengers, and the Board members are absolved for all liability claims except for malfeasance.
9. Limitation Upon Claims Against Cars. By accepting a Deed, whether or not it shall be so expressed in the Deed, Owners acknowledge that, for the benefit of all Owners, Owners automatically waive and shall have no right to make any claim of any kind whatsoever against any and all Cars.
10. Restraint upon Assignment of Shares and Assets. Each Owner's share in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his/her Train'Share.
11. Management Agreements. The Board is authorized to enter into agreements with Management Companies and to delegate to such Management Companies all powers and duties of the Association and responsibility for Car operations, Car maintenance and Passenger services, pursuant to provisions of the Governing Instruments and except as may otherwise be governed by applicable law. Initial Management Agreements shall be for up to five years and may be renewed for up to an additional five year term upon the agreement of the parties.
12. Office. The Board shall determine the location of the offices of the Association from time to time, at its sole discretion.

#### ARTICLE XII - MANAGEMENT

1. Association Powers and Duties. From the date that the first Train'Share is sold until the last Journey by Rail attached to all Train'Shares occurs, except as otherwise provided for in this Declaration, the Association, acting alone (through the Board or a Management Company) may, subject to the provisions of the Governing Instruments, exercise any and all rights and powers set forth in this Declaration and other Governing Instruments, and, except as specifically limited herein, all the rights and powers of a non-profit mutual benefit corporation under the laws of the jurisdiction in which the Association is incorporated.
2. Specific Powers and Duties of Association. The Association shall represent the interests of all Owners and shall have the power to do all things that are required to be done on behalf of Owners pursuant to this Declaration and other Governing Instruments. In amplification and not limitation of the foregoing powers and duties, some of the rights and obligations of the Association are as follows:
  - (a) Bank Accounts. To deposit all funds collected from Owners in the General Account. Funds deposited in the General Account may be used by the Association only for the purposes for which such funds have been collected.
  - (b) Car Operations. To oversee the operation, maintenance and repair of Cars pursuant to respective Car Use Rights Agreements.
  - (c) Collection of Damages From Exchange Users and Individual Journey by Rail Passengers. If any loss, damage or destruction to a Car exterior or interior, other than by ordinary wear and tear, is caused by an intentional or negligent act or omission of any Exchange User or Individual Journey Passenger, the Association shall use reasonable efforts to collect from such Exchange User or Individual Journey Passenger the cost of repair, restoration or replacement of the same, and the costs of collection thereof, to the extent such loss, damage or destruction is not covered by insurance proceeds to the Association.
  - (d) Exchange Program. To negotiate agreements with individuals or organizations to provide for participation by Owners in one or more external Exchange Programs, and to make changes to or replace Exchange Programs without notice to Owners.
  - (e) Financial Statements. To prepare financial records consistent with sound accounting practices to include quarterly statements for Association and individual Car administration and operations, and an Annual Report to be available to Owners by the 31<sup>st</sup> of March each year for the prior Fiscal Year. The Annual Report shall be prepared by a qualified Public Accountant or, as deemed required by the Board or a majority of Members, by a Certified General Accountant. As deemed required by the Board or a voting majority of Members an annual independent audit may be completed.
  - (f) Budget and Forecast. Preparation of a forecast and Budget for the management, administration and operation of the Association and the operation of Cars, including reasonable reserves for Car maintenance and replacement costs, from which Journey Use Fees are calculated for the forthcoming Fiscal year. The Budget for a Fiscal Year may be revised to reflect changes in expenses and costs if Additional or Alternative Cars are acquired during such Year, and as otherwise may be reasonable. Copies of annual Budgets shall be made available to Owners on or before the 30<sup>th</sup> of October each year for the forthcoming Fiscal Year.
  - (g) Car Use Rights Agreements. To comply with provisions of Car Use Rights Agreements, including payments as provided for therein.
  - (h) Inspection of Books and Records. To make the books and records of the Association, including Car safety, inspection and maintenance records, open to inspection on the written demand of any Member or Car Owner, at any reasonable time during usual business hours, for a purpose reasonably related to the Member's interests as an Owner or the Car Owner's interest in a Car. The inspection may be made by an Owner, Car Owner or by their designated agent or attorney, and shall include the right to copy and make extracts. The Association shall establish reasonable rules with respect to: Notice to be given to the custodian of records by the Owner or Car Owner desiring to make the inspection; Hours and days of the week when such inspection may be made; and, Payment of the cost of reproducing copies of documents requested by a Member. Each current Director on the Board, at no expense, shall have the right at any time to inspect all books, records and documents of the Association and physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies. No party may use the books and records of the Association for any purpose other than Association business, and no party may sell or otherwise provide copies of the same to any third party. Association Registry records are and all parties inspecting them shall retain such information as confidential.
  - (i) Insurance: To acquire and maintain insurance of the types and kinds as set forth in this Declaration and as required by individual Car Use Rights Agreements.
  - (j) Legal and Accounting: To obtain and pay the cost of legal, accounting and other professional services necessary or proper in the operation and administration of the Association, Cars and the Train'Share program, and the enforcement of the Governing Instruments.
  - (k) Levy and Collection of Fees: To levy, collect and enforce Journey Use Fees and Personal Charges from and against Owners in the manner provided in this Declaration and to do all other things necessary to enforce each Owner's related obligations.
  - (l) Collection of Personal Charges. To collect Personal Charges owed by Owners and other Passengers in the manner provided in this Declaration and to do all other things necessary to enforce related obligations of each Owner and Passenger.
  - (m) Meetings. To provide Members with a notice of annual Association meetings to be held pursuant to Bylaws and to provide Members with access to copies of Minutes of such meetings within 60 days after such meetings. To provide Members with access to minutes of Board meetings within 60 days following the date of such meetings, in a manner determined by the Board which may be a secure Internet web site at the option of the Board.
  - (n) Other Necessary Acts: To do all other things or acts deemed by the Board and/or Association to be necessary, desirable or appropriate for the benefit of Owners, Car Owners, Management Companies and the operation of Cars.
  - (o) Rules: To authorize, adopt, publish and enforce, from time to time, Rules relating to fees and charges for various services, and possession, use, access and enjoyment of Rooms, Cars and Train Sets which Rules shall be consistent with the provisions of this Declaration.
  - (p) Certificate of Status and Documents: To provide a qualified requesting party with a certificate describing amounts owed by and payments in arrears of an Owner, if any, and to provide a copy of any or all of the Governing Instruments within 10 days after receiving a request from such Owner, Train'Share Mortgagee, prospective mortgagee of a Train'Share, purchaser or other prospective transferee of a Train'Share. The Association may charge a "Certificate of Status" fee in the amount set forth in the then current Rules, payable in advance, for providing such certificate and/or Governing Instruments, which shall be paid prior to their delivery.
  - (q) Taxes and Fees. To pay all taxes, fees and other costs effecting or relating to the Association and to discharge, contest or protest disputed liens or charges affecting the

