

WHEN RECORDED, RETURN TO:

Thomas G. Bennett  
Ballard Spahr LLP  
201 South Main Street, Suite 800  
Salt Lake City, Utah 84111

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE RESIDENCES AT EMPIRE CANYON RESORT**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE RESIDENCES AT EMPIRE CANYON RESORT**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESIDENCES AT EMPIRE CANYON RESORT (this "Residential Declaration") is made as of December 1, 2009, by DV Luxury Resort LLC, a Delaware limited liability company ("Hotel Owner").

**RECITALS**

A. Hotel Owner is the lessee, pursuant to that certain Agreement of Lease dated May 23, 2007 by and between Talisker Empire Pass Hotel LLC, a Delaware limited liability company ("Lessor") and Hotel Owner, as amended by that certain First Amendment to Agreement of Ground Lease dated July 17, 2008, and as the same may hereafter be amended (collectively the "Talisker Lease"), of certain land in Park City, Summit County, Utah, as more particularly described on the attached Exhibit A (the "Development Land"). The Development Land, together with all of the improvements located thereon (including the improvements described in Recital B), are defined as the "Resort" in the Master Definitions attached hereto as Exhibit C (the "Master Definitions").

B. Hotel Owner is developing on the Development Land a mixed-use Resort comprised of, among other things, hotel rooms (comprising a portion of the "Hotel," as that term is defined in the Master Definitions), and residential condominium units (defined in the Master Definitions as the "Units"), together with certain appurtenances, landscaping, amenities, fixtures, equipment, shared components, shared facilities, "common areas and facilities" (as described in Section 2.4.2 below), signs, entry and exit areas, and parking areas.

C. The Resort is physically part of a larger project known as Empire Pass (defined in the Master Definitions as the "Empire Pass Project") which includes and/or is expected to include a mixture of single-family, multi-family, commercial and recreational uses as well as open space, ski runs, ski ways, trails, private roadways and other amenities. Although the Resort is a physically a part of the Empire Pass Project, the Resort is not subject to the Empire Pass Declaration provided, however, that Unit Owners shall be required to make the Empire Pass Payments as more particular set forth in Article 5 of the Master Declaration.

D. By this Residential Declaration, it is the intention of Hotel Owner to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration and improvement of the Residential Association Property (as defined in the Master Definitions), and the interests therein conveyed or reserved, and for the payment of taxes, assessments, insurance premiums and other expenses pertaining thereto. Hotel Owner intends that the owners, mortgagees, occupants and all other persons hereafter acquiring any interest in the Residential Association Property, or any part thereof, shall at all times enjoy the benefits of, and shall hold, sell, lease and convey their interests subject to the rights, easements, covenants, conditions, restrictions and obligations hereinafter set forth, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect of the Residential Association Property and are established for the purpose of enhancing the value, desirability and

attractiveness of the Residential Association Property. Hotel Owner intends that, in accordance with Section-57-8-10(2)(d)(vi) of the Act (as defined in the Master Definitions), the Act shall apply to the Residential Association Property. In addition, in order to accomplish the object of creating a unique mixed-use luxury resort on the Development Land and a condominium regime in a portion thereof, and to protect and preserve the long term viability and value of the Resort, it is necessary that Hotel Owner maintain a certain level of control over the portion of the Resort that is submitted to the Act that may be atypical to that found in a traditional condominium project. Accordingly, each Unit Owner, by acceptance of a deed to such Unit Owner's Unit, acknowledges and agrees that certain provisions contained in this Residential Declaration and the Master Declaration may vary somewhat from a traditional application of the requirements of the Act and each Unit Owner hereby agrees to accept such variations and agrees not to challenge the enforceability of the Governing Instruments or the validity of the condominium regime established by this Residential Declaration as a result of such variations.

NOW, THEREFORE, in furtherance of such intent, Hotel Owner hereby declares that the Residential Association Property shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions set forth in this Residential Declaration, as this Residential Declaration may be amended from time to time, all of which covenants, conditions and restrictions are declared to be in furtherance of a plan established for the purpose of enhancing the value, desirability and enjoyment of the Residential Association Property. All of the covenants, conditions and restrictions contained herein shall constitute covenants running with the land and equitable servitudes and liens and shall be binding upon and for the benefit of Hotel Owner and all parties having or acquiring an interest in the Residential Association Property therefrom including, but not limited to, the heirs, executors, administrators and assigns of any such parties and all subsequent owners of such interest.

## **ARTICLE I DEFINITIONS**

Unless otherwise defined herein, all defined terms shall have the meaning set forth in the Master Definitions attached hereto as Exhibit C.

## **ARTICLE II DESCRIPTION OF PROPERTY ESTABLISHMENT OF OWNERSHIP INTERESTS**

2.1 Description of Land and Other Property. The Residences at Empire Canyon Resort condominium project initially consists of ninety-four (94) Units described in the Condominium Plat. These Units and any personal property owned by the Residential Association consists of all of the property subject to this Residential Declaration (collectively defined in the Master Definitions as the Residential Association Property).

2.2 Description of Buildings. All of the Units are located in the main hotel building on the Development Land, which also houses various Use Areas. The main hotel building consists of thirteen (13) stories, a ground level floor and a subterranean basement containing, among other things, parking. The main hotel building is constructed of reinforced concrete

foundation, steel and wood framing, wood, cement and stone siding and composite roofing materials. Because each Unit is an "airspace unit," none of the infrastructure of the main hotel building described in this Section is part of The Residences at Empire Canyon Resort condominium project, but each Unit is dependent upon such building for, among other things, structural support. The overall Resort project contains numerous other improvements typical of a hotel, including (as of the date hereof) a pool, landscaped areas, parking areas, retail space and hotel operations areas, provided, however, that Hotel Owner reserves the right to change over time the materials, furnishings, services, recreational areas, features and amenities described above in Hotel Owner's sole discretion.

2.3 Condominium Ownership – Division Into Units. As of the recording of this Residential Declaration, the Residential Association Property (excluding the Residential Furnishings) is hereby initially divided into ninety-four (94) Units. Hotel Owner, in order to establish a plan of condominium ownership for the Residential Association Property, hereby divides the Residential Association Property into the following elements with the ownership interests therein as set forth below:

2.3.1 Unit. Each Unit Owner shall own a separate fee simple estate in a Unit;

2.3.2 Easement Rights Over Access Areas. Each Unit Owner owns an undivided Percentage Ownership Interest (as set forth in Exhibit B) in the non-exclusive easement rights over the Access Areas, Parking Areas, Storage Areas and such Balcony/Patio Areas appurtenant to such Unit Owner's Unit, as designated on the Condominium Plat and as more particularly described in the Master Declaration; and

2.3.3 Residential Furnishings. All Residential Furnishings shall be owned by the Residential Association, subject to the provisions of Section 5.1.

2.4 Conveyance of a Unit. Each of the following shall be included in any conveyance of a Unit:

2.4.1 Unit. The right to use and occupy such Unit in accordance with the Master Declaration and this Residential Declaration, as well as all other applicable Governing Instruments;

2.4.2 Easement Rights Over Access, Parking and Storage Areas. An undivided Percentage Ownership Interest (as set forth in Exhibit B), in the non-exclusive easement rights granted in the Master Declaration over the Access Areas, Parking Areas and Storage Areas as designated on the Condominium Plat. Such easement rights are intended to comprise the "common areas and facilities" as that term is defined in the Act. Such easement rights cannot be altered without the consent of Hotel Owner and the consent of at least two-thirds (2/3rds) of the voting power of the Unit Owners; and

2.4.3 Easement Rights Over Balcony/Patio Areas. An undivided Percentage Ownership Interest (as set forth in Exhibit B), in the non-exclusive easement rights granted in the Master Declaration over the Balcony/Patio Areas appurtenant to the Units, as designated on the Condominium Plat. Such easement rights are intended to comprise the "limited common areas and facilities" as that term is defined in the Act. Such

easement rights cannot be altered without the consent of Hotel Owner and the consent of at least two-thirds (2/3rds) of the voting power of the Unit Owners as well as the consent of any affected Unit Owner.

2.5 Severance From Access Areas or Appurtenant Easements. No Unit Owner shall be entitled to sever his or her Unit, or any portion thereof, from his or her undivided interest in the easement rights over the Access Areas, the Parking Areas, the Storage Areas or the Balcony/Patio Areas, or from any easement interests appurtenant thereto or licenses granted thereto under the Master Declaration. Neither may such interests be severally sold, conveyed, leased, encumbered, hypothecated or otherwise dealt with, and any such attempt to do so in violation of this provision shall be void and of no effect. The Hotel Owner and its successors, assigns and grantees and each Unit Owner each covenant and agree that the Units and the corresponding undivided interest in the easement rights over the Access Areas, the Parking Areas, the Storage Areas and the Balcony/Patio Areas and the easements, licenses and other interests appurtenant thereto, shall not be separated or separately conveyed, and: (a) each such undivided interest in the easement rights over the Access Areas, the Parking Areas, the Storage Areas and the Balcony/Patio Areas and any other easements appurtenant to a Unit shall be deemed to be conveyed or encumbered with such Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to such Unit; and (b) each such Unit shall be deemed to be conveyed or encumbered with such undivided interest in the easement rights over the Access Areas, the Parking Areas, the Storage Areas and the Balcony/Patio Areas and in any other easements, licenses or other interests appurtenant thereto even though the description in the instrument of conveyance or encumbrance may refer only to the title to the respective undivided interest.

2.6 Separation, Combination of Units. No Unit Owner may partition or separate a Unit or the legal rights comprising ownership of a Unit from any other part thereof, nor shall a Unit Owner combine a Unit with another or any portion of another Unit. No Unit Owner shall convey, transfer, devise, bequeath or encumber anything other than a single, complete Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Residential Declaration or any other Governing Instrument. Notwithstanding the foregoing, for as long as Hotel Owner owns a Unit, Hotel Owner shall have the right to: (a) relocate the boundaries of and between two adjoining Units; (b) physically combine a part of or combination of parts of the space of one Unit with a part of or combination of parts of the space within one or more adjoining Units; or (c) subdivide a Unit or part of a Unit to create additional Units (in each case, provided that the affected Units are owned by Hotel Owner). Before exercising its rights herein, Hotel Owner must obtain all necessary approvals from any governmental authority having jurisdiction over the Residential Association Property before exercising its rights herein. The cost and expense incurred for legal, architectural and/or engineering fees and all other costs and expenses incurred by the Residential Association in connection with Hotel Owner's exercise of rights under this Section 2.6 shall be borne by Hotel Owner. Hotel Owner shall be permitted to execute and record any amendment to this Residential Declaration or the Condominium Plat, or both, effectuating the relocation of boundaries of, combination or subdivision, or re-designation of Unit(s). If Hotel Owner requires, whether for title purposes, governmental approvals or otherwise, the Residential Association Board shall ratify the action in connection with effectuating such relocation of boundaries,



combination or subdivision, or re-designation of Unit(s), and take such necessary actions in connection therewith if the requirements in this section have been satisfied. The rights reserved to Hotel Owner under this section shall not apply to a Unit after Hotel Owner first conveys such Unit to an unaffiliated third-party purchaser.

2.7 Fractional Interest Ownership – Reservation Right. Subject to Lessor's approval rights under the Talisker Lease and to the extent permitted under applicable law and all necessary governmental approvals having been obtained, Hotel Owner, for itself, its successors and assigns, expressly reserves the right to submit all or some of the Units or any other unit located on the Resort to a fractional, club, or other shared ownership or use program and, in connection therewith, establish a fractional interest or timeshare regime and owners association, all of which shall be subject to all of the terms and conditions herein. The right to submit a Unit or any other unit located on the Resort to any such plan of fractional or timeshare ownership shall extend only to Hotel Owner, its successors or assigns, and shall specifically and expressly not be available to Non-Hotel Owners or their successors or assigns, except with the prior written consent of Hotel Owner, which consent may be withheld in the Hotel Owner's sole discretion. Submission of a Unit or any other unit located on the Resort to such a plan of fractional or timeshare ownership shall not be subject to the prior written consent of any Unit Owner, except to the extent a Unit to be so submitted is already owned by a Non-Hotel Owner, or any Mortgagee, except the first Mortgagee of record of any such Unit to be submitted.