Association.

- (r) Utilities: To obtain and pay the Association's business office expenses and cost of water, electrical, telephone, communications, gas, refuse pickup, garbage disposal, other utility and related services.

3. Car Management. The Association is authorized to enter into one or more Car Management Agreements on behalf of itself, Owners and the Developer for the provision of Car operations, Car maintenance and general repair, Car safety and Passenger services that include, but are not limited to, Common Area cleaning, Room services, Room housekeeping, laundry, galley, food and beverage service, Passenger reception, entertainment, recreation, provisioning and related services.

4. Association Management. The Association is authorized to enter into an Association Management Agreement on behalf of itself and Owners for the administration of the Association's business and the operation of the Reservation System; and, a related Management Company can appoint specific person as it deems appropriate to be responsible for the management of the business of the Management Company and thereby the Association ("Managing Agent")

5. Management Company. As the Board may deem appropriate at the time a Management Agreement is first executed, one or more management companies may be owned, under the control of or managed by the Developer or its' principals ("Managing Agent").

6. Unrelated Agreement Termination. Termination of Management Agreements shall be as set forth in such Agreements. Termination of one Management Agreement shall not be cause for termination of other Management Agreements. In the event that a Management Agreement is terminated, the related Management Company's duties and other obligations will be the exclusive responsibility of the Association until a new Management Company is retained by the Association.

#### **ARTICLE XIII - INSURANCE**

1. Car Use Rights Agreements. Provisions of this Declaration for repairs to or replacement of a Car shall comply fully with related terms of respective Car Use Rights Agreements. In the event of a conflict between this Declaration and a Use Rights Agreement, provisions of the Use Rights Agreement shall prevail.

2. Purchase of Insurance. The Association shall obtain and maintain adequate casualty, liability and other insurance deemed necessary by the Board and as required by individual Car Use Rights Agreements. Such insurance coverage shall include, but may not be limited to, the following:

- (a) Insurance required for Cars to travel on tracks and/or to be pulled by Engines owned and operated by Amtrak, VIA Rail and necessary Short Lines.
- (b) Sufficient coverage to pay the full cost of repairs to Cars, except for a reasonable deductible amount, to the minimum extent customarily written on similar private cars in use providing Journeys by Rail as contemplated by this Declaration
- (c) Coverage for loss or damage to Cars and Furnishings and Equipment caused by fire, collision and other risks and hazards, in an amount equal to the maximum insurable value up to the cost of equivalent replacement Cars.
- (d) Coverage shall be based on the current cost to repair or replace Cars, not on the cost to the Developer when first acquired.
- (e) Public liability insurance in such amounts and with such coverage as shall be required by the Association, at its sole discretion, with cross liability and endorsement to cover liabilities of the Owners as a group to an Owner, and to liabilities of one Owner to another Owner.
- (f) Insurance for water quality and pollution, if available and considered necessary by the Board or required by law.
- (g) Insurance covering personal property on Cars or in the possession of the Association, its agents, Crew members or employees, that belongs to any Owner, Permitted User or Exchange User, against hazards such as burglary and theft.
- (h) Insurance covering personal property on Cars or in the possession of the Association, its agents, Crew members or employees against hazards such as burglary and theft.
- (i) Errors and omissions insurance for members of the Board, senior Management Company personnel, and the Association's officers.
- (j) Medical and insurance for Crew as may be reasonable and normal for comparable commercial non Amtrak passenger train operators, as deemed appropriate by the Board.
- (k) To the extent available at a reasonable cost, to be determined by the Association, all insurance policies shall name the Association, as a fiduciary of the Owners, as an additional insured.
- (l) Insurance policies shall name Car Owners as additional insured parties to the extent required by Car Use Rights Agreements.
- (m) Such other risks as from time to time shall be customarily covered with respect to passenger Journeys by Rail and as the Association deems necessary in and for the interest of the Association, Owners, Car Owners, a Car Lessor, and Train' Share Mortgagees, as their interests may appear.

2. Premiums. Premiums for insurance policies purchased by the Association shall be paid as and be a part of Journey Use Fees.

3. Insurance Trustee. An Insurance Trustee, to be the Chairman of the Board if no other Trustee is appointed, shall be appointed by the Board. The duty of the Trustee shall be to receive such insurance proceeds as are paid and to hold the same in trust for the recipient(s) pursuant to this Declaration and as required by, but not limited to, insurance provisions in Car Use Rights Agreements. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. All proceeds covering loss or damage to Car and/or their Furnishings and Equipment shall be paid to the Insurance Trustee.

4. Insured Parties. All insurance policies purchased by the Association shall be for the benefit of the Association, Car Owners, Car Lessor, Owners including the Developer for unsold Train'Shares, and Train'Share Mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses be paid to the Insurance Trustee. The named insured shall be the Association individually and as agent for the Owners without naming them and as agent for their Train'Share Mortgagees, Car Owner or Lessor for individual Cars as provided for in related Car Use Rights Agreements. Provisions shall be made for the issuance of mortgagee endorsements and memoranda of insurance for Train'Share Mortgagees. Owners who have Mortgagees shall pay any additional expense associated with their Mortgagee being a named insured and for the issuance of mortgagee endorsements and memoranda of insurance.

5. Insurance Proceeds. All insurance proceeds related to loss of or damage to Cars shall be paid to an insurance trust bank account managed by the Insurance Trustee. The Insurance Trustee shall hold such proceeds in trust to be used for the purpose of repair to or replacement of Cars. Any surplus of such proceeds after repair and/or replacement shall be pro-rated among all Owners of All Train'Shares, after administrative costs, or, at the sole discretion of the Board, by a credit to their future Journey Use Fee payments. In the event a loss is such that the a Car is not to be repaired or replaced, insurance proceeds shall be paid to Car Owners or Lessors and Owners of Train'Shares as their interest may appear after administrative costs. Payments to Owners shall be consistent with the number of Journeys by Rail lost by each Owner.

6. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed consecutively as follows:

- (a) Trustee. Expenses of the Insurance Trustee unless an alternate provision to make such payments is made.
- (b) Repairs. To defray the cost of repairs to Cars.
- (c) Remaining Proceeds. Any proceeds remaining after defraying repair costs to the extent that a Car is fully returned to the same condition as it was before the loss or damage shall be distributed as surplus proceeds in the manner provided for in this Article XIII paragraph 5 of this Declaration.
- (d) Failure to Repair. If it is determined in the manner elsewhere provided for in this Declaration that damage to a Car shall not be repaired, the remaining proceeds shall be distributed in the manner set forth in this Article XIII paragraph 5 of this Declaration.
- (e) Certificate. In making distribution to Owners and their Train'Share Mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its Registrar for names of Owners and their respective shares of the distribution.

7. Mortgagees. No Train'Share Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no such Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and such Mortgagee pursuant to the provisions of this Declaration and applicable policies.

8. Avoidance of Increased Risk. No Owner shall permit anything to be done or kept in a Room or do or place anything on a Car or do anything related to Car operations that could result in increased premiums or the cancellation of insurance related to Cars.

9. Owner Release of Insurance Liability. To the extent that damages suffered are covered by insurance, Owners, Permitted Users and Exchange Users have no right to or to make any claims of any kind or type whatsoever for or arising from personal injury, use and occupancy of Cars, or for any other loss or damage arising from use of Cars against the Association, the Developer, a Car Owner or their officers and representatives. These provisions do not apply to claims arising out of negligent acts or to a claim by an Owner against and arising from the personal conduct of any other Owner, Permitted User or Exchange User.

10. Association as Agent. The Association is hereby irrevocably appointed Agent for each Owner, Train'Share Mortgagee or other lien holder of a Train'Share to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

#### **ARTICLE XIV - RECONSTRUCTION AND REPAIR AFTER CASUALTY**

1. Car Owner. In the event that a Car is damaged, the Board or its agent shall immediately advise the respective Car Owner. All Car salvage, reconstruction, repair, loss, replacement and related estimates, work, costs and payment matters shall comply with provisions of the respective Car Rights Use Agreement.

2. Determination to Reconstruct or Repair. In the event that a Car is damaged, the Car Management Company shall consider the extent of such damage, whether or not the Car should be repaired, and if so, the Board shall obtain an estimate of the cost to repair the Car from qualified sources through the Car Management Company.

3. Repairable Damage. In the event of damage to a Car whether resulting from an insured casualty, uninsured casualty or other proceedings, other than by ordinary wear and tear, unless otherwise provided for in a Use Rights Agreement the Car Management Company shall have the authority to and shall use its best commercially reasonable efforts to cause such damage to be repaired promptly and to be paid for to the extent possible using available insurance proceedings for such purpose.

4. **Journey Use Fees.** If the amount by which an award of insurance proceeds is reduced on account of a deductible clause in an insurance policy and/or insurance proceeds are otherwise not sufficient to defray the estimated costs of a Car repair, or if, at any time during or upon completion of reconstruction and repair, the funds for the payment of related costs are insufficient, Special Assessments shall be levied against the Owners in accordance with provisions of this Declaration. Such Special Assessments on account of damage shall be a Journey Use Fee assessed to each Owner on a pro-rated basis, including the Developer for unsold Train'Shares.

5. **Change of Cars:** During such time that a Car is damaged and not available to provide Journeys by Rail on the damaged Car, Owners shall have the right to select a Room in any Car from the Space Available List. If a Car is damaged and not repairable, an equivalent replacement Alternative Car, selected at the sole discretion of the Board, shall be obtained by the Association as soon as possible using insurance proceeds and/or other methods available to the Association as provided for in this Declaration or as the Board may otherwise determine.

#### ARTICLE XV - COMPLIANCE AND DEFAULT

1. **Owner Compliance and Default.** Each Owner or All Train'Shares shall be governed by this Declaration and other Governing Instruments. Failure of a Buyer to comply with the terms herein and thereof, as the same may be amended from time to time, shall entitle the Association to terminate such Buyer's (Owner's) use rights under the Purchase Agreement and to pursue any and all legal and equitable remedies for the enforcement of such provisions. All provisions of this Declaration shall be enforceable equitable servitudes and shall be effective until the end of the Initial or Perpetual Term, whichever ends last.