2.8 Calculation of Percentage Ownership Interest. The Percentage Ownership Interest appurtenant to each Unit is based upon the square footage of such Unit. The Percentage Ownership Interest appurtenant to each Unit shall be determined by dividing the square footage of a Unit by the total number of square feet of all Units, as set forth in attached Exhibit B. Except as otherwise provided in this Residential Declaration or the Act, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered. The sum of the Percentage Ownership Interests allocated to all Units shall at all times equal one hundred percent (100%). Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent (100%).

2.9 AHU Units and Certain Other Units. The AHU Units and Hotel Owner owned ADA Units receive utilities through lines and pipes that are metered as part of the Hotel. Accordingly, to the extent that any utilities for the AHU Units and Hotel Owner owned ADA Units are so metered, and to the extent the Residential Association is not charged for such utilities in its Master Association Assessment, the Residential Association shall not assess the AHU Units and/or Hotel Owner owned ADA Units for any portion of the fees or charges for such utilities. The Residential Association shall take the above considerations into account in determining the Residential Assessments for the Units. Each Unit Owner, by accepting an Original Deed or any other transfer of a Unit, as applicable, hereby acknowledges and agrees to the dissimilar treatment with respect to Residential Assessments for such Units and as described in this Section 2.9.

Each Unit Owner, by accepting an Original Deed or any other transfer of a Unit, as applicable, hereby acknowledges that the AHU Units may be restricted in a manner that requires that the AHU Units be made available for occupancy by employees of the Resort on terms and

conditions that provide for affordable employee housing at less than market rental rates and/or sales prices.

The provision of this Section 2.9 shall not be amended or revised without the prior written consent of Hotel Owner.

### **ARTICLE III INTERESTS, USE RIGHTS AND RESTRICTIONS**

3.1 Residential Association Property and Access Areas – Interests and Use Rights. A Unit Owner has the exclusive right to use and occupy such Unit Owner's Unit, and non-exclusive rights and easements to use and enjoy the Residential Furnishings, the Access Areas, the Parking Areas, the Storage Areas and the Balcony/Patio Areas appurtenant to a Unit Owner's Unit, all in accordance with the Master Declaration, this Residential Declaration and the Governing Instruments.

3.2 Use Restrictions.

3.2.1 Alterations, Additions and Improvements.

3.2.1.1 Except as required to prevent damage or injury to persons or property in an emergency, no Unit Owner shall make or authorize (without the prior written consent of the Hotel Owner and the Residential Association) any alterations, additions or improvements to the Balcony/Patio Area appurtenant to a Unit.

3.2.1.2 Nothing herein shall prevent a Unit Owner from removing, altering or replacing any furniture located within his or her Unit, or from repainting, wallpapering or similarly coating or refinishing the surfaces of the walls or the interior surfaces of the doors of his or her Unit, or from re-carpeting or otherwise recovering the surfaces of the floors of his or her Unit; provided, however, Unit Owners may not install any floor covering other than carpeting in areas designated as carpeted area by the Hotel Owner at the time a Unit was sold. Except for those specific activities permitted above in Sections 3.2.1.1 and 3.2.1.2, Unit Owners must obtain the written consent of both Hotel Owner and the Residential Association prior to undertaking any alteration, addition, improvement or maintenance of any Unit (including, but not limited to, load bearing or other walls and plumbing, other than finish plumbing fixtures) to the extent such alteration, addition, improvement or maintenance will require a building permit from the City.

3.2.1.3 The foregoing provisions shall not modify or affect the obligation of each Unit Owner with respect to the maintenance and repair obligations set forth in Section 5.1 below.

3.2.2 Hotel Rules and Regulations. Each Unit Owner, by accepting an Original Deed or any other transfer of a Unit, as applicable, hereby covenants and agrees to abide by the Hotel Rules and Regulations.

3.2.3 Use and Occupancy. Use and occupancy of the Units is limited to private, residential use (including use by Occupants and other Permitted Users). Non-residential and/or commercial use of any Unit by any Unit Owner (except as expressly provided in Section 3.3.2 below) is prohibited. Neither the foregoing provision, nor the terms of Section 3.3.2, shall limit the rights of Hotel Owner to rent or make available for lodging all or portions of any Units that it owns (including, without limitation, any ADA Units it owns) as part of its commercial hotel operations. The provisions of this Section 3.2.3 shall not be amended or revised without the prior written consent of Hotel Owner.

3.2.4 ADA Compliance. The Resort will be constructed in compliance with the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) and, in accordance therewith, the ADA Units will be designed and constructed to be accessible to disabled persons, in compliance with the Americans With Disabilities Act and will be designated as "ADA Units" on the Condominium Plat. All ADA Units, as well as all improvements therein, shall be designed and constructed in compliance with the Americans With Disabilities Act as well as all other laws, ordinances, building codes, rules, regulations, orders and directives applicable to such Units and in effect at the time of construction (collectively, "Applicable Laws"). All Units that are designated as ADA Units, as well as all improvements therein, must at all times be in compliance with Applicable Laws. Each Unit Owner of an ADA Unit shall be responsible at such Unit Owner's sole cost and expense and shall take all actions required to cause such ADA Unit to be in compliance in all respects with all Applicable Laws, including future changes to Applicable Laws that may require modifications to the ADA Units.