2. **Notification of Default:** At any time after 10 days following the occurrence of an Owner being in default of any portion of the Governing Instruments, the Association or an authorized representative may, but is not required to, make a written demand to such Owner for payment and/or that other non performance be cured within a period of time to be determined by the Board. Said demand shall state the date and amount of the delinquency with respect to which the Owner is in default.

3. **Default Action.** In the event any Owner or his Permitted User should fail to comply with any of the provisions of the Governing Instruments, the Association or any other Owner(s) shall have full power and authority to enforce compliance in any manner provided for herein and therein, by law or in equity, including, without limitation, the right to enforce the Governing Instruments by bringing an action for damages, an action to enjoin the violation or termination of such Owner's use rights under his Deed and Purchase Agreement.

4. **Suspension of Privileges.** Without limiting the Association's other rights of recourse as provided for in this Declaration, if a written demand is made to a defaulting Owner for payment, the Association may, at its option, suspend the right of an Owner and his Permitted User to use Journeys by Rail, occupy Cars and Rooms, and/or the right of such Owner to participate in any vote or other determination as a Member of the Association. In this event the written demand shall include a notice of such suspension and the reasons therefore and the suspension shall become effective five days following the date such notice is given. If such suspension is based on the failure of an Owner to pay Journey Use Fees, Personal Charges or any other amount(s) payable when due pursuant to the provisions of this Declaration, the suspended privileges of such Owner shall be reinstated automatically at such time as the Owner pays to the Association, in cash or by wire transfer or cashiers check, all amounts past-due as of the date of reinstatement, together with accrued and unpaid interest, late charges and other monetary penalties imposed. If such suspension of privileges is based on any act or omission other than the failure of an Owner to pay Journey Use Fees, Personal Charges or any other amount(s) when due, the suspended privileges shall be automatically reinstated upon the expiration of the period in the suspension notice which may not be until such acts, omissions or failures of an Owner are cured, provided, however, the Owner shall be deemed to have taken a Journey by Rail during any Designated Time Period(s), as set forth in the Owner's Deed, or Alternative Time Periods, that passed during the suspension period and shall owe the related Journey Use Fees due for such Journey by Rail as provided for in this Declaration. During such time as the privileges and rights to use and access Cars are suspended, as provided for herein, Owners remain responsible for Journey Use Fees that come due and use of the Journey by Rail attached to ownership of the respective Train'Shares shall be at the sole option of the Association.

5. **Certificate.** Any Owner shall have the right to require from the Association a certificate showing the amount of unpaid Journey Use Fees and Personal Charges against him with respect to his Train'Share. The holder of a mortgage or other lien shall have the same right as to any Train'Share upon which it has a lien. Any person who relies upon such certificate shall be protected thereby. The Association may charge a Certificate of Status Fee in the amount set forth in the Rules, for providing such certificate and/or Governing Instruments, which shall be paid prior to their delivery.

6. **Mortgages.** In the event a Train'Share Mortgagee shall obtain title to a Train'Share as a result of the foreclosure of such mortgage, or in the event such Train'Share Mortgagee shall obtain title to a Train'Share as the result of a conveyance in lieu of foreclosure of such first mortgage, such Mortgagee shall not be liable, except as provided for herein and to the extent required under law, for that share of the Journey Use Fees and Personal Charges chargeable to the Train'Share, or the Owner thereof, which became due prior to the acquisition of title by such Mortgagee, and any such unpaid share of Journey Use Fees and Personal Charges chargeable against any such foreclosed Train'Share transferred in lieu of foreclosure, shall be deemed a Journey Use Fee to be paid in the same manner as other Journey Use Fees by all of the Owners. However, all rights for use of Cars and subsequent transfer of Train'Share ownership shall be suspended until such time as all Fees and Charges owed to the Association have been paid in full.

7. **Other Remedies.** Nothing contained in this Article of this Declaration shall be construed to be a modification of any other rights or remedies of the Association, to the extent allowed by the Governing Instruments.

8. **Personal Liability for Unpaid Fees.** In the event a Train'Share is owned by more than one person or entity all such Owners shall be personally liable, and jointly and severally liable for all Journey Use Fees and Personal Charges related to ownership or and/or made against the Train'Share. The Association may bring an action for a money judgment against a delinquent Owner(s) to collect all sums owed, including interest, late charges, costs and reasonable attorneys' fees.