### 3.3 Additional Hotel Owner's Rights.

3.3.1 Sales, Re-sales and Related Purposes. Hotel Owner, for itself, its successors, assigns, agents, employees, contractors, subcontractors and other authorized personnel, reserves the exclusive right as reasonably required by Hotel Owner, to: (1) market and sell the Units; (2) maintain customer relations and provide post-sales service to Unit Owners; (3) display signs and to erect, maintain and operate, for sales and administrative purposes, model units and a customer relations, customer service and sales office complex; and (4) show the Units that have not already been conveyed by an Original Deed (i.e., that are owned by Hotel Owner). The exercise of such rights shall not unreasonably interfere with the Residential Association's use of its Residential Association Property or the rights of Unit Owners to use and occupy the Units and shall be subject to Lessor's rights under Section 16.1.4 of the Talisker Lease to purchase one of the Units.

#### 3.3.2 Occupancy of Units by Occupants.

3.3.2.1 Occupancy Agreements. Pursuant to Section 8.5 of the Master Declaration, a Unit Owner of a Unit other than an AHU Unit or an ADA Unit that is owned by the Hotel Owner shall be entitled to enter into Occupancy Agreements for its Unit subject to any restrictions contained in the Governing Instruments and applicable laws for any period of time (including as short as one day).

3.3.2.2 Hotel Owner Rentals. Hotel Owner may rent Units to the general public, both on its own account and for the account of Unit Owners who have executed a rental agreement with Hotel Manager. Hotel Owner, on behalf of itself and its successors, assigns, agents, employees, contractors, subcontractors and other authorized personnel, reserves the exclusive right in, over and through the Residential Association Property for the purpose of conducting its own rental activities; provided, however, the exercise of such right shall not unreasonably interfere with the Residential Association's use of the Residential Association Property as necessary to perform its duties and obligations pursuant to this Residential Declaration and the Hotel Rules and Regulations or the rights of Unit Owners to use and occupy their respective Units or use the Residential Furnishings.

3.3.2.3 Transient Occupancy. It is intended that Hotel Owner may use the Units owned by Hotel Owner for transient or nightly rentals. As such, the making of Units or portions thereof available for transient occupancy purposes shall not be subject to the approval of the Residential Association and/or any other limitations other than as expressly provided herein; however, the making of Units or portions thereof available for transient occupancy purposes shall be in accordance with any applicable zoning ordinances and other applicable laws.

3.3.2.4 ADA Compliance. Each Unit that is occupied pursuant to an Occupancy Agreement or rented pursuant to 3.3.2.2 above, as well as any improvements therein, may be subject to compliance with the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other Applicable Laws. Each Unit Owner shall be responsible at such Unit Owner's sole cost and expense, prior to entering into an Occupancy Agreement or rental agreement for such Unit, to take all actions required to cause such Unit to comply in all respects with all Applicable Laws.

3.3.3 Re-designation of Use Areas. Each Unit Owner, by acceptance of a deed for a Unit, shall be deemed to have acknowledged that Hotel Owner shall have the right to re-designate the Use Areas in accordance with Section 2.2 of the Master Declaration.

3.3.4 Conveyance of Property to the Residential Association. Hotel Owner shall have the right to convey any personal property to the Residential Association reasonably related to the operation of the project at any time upon not less than thirty (30) days' written notice to the Residential Association Board, provided that any such property shall be free of monetary encumbrances as of the date of such conveyance.

3.3.5 Option to Withdraw. Hotel Owner hereby reserves, pursuant to Section 57-8-13.8 of the Act, the unilateral and exclusive option to withdraw one or more Units from the condominium regime such that this Residential Declaration is no longer applicable thereto (the "Option to Withdraw"), without the prior consent of the Unit Owners, Mortgagees, the Residential Association or any other person or entity. The Option to Withdraw must be exercised within seven (7) years after recordation of this

Residential Declaration. The terms and conditions of the Option to Withdraw shall be as follows:

3.3.5.1 The real property subject to this Option to Withdraw consists of the Units.

3.3.5.2 The Option to Withdraw may be exercised as to some or all of the Units which have not been conveyed by an Original Deed and in any order and at different times.

3.3.5.3 Each Unit Owner, by acceptance of a deed to a Unit, shall be deemed to have consented to all provisions of this Section 3.3.5.

3.3.5.4 A withdrawal of a Unit pursuant to this Section 3.3.5 shall be deemed to have occurred at the time of the recordation of an amendment to this Residential Declaration and the Condominium Plat, if necessary, executed by Hotel Owner, containing the legal description of the Unit(s) being withdrawn. After the filing for record of such amendment to this Residential Declaration reflecting Hotel Owner's exercise of the Option to Withdraw, title to each such withdrawn Unit shall be vested in and held by Hotel Owner and none of the Unit Owners, Mortgagees or the Residential Association shall have any claim or title to or interest in such withdrawn Unit. Upon any such withdrawal of a Unit, and at all times thereafter, this Residential Declaration shall no longer govern the use, enjoyment, repair, maintenance, restoration and improvement of the Unit so withdrawn.

3.3.5.5 No provision of this Section 3.3.5 shall be amended without the prior written consent of Hotel Owner, so long as Hotel Owner owns any Unit.

3.3.5.6 Hotel Owner shall have no right to withdraw any Unit which is not owned by Hotel Owner or an affiliate of Hotel Owner.

3.3.5.7 Any Unit which is withdrawn by Hotel Owner may be annexed and again made subject to this Residential Declaration in accordance with Section 3.3.6 or made subject to any other residential declaration applicable to any portion of the Resort.

3.3.5.8 The Percentage Ownership Interests set forth on Exhibit B for all Units shall be reallocated based upon square footage at the time Hotel Owner records an amendment to this Residential Declaration reflecting Hotel Owner's exercise of its Option to Withdraw in accordance with the provisions set forth in this Residential Declaration.

3.3.6 Option to Expand. Subject to Lessor's approval rights under the Talisker Lease, Hotel Owner hereby reserves, pursuant to §57-8-13.6 of the Act, the unilateral and exclusive option to expand the number of condominium units that are subject to this Residential Declaration (the "Option to Expand") upon the terms and provisions set forth in this Section 3.3.6 without the prior consent of the Unit Owners, the

Mortgagees, the Residential Association or any other person or entity. The Option to Expand must be exercised within seven (7) years after recordation of this Residential Declaration. The terms and conditions of the Option to Expand shall be as follows:

3.3.6.1 Subject to the power granted to Hotel Owner in Section 3.3.6.3 below, the real property subject to the Option to Expand consists of the Expandable Property, the legal description of which is the same as the Development Land attached hereto as Exhibit A.

3.3.6.2 Subject to the provisions of Section 3.3.6.3 below, the Option to Expand may be exercised at different times and in any order elected by Hotel Owner. No assurance is made with regard to which portion of the Expandable Property, if any, will be subjected to this Residential Declaration.

3.3.6.3 Hotel Owner shall not be restricted in the number of Units that may be subjected to this Residential Declaration (the "Expansion Units"), except as may be required by applicable zoning requirements, ordinances or regulations, provided that the maximum number of Expansion Units that may be created shall not exceed two hundred twenty-five (225) Units. The maximum number of Expansion Units per acre shall not exceed fifteen (15).

3.3.6.4 Each Unit owner, by acceptance of a deed to a Unit, shall be deemed to have consented to all provisions of this Section 3.3.6.

3.3.6.5 Subjecting all or a portion of the Expandable Property and the corresponding Expansion Units to this Residential Declaration pursuant to this Section 3.3.6 shall be deemed to have occurred at the time of the recordation of an amendment to this Residential Declaration and the Condominium Plat, if necessary, executed by Hotel Owner, containing the legal description of the Expansion Unit(s) being added. After the filing for record of such amendment to this Residential Declaration reflecting Hotel Owner's exercise of the Option to Expand as to a particular Expansion Unit, title to such Expansion Unit shall be vested in and held by Hotel Owner and none of the Unit Owners, the Mortgagees or the Residential Association shall have any claim or title to or interest in such Expansion Unit and, thereafter, such Expansion Unit shall be referred to as a Unit. Upon any such addition and at all times thereafter, this Residential Declaration shall govern the ownership, use, enjoyment, repair, maintenance, restoration, improvement and transfer of such Expansion Unit. Residential Assessments on such Expansion Unit shall commence on the date on which such amendment is recorded.

3.3.6.6 The Expansion Units shall be substantially similar to the Units depicted on the Condominium Plat.

3.3.6.7 The Percentage Ownership Interests set forth on Exhibit B for all Units shall be reallocated based upon square footage at the time Hotel Owner records an amendment to this Residential Declaration reflecting Hotel Owner's

exercise of its Option to Expand in accordance with the provisions set forth in this Residential Declaration.

3.3.6.8 No provision of this Section 3.3.6 shall be amended without the prior written consent of Hotel Owner, so long as Hotel Owner owns or has the right to construct any condominium unit on the Expandable Property.

### 3.4 Residential Association Easements.

3.4.1 Grant of Easement to the Residential Association. The Residential Association, for itself, its successors and assigns, and its and their agents, employees, contractors, subcontractors, and other authorized personnel, shall have the right and is hereby granted, for so long as the Residential Association or its successors and assigns shall be required hereunder to manage and maintain the Residential Furnishings and/or perform its obligations under this Residential Declaration, a non-exclusive easement in gross in, over and through the Residential Association Property (including each Unit) for the management, operation, repair and maintenance of the Residential Furnishings and/or the performance of its obligations under this Residential Declaration; provided, however, that use of such easement shall not: (A) unreasonably interfere with or diminish the rights of Unit Owners, Permitted Users or Hotel Owner to occupy the Units; (B) unreasonably interfere with or diminish the rights of Unit Owners to use the Access Areas, the Balcony/Patio Areas and the Residential Furnishings, or (C) interfere with or diminish the rights of Hotel Owner under this Residential Declaration and the Master Declaration. In amplification and not in limitation thereof, the Residential Association and its respective successors and assigns shall have the right at any reasonably necessary time, whether or not in the presence of the Unit Owner thereof, to enter upon any Unit for the purpose of: (1) making emergency repairs therein; (2) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Unit; (3) protecting property rights and welfare of any Unit Owner or Permitted User; or (4) for any other purpose reasonably related to the performance by the Residential Association of its duties and obligations under the terms of this Residential Declaration. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and enjoyment of the rightful occupant of such Unit and shall be preceded by reasonable notice to such occupant (and in the case of a Unit owned by the Hotel Owner, the Hotel Owner and the Hotel Manager) in the event of entry into a Unit, whenever the circumstances permit; provided, however, the use of such easements shall not unreasonably interfere with the rights of Unit Owners to use and occupy their respective Units, use the Balcony/Patio Areas or use the Residential Furnishings. The provisions of this Section 3.4.3 relating to Units owned by the Hotel Owner shall not be amended or revised without the prior written consent of the Hotel Owner.

3.4.2 Easements Granted by the Residential Association. The Residential Association shall not grant any easement within the Residential Association Property without the express written consent of Hotel Owner, which consent may be withheld in the Hotel Owner's sole discretion.

3.5 Utility Easement to Unit Owners. Wherever sanitary sewer connections or lines and/or water connections or lines or cable television, electricity, gas or telephone lines are installed within the Residential Association Property, which connections or lines serve more than one Unit, each Unit Owner served by such connections or lines shall have a non-exclusive easement for, and be entitled to the full use and enjoyment of, such portions of such connections or lines as may serve or be needed to serve such Unit Owner's Unit. In the event of a dispute with regard to such easement or with respect to the sharing of the cost thereof, then upon written request of one of the Unit Owners addressed to the Residential Association the matter shall be submitted to the Residential Association Board, which shall decide the dispute in a manner consistent and in all cases in compliance with the provisions of the Master Declaration and the Residential Declaration, and the decision of the Residential Association Board made in accordance with such standard shall be final and conclusive on the parties.