9. **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the terms of the Governing Instruments as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding, and recover such reasonable attorneys' fees as may be awarded by the Court, including all appeals and all proceedings in bankruptcy.

10. **No Waiver of Rights.** The failure of the Association or any Owner to enforce any covenant, restriction or other provision of applicable law or the Governing Instruments shall not constitute a waiver of the right to do so thereafter.

11. **Injunctive Relief.** The Association may seek an injunction from a court of equity to compel compliance with or prohibit violation of the Governing Instruments regardless of whether an adequate remedy at law exists.

12. **Governing Law, Waiver of Jury Trial, Venue of Actions.** Except for mandatory legal requirements attached to the Association in the jurisdiction in which it has been incorporated, this Declaration or other Governing Instruments shall be governed by and be construed in accordance with laws of the State where the Association has its primary business office. The Association, each Owner, Developer, Management Company and any other party claiming rights or obligations by, through, or under this Declaration hereby waives any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the others concerning the interpretation, construction, validity, enforcement or performance of this Declaration or any other agreement or instrument executed in connection with this Declaration. In the event any suit or legal action is commenced by any party, the other parties hereby agree, consent and submit to the personal jurisdiction of the courts in the County where the Association has its primary business office, with respect to such suit or legal action, and each party also hereby consents, submits to and agrees that venue in any such suit or legal action is proper in said court and county, and hereby waives any and all personal rights under applicable law or in equity to object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

#### ARTICLE XVI - AMENDMENTS

1. **Board and Owners.** An amendment to this Declaration may be proposed either by the Board or an Owner. It may be considered at any meeting of the Association, regular or special, of which due notice has been given according to the Bylaws. Passage shall be by the affirmative vote of Owners casting not less than 60% of the votes of all of the members of the Association either in person or by proxy, and not just of those present. Notwithstanding the foregoing, except as otherwise permitted in this Declaration or required by applicable law, no amendment shall modify an Owner's proportionate share of the Journey Use Fees, nor Member's voting rights. Amendments to this Declaration may also be made as otherwise provided for herein.

2. **Developer.** Until the Conversion Date, the Developer shall have the right to amend this Declaration provided that such amendment shall not increase the proportion of Journey Use Fees borne by Owners, be cause for an unreasonable increase of Journey Use Fees or materially and adversely affect the rights of any Owner as granted under any Governing Instrument.

3. **Limitations.** No amendment shall be passed which shall impair or prejudice the rights and priorities of any Car Owner or Train'Share Mortgagee or change the provisions of this Declaration with respect to their rights without the written approval of all Car Owners or Train'Share Mortgagees of record. No amendment shall change the rights and privileges of the Developer without the Developer's written approval and such attempt to change this Declaration shall be invalid.

4. **Service Charges.** The Board can amend Service Charges by amending the Rules of the Association to reflect such revisions.

5. **Binding.** Except as otherwise limited, any amendment to this Declaration shall be binding upon every Owner and every Train'Share. No amendment shall require the consent or approval of any Train'Share Mortgagee. Any amendment authorized hereby shall be evidenced by an instrument in writing, signed and acknowledged by any two officers of the Association, which amendment shall be effective upon filing it in the office of the Association Registry.

#### ARTICLE XVII - TERMINATION

The Plan and this Declaration shall terminate as follows:

1. **By Agreement.** If 90% of all Train'Share Owners and responding holders of liens and mortgages forl of the Train'Shares execute and duly record an instrument terminating the Plan.
2. **Destruction of Cars.** At the option of the Board if the number of Cars that are damaged, the period of time necessary to return them to service or acquire replacement Cars or any other circumstances prevents the economical provision of enough Journeys to fulfill 60% of intended Journey by Rail departures within a 60 day period of time, as determined by the Board of Directors.
3. **Scheduled Termination.** The overall Plan will terminate at 11:59 PM on the last day of the Designated or Alternative Time Period of any and all Owners or at 11:59 PM on the day that the last Journey by Rail due any and all Owners on any and all Cars is used, whichever occurs first. Rights of individual Owners shall terminate at 11:59 PM on the last day of the Designated Time Period for the last Journey by Rail due an Owner during the Initial or Perpetual Term to which an Owner has rights.

ARTICLE XVIII - MISCELLANEOUS PROVISIONS

1. Notices. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered at the appropriate address to be determined as set forth below, either when delivered personally (in which event, such notice shall be deemed effective only upon delivery), when a receipt for delivery is required and given (registered mail, courier service or otherwise), or five days after deposit of same with the United States post office, postage prepaid. Until a notice in the manner provided for herein is received from an addressee for a change of address, the last stated address, or as provided herein if no notice of change has been sent or received, shall continue in effect for all purposes hereunder. Notices shall be addressed and delivered as follows:

- (a) To Owners at the last address for such Owner appearing in the Association Registry. In the event that an Owner's address appearing in the Association Registry is wrong or reasonable efforts to deliver a notice fail, there shall be no requirement for notice delivery to such Owners.
(b) To the Association at the address currently stated on the Train'Share Internet web site, and as shall otherwise be provided by the Association at its option.

2. Severability. If any provision of this Declaration, or any section, sentence, clause, word or the application thereof in any circumstances shall be held invalid, the remainder of this Declaration and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected thereby.

3. Liability. Neither the Association, Developer or Car Owners shall be responsible for the acts, omissions, conduct or breach of any obligations of any Owner, Permitted User or Exchange User, under this Declaration, other Governing Instruments or otherwise.

4. No Waiver. The failure to enforce any provision of this Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

5. Construction. Article or paragraph headings in this Declaration and attached Exhibits are for reference purposes only and shall not in any way modify or limit any provisions of this Declaration. As used herein the singular shall include the plural and the masculine shall include the feminine (if a feminine reference is not included).

6. Successors. The provisions of this Declaration shall be binding upon all parties having or acquiring a Train'Share or any right, title or interest therein and shall be for the benefit of each Owner and his heirs, successors and assigns. Each Owner, including Developer as to unsold Train'Shares, shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Train'Share upon ceasing to own a Train'Share and paying all sums and performing all obligations hereunder as the same relate to each Train'Share.

7. Dispute Arbitration. To reduce the cost of resolving disputes, to resolve them more quickly in a less formal and antagonistic manner, and to retain the possibility of a mutually beneficial resolution, except as otherwise stated in this Agreement, all controversies, disputes or claims between Train'Share Owners and the Association, regarding any provision of this Declaration or other Governing Instruments shall be resolved at the request of the Association or an Owner by binding arbitration administered by an organization or individual approved by such parties located in the jurisdiction in which the Association has its primary business office. Until arbitration has been completed, neither such Owner nor the Association shall make any announcements or discuss issues regarding the dispute to or with the public or other Train'Share Owners except as required to proceed with arbitration. If the parties cannot agree on an arbitrator, one shall be determined in accordance with arbitration procedures in the State where the Association has its primary business office, or if no such procedures exist by a court having competent jurisdiction. Arbitration shall be conducted on an individual, not class-wide basis, and shall not be consolidated with any other action involving any other person. With the permission of the arbitrator, persons with information pertinent to the dispute may attend. All parties shall be represented by a person able to make a binding agreement during arbitration. Fees and expenses of arbitration shall be equally shared by Owners and the Association. The arbitrator shall have the right to include in his decision any relief deemed proper under the circumstances, including without limitation, money damages with interest, specific performance, injunctive relief, and attorneys and legal fees. The arbitrator shall not award exemplary or punitive damages. The award and decision of the arbitrator shall be conclusive and binding upon Owners and the Association. Without limiting arbitration conclusions, judgment upon the award may be entered and enforced by any court of competent jurisdiction. Owners and the Association waive any right to contest the validity or enforceability of such award and decision of the arbitrator. All other remedies allowed by this Declaration or otherwise may proceed during arbitration.

8. Affiliated Entity. At the sole discretion of the Board, at any time and without a requirement for a special vote of Members, the Train'Share Plan can acquire related business interests, be merged, affiliated with, made a part of, and/or otherwise join together with a related type of business, now and in the future. Such relationship may include, but not be limited to, acquisition of, merger with or otherwise joining and being included in and/or as a part of vacation, travel or timeshare organization.