3.6 Easements for Encroachments. Each Unit and all portions of it are subject to easements hereby created for encroachments between the Units and the Hotel as follows:

3.6.1 In favor of Hotel Owner so that it shall have no legal liability when any part of the Hotel encroaches upon a Unit;

3.6.2 In favor of each Unit Owner so that the Unit Owner shall have no legal liability when any part of such Unit Owner's Unit encroaches upon the Hotel or upon another Unit; and

3.6.3 In favor of Hotel Owner, each Unit Owner and the Residential Association for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 3.6 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Hotel or any Unit constructed on the Resort, by error in the Condominium Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair of any part of the Resort. Such encroachments shall also include encroachments caused by reconstruction of the Resort provided such reconstruction is done in substantial conformity with the location of the Resort prior to such reconstruction. Such encroachments shall not be considered to be encumbrances upon any part of the Units.

3.7 Covenants Running With the Land. Each of the easements provided for in this Residential Declaration shall be deemed to be established upon the recordation of this Residential Declaration, and shall thenceforth be deemed to be covenants running with the Units for the use and benefit of the Units and the Unit Owners thereof, whether or not such easements are set forth in the Original Deeds to the Units or any other subsequent conveyance of a Unit. Each easement set forth herein shall survive the termination of this Residential Declaration.

3.8 Transfer of Interest. No Unit Owner shall sell, assign, transfer, hypothecate or encumber less than all of his or her Unit; provided, however, that nothing herein contained shall: (i) limit the right of Hotel Owner and its successors and assigns to sell Units as contemplated herein; or (ii) restrict the manner in which title to the Unit may lawfully be held under Utah law (e.g., joint tenants, tenants-in-common, or the like). Except as provided under clause (i) above,



any sale, assignment, transfer, hypothecation or encumbrance by any Unit Owner of less than all of his or her interest in his or her Unit shall be null, void and of no effect. The transfer of any Unit shall operate to transfer to the new owner of the Unit the interest of the prior Unit Owner in all funds in the hands of the Residential Association even though not expressly mentioned or described in the instrument of transfer and without further instrument of transfer.

3.9 Separate Mortgages. Each Unit Owner shall have the right to mortgage or otherwise to encumber all, but not less than all, of such Unit Owner's Unit. Subject to the provisions of Article VII of this Residential Declaration, any Mortgage shall be subordinate to all of the provisions of the Governing Instruments and, in the event of foreclosure, the provisions of the Governing Instruments shall be binding upon any Unit Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. Notwithstanding any other provision of the Governing Instruments, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof, shall impair, defeat or render invalid the priority of the lien of any First Mortgage encumbering a Unit.

3.10 Subordination and Partition of Tenancy-in-Common Attributes.

3.10.1 Subordination. It is intended that this Residential Declaration and all documents promulgated hereunder and, to the extent applicable, the Master Declaration and all documents promulgated thereunder, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Units. Accordingly, all rights with respect to the use, possession, enjoyment, management or disposition of a Unit which a Unit Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right jointly to use, possess or manage commonly owned Residential Association Property) are hereby unconditionally and irrevocably subordinated to this Residential Declaration and any documents promulgated hereunder, and to the Master Declaration and all documents promulgated thereunder, for so long as this Residential Declaration, any documents promulgated hereunder, or the Master Declaration and all documents promulgated thereunder, respectively, shall remain in effect; provided, however, that in the event that an election to terminate this Residential Declaration is made pursuant to Section 14.2 of this Residential Declaration, a Unit Owner shall have the rights specified in such Section. Provided, further, that in the event of a determination of obsolescence pursuant to Article XII of this Residential Declaration, a Unit Owner shall have the rights specified in such Article and in Section 12.7 of the Master Declaration.

3.10.2 Partition. Except as provided in Section 14.2 of this Residential Declaration, no Unit Owner or other person or entity acquiring any right, lien or interest in the Residential Association Property shall seek or obtain, through any legal procedures, judicial partition of the Residential Association Property or the sale thereof in lieu of partition. If, however, any Unit is owned by two (2) or more persons as tenants-in-common or as joint tenants or as husband and wife, nothing herein contained shall prohibit a judicial sale of such Unit in lieu of partition as between such interest holders.

3.11 Protection of Interest. Except as provided in Section 3.9 of this Residential Declaration, no Unit Owner shall permit such Unit Owner's Unit to be subject to any lien (other

than the liens of current real property taxes), claim or charge, the enforcement of which may result in a sale or threatened sale of the Unit of any other Unit Owner (or any part thereof) or in any interference in the use or enjoyment thereof by any other Unit Owner. In the event of a threatened sale of the Residential Association Property or the Unit of any such other Unit Owner (or any part thereof), or should the use and enjoyment of any portion thereof by such other Unit Owner be threatened by reason of any lien, claim or charge against the Unit of any other Unit Owner (the "Defaulting Unit Owner"), or should proceedings be instituted to effect any such sale or the foreclosure of any such lien, claim or charge, then any Unit Owner other than the Defaulting Unit Owner (the "Curing Unit Owner") acting on his or her own behalf or through the Residential Association, or the Residential Association acting on behalf of any one or more Unit Owners, (in each case if promptly indemnified to the acting party's satisfaction) 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 Defaulting Unit Owner shall forthwith reimburse the Curing Unit Owner or the Residential Association, as applicable, for the amount so paid or expended by the Curing Unit Owner or the Residential Association, as applicable, in paying or compromising the lien, claim or charge, together with such reasonable attorneys' fees and related costs as the Curing Unit Owner or the Residential Association may have incurred. No Unit Owner shall permit his or her interest in any funds from time to time in possession of the Residential Association to be subjected to any attachment, lien, claim or charge or other legal process, and each Unit Owner shall promptly restore any funds held by the Residential Association with respect to his or her Unit to the extent depleted by the reason of the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Residential Association for all reasonable attorneys' fees or other costs incurred in respect thereof.

Notwithstanding the foregoing, in the event a lien against two or more Units becomes effective, each Unit Owner may remove his or her Unit and the Percentage Ownership Interests appurtenant to such Unit from such lien by payment of the fractional or proportional amount attributable to the Unit to be released. Such payment shall be computed by reference to the respective Percentage Ownership Interests of the Units subject to such lien. Subsequent to any such payment, or other discharge or satisfaction for a given Unit subject to such lien, the Unit and the Percentage Ownership Interests appurtenant thereto with respect to which such payment, discharge or satisfaction is made shall be free and clear of the lien so paid, satisfied or discharged. Such payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any other Unit and the Percentage Ownership Interests appurtenant thereto for which such payment, discharge or satisfaction has not been made.

3.12 Compliance With Laws. No Unit Owner or Permitted User shall permit anything to be done or kept in such Unit Owner's Unit or part thereof or within any other portion of the Residential Association Property which violates any applicable law, ordinance, statute, rule or regulation of any local, county, state or federal government or agency thereof.

3.13 No Increased Insurance. Nothing shall be done or kept in any Unit or within any other portion of the Residential Association Property which will increase the rate of insurance on the Residential Association without the prior written consent of the Residential Association Board. No Unit Owner shall permit anything to be done or kept in their Unit, or do or place

anything within the Residential Association Property, which would result in the cancellation of insurance of the Residential Association.

3.14 Antennae and Exterior Appliances. Except to the extent otherwise permitted by applicable law notwithstanding the prohibition stated in this Section 3.14, no Unit Owner shall erect, attach or cause to be erected or attached, any item, including but not limited to towers, antennae, aerials, dishes, reflectors or other facilities for the reception or transmission of radio or television broadcasts or other means of communication, or wiring for electrical or telephone installation, television antennae, security systems, machines, air conditioning units or appliances, on the exterior of, or that protrude through the walls or roof of, the Hotel without the prior written consent of the Master Association Board.

3.15 Domestic Animals. The Hotel Rules and Regulations may regulate the access to and use of any part of the Development Land and any Use Areas by pets or other animals, and each Unit Owner shall comply and cause its Permitted Users to comply with any of the restrictions and limitations set forth in the Hotel Rules and Regulations. The Residential Association rules may further limit or restrict the keeping of such animals. Both Hotel Owner and the Residential Association shall specifically have the power to prohibit the keeping or maintenance of any animal within the Residential Association Property which is deemed by Hotel Owner or the Residential Association to constitute a nuisance to any other occupant. Each person bringing or keeping an animal within the Resort shall be absolutely liable to the Hotel Owner and other Unit Owners and occupants for any damage to persons or property caused by any animal brought upon or kept upon the Resort by such person or by members of its family or its invitees. Each Unit Owner shall clean up after such animals that have deposited droppings or otherwise used any portion of the Resort. Animals belonging to Unit Owners or invitees or occupants of any Unit Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the applicable Unit. The Hotel Owner shall at all times have the right to amend any rules and regulations regarding animals and may terminate the right to bring animals to the Residential Association Property.

3.16 Waterbeds and Aquariums. No water bed and no aquarium or other container holding thirty (30) or more gallons of water shall be permitted in any Unit. Each Unit Owner acknowledges that substantial damage to other Units, the Development Land and/or the Resort may occur as a result of a violation of this restriction.

3.17 Legal Description of a Unit. Any legal description substantially in the form set forth below or which is otherwise sufficient to identify a Unit shall be sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect a Unit:

Unit No. \_\_\_\_\_ of The Residences At Empire Canyon Resort, according to the Condominium Plat recorded in the Office of the Summit County Recorder on \_\_\_\_\_, 20\_\_\_\_, as Entry No. \_\_\_\_\_ and the Declaration of Covenants, Conditions and Restrictions for The Residences At Empire Canyon Resort recorded in the Office of the Summit County Recorder on \_\_\_\_\_, 20\_\_\_\_, as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ and as further defined in and made subject to that certain Master Declaration of Covenants, Conditions and Restrictions for The Hotel and Residences At Empire

Canyon Resort recorded in the Office of the Summit County Recorder on \_\_\_\_\_, 20\_\_\_\_, as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_, together with an undivided interest in the non-exclusive easement rights over the Access Area, the Parking Area, the Storage Area and the Balcony/Patio Area appurtenant to such Unit, as designated on the Condominium Plat.

Any conveyance of a Unit shall include the items set forth in Section 2.4 above.

3.18 Insurance. Each Unit Owner shall have the obligation and duty to obtain, maintain and pay the cost of insurance in accordance with Section 11.2 below.

#### **ARTICLE IV THE RESIDENTIAL ASSOCIATION**

4.1 Membership in Residential Association. Each Unit Owner shall be a Residential Association Member and shall remain a Residential Association Member until such Unit Owner ceases to be a Unit Owner.

4.2 Transfer of Membership in the Residential Association. The membership of each Unit Owner in the Residential Association is appurtenant to and inseparable from his or her ownership of a Unit and shall be automatically transferred upon any effective assignment or transfer of the ownership of his or her or her entire Unit to any assignee or transferee and, except with respect to the automatic transfer described above, such membership shall be nontransferable whether by gift, bequest or otherwise.

4.3 Voting and Types of Membership in the Residential Association. Voting and types of membership in the Residential Association shall be in accordance with the provisions of the Residential Articles and the Residential Bylaws. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

4.4 Board of Directors. The Residential Association Board shall consist of at least three (3) and not more than seven (7) natural persons, to be initially appointed by Hotel Owner and subsequently elected in accordance with the Residential Bylaws. The initial Residential Association Board shall consist of three (3) persons.

4.5 Period of Hotel Owner Control. There is hereby established a Period of Hotel Owner Control of the Residential Association, as described in the Master Definitions, during which period Hotel Owner or persons designated by it shall have the authority to appoint and remove the Residential Association officers and members of the Residential Association Board.