9. Conflict with Purchase Agreement. In the event that there is a conflict between the terms of this Declaration and the Purchase Agreement or Rules regarding ownership of a Train'Share and/or use and occupancy of Cars, the provisions of this Declaration shall prevail. In the event that there is a conflict between the terms of the Purchase Agreement and this Declaration regarding the purchase and payment for a Train'Share or the collection of an unpaid portion of the Purchase Price of a Train'Share, the provisions of the purchase Agreement shall prevail.

IN WITNESS WHEREOF, the Developer has executed this Declaration on the below stated date

WITNESS

By: \_\_\_\_\_
Name: \_\_\_\_\_

DEVELOPER

By: \_\_\_\_\_
Name: \_\_\_\_\_
Position: \_\_\_\_\_

STATE OF TEXAS
TARRANT COUNTY

BEFORE ME, a Notary Public in the State of Texas and county aforesaid, appeared \_\_\_\_\_ the \_\_\_\_\_ of America's Trains Inc., and he acknowledged that he executed the forgoing instrument on behalf of the corporation pursuant to due authority. He provided identification evidencing his identity.

WITNESS my hand and seal this \_\_\_\_ of \_\_\_\_\_, 201 \_\_\_\_
Notary Name: \_\_\_\_\_
Notary Signature: \_\_\_\_\_

**EXHIBIT "A"**

**CARS DESCRIPTION**

1. To better provide immediate current information about Cars (see Article II of this Declaration) and the related number of Rooms, routes and other Car travel facts, Cars are and will be as described on the Internet at <http://www.americantrainvacations.com/atv/page/carstrains.html> ("Web Site"). For this purpose, this and related Web Site pages as they may be revised from time to time are hereby made a part of this Declaration.
2. Additional Cars may be included from time to time.
3. Cars may be replaced by comparable Alternative Cars from time to time.
4. Additional Car information is available on request from the Association and the Developer.

**EXHIBIT "B"**

**CURRENT FEES**

Fees may be revised from time to time. In addition to Fee amounts described below, Fees are included in the Rules. In the event that there is a conflict between Fee amounts set forth below or in other Governing Instruments, the Fee amounts described in the Rules will prevail.

The Journey Use Fee is the only mandatory annual Fee. However, if a Journey by Rail is not used, the Journey Use Fee does not have to be paid because a Train'Share Owner can give an annual Journey to the Association and the Association will pay the Fee.

The Journey Use Fee is calculated to be sufficient to pay a pro rata portion (shared among all Train'Share Owners) of overall Car operating and management costs including, but not limited to, Amtrak and other railroad support services, locomotives/trains to pull Cars, track use rights, layover costs at en-route destinations, Car maintenance and repair, Car improvements, all-inclusive on board passenger services, reservation services, route planning, security arrangements, related and other operating Car operating expenses, overall management of Train Set and Car operations, Association administration, and other amounts as set forth in or contemplated by this Agreement and the Declaration.

The present Journey Use Fee, as described below, is an annual or biennial Fee, depending on the type of Train'Share. The Fee varies by Room category. Unspecified Fee changes may also occur during Time Periods when special services are provided, and if Train'Share Owners incur additional or special charges for services not available to all other passengers. The Journey Use Fee is calculated to be sufficient to pay a pro rata portion (shared among all Train'Share Owners) of overall Car operating and management costs.

<b>Journey Use Fees</b>						
Grande Suite	Master Suite	Deluxe Double	Double Upper/Lower	Single	Duplex Suite	Exclusive Private Car
\$4,135	\$4,044	\$4,044	\$3,998	\$3,161	\$7,997	\$22,599

**FEE CHANGES**

Journey Use Fees are calculated annually. Typically, fees might be expected to reasonably increase each year due to normal economic factors. However, overall per passenger operating expense projections show a reduction in per passenger costs over time as the addition of more Cars and related passenger capacity creates operating efficiencies.

Normal Journey Use Fees assume that Journey routes are all about the same distance (number of miles) with common en-route layover costs or that the cost of more miles on a longer route is offset by a reduced cost from fewer en-route layovers because more overnights are on board while traveling; however, if additional or reduced costs for variable route distances and layover factors cause meaningful cost changes the Association may make nominal adjustments to the Journey Use Fee for a specific Journey route, upwards or downwards, to fairly represent a pro rata sharing of operating costs among all Train'Share Owners. A Journey Use Fee may be revised by the Association during a fiscal year for the benefit of Train'Share Owners if unexpected changes cause increased or decreased one time or ongoing Journey Use Fees.