#### **ARTICLE V MANAGEMENT**

5.1 Allocation of Maintenance and Repair Obligations.

5.1.1 Unit Owners' Maintenance Obligations. Each Unit Owner shall be responsible for the maintenance of his or her Unit as set forth in Section 1.4.3 of the Master Declaration.

5.1.2 The Residential Association's Obligations. The Residential Association shall have the primary obligation and liability to administer to the affairs of the Unit Owners as provided herein and to maintain and repair the Residential Furnishings.

5.1.3 Items Comprising a Unit or Contained Therein or Servicing Such Unit. For avoidance of doubt, the following is intended to clarify what comprises a Unit or what is contained in or what exclusively services such Unit: First, all items that are included within the definition of Unit shall be deemed to comprise a Unit, and all items that are excepted from such definition of Unit (e.g., (1) the bearing walls, windows and window frames, exterior doors and door frames, columns, exterior floors, roofs, railings, fences, foundation slabs, exterior wall surfaces and central services, pipes, ducts, chutes, and flues, conduits, wires and other utility installations wherever located within each such individual air space unit, and (2) all balconies and patios contiguous and related to each such individual air space unit), shall not be deemed to comprise a Unit. Second, all F&E and all personal property and improvements that are located entirely or partially within a Unit (for example, an exhaust fan located in a bathroom of a Unit, the cover of which is within the Unit but the motor of which extends into the attic space above the ceiling of the Unit, is deemed to be within the Unit in which it is located) shall be deemed to be contained in such Unit. Third, all equipment located within the walls, floors or ceilings immediately contiguous to a Unit and exclusively serving such Unit shall be deemed to exclusively service such Unit and therefore to be part of such Unit for the purposes of Section 1.4.2 of the Master Declaration (e.g., a fan coil unit, circuit breaker and smoke and fire system dedicated to but not located within a Unit). In furtherance of the foregoing, all of the following shall expressly not be deemed to comprise or be contained in or exclusively service a Unit:

5.1.3.1 all areas that do not and equipment that does not exclusively serve a single Unit (e.g., multiple fan cooling unit, hot water circulating pump, fire protection system, roofs, elevators, hallways, fire escape stairs, railings and fences, foundations and slabs, each of which serves more than one Unit);

5.1.3.2 all items not within a Unit which are part of the physical structure that creates and/or supports a Unit (e.g., studs, beams, fasteners, connectors, nails, screws, nuts, bolts, junction boxes, insulation, exterior siding, pipes, ducts, chutes, flues, conduits, sub-floors, ceilings and drywall, exterior doors and windows); and

5.1.3.3 all items which are part of a utility distribution system (e.g., water lines and pipes; sewer lines, pipes, ducts and vents; electrical lines and wiring, connectors and boxes; and gas lines). For clarification, the items in this category are part of a system that delivers utilities to a Unit, but do not include the fixtures or other items designed to operate when the utilities are delivered through such system (e.g., an exhaust fan or light fixture).

As an example of the foregoing repair and maintenance obligations, if (subsequent to any applicable warranty period) the exhaust fan referred to above breaks, the Unit Owner shall be

responsible for its repair. If, however, the exhaust fan fails to operate because of a faulty wire located within the walls of the Unit, then the Unit Owner will not be responsible for the repair (because, in fact, it is not the exhaust fan that is faulty but rather the wire delivering electrical current to such exhaust fan that is faulty (in accordance with Section 5.1.3.3) and because such faulty wire is not within the Unit). Notwithstanding the foregoing, all items not deemed to “comprise” or be “contained” in a Unit under the foregoing provisions that require repair as a result of prior alterations or other actions by a Unit Owner (or a predecessor Unit Owner) or such Unit Owner’s Permitted Users shall also be the responsibility of such Unit Owner to repair (e.g., if a Unit Owner is installing shelving in his or her Unit and in so doing damages electrical wires within the wall of such Unit, if a Unit Owner removes or modifies a water line within the walls of his or her Unit and in so doing damages such water lines, or if a Unit Owner causes the plumbing to back up, then such Unit Owner shall be responsible for repairing the damaged electrical wires, repairing the altered water line (if it ever requires repair), or cleaning out the plumbing).

5.2 Specific Powers and Duties of the Residential Association. The Residential Association, acting alone (through the Residential Association Board, its officers, or other duly authorized representatives) may, subject to the provisions of the Governing Instruments, exercise any and all rights and powers herein enumerated and, except as specifically limited herein, all the rights and powers of a non-profit corporation under the laws of the State of Utah. The following powers and duties are in amplification and not limitation of the foregoing powers and duties:

5.2.1 Bank Accounts. The Residential Association shall have the power and duty to establish and maintain the Residential Association General Account and a Residential Association Reserve Account, and to deposit therein all funds collected by the Residential Association from the Residential Association Members in connection with its rights and duties hereunder as follows:

5.2.1.1 All funds shall initially be deposited in the Residential Association General Account. Funds deposited in such General Account may be used by the Residential Association only for the purposes for which such funds have been collected.

5.2.1.2 Within ten (10) days after initial deposit in the Residential Association General Account after collection, all amounts collected for Residential Reserve Expenses shall be deposited in a Residential Association Reserve Account. The Residential Association shall keep accurate books and records reflecting the amount in such Reserve Account. Funds deposited in such Reserve Account shall be held in trust and, except in an emergency, may be used by the Residential Association only for the specific purposes for which such funds have been collected. Funds held in such Reserve Account and used in an emergency shall be replaced in such Reserve Account as soon as practicable after the date upon which emergency arose but in no event later than the end of the Fiscal Year immediately following the Fiscal Year in which such emergency occurred. Interest, if any, earned on Reserve Account funds shall be accumulated therein and shall be used only for payment of Residential Reserve Expenses and

any taxes incurred by the Residential Association as a result of the earning of such interest.

5.2.2 Delegation – Employment of Agents. The Residential Association shall have the power and duty to delegate the authority and responsibilities of the Residential Association hereunder to one or more agents, including, without limitation, the Residential Association Manager as provided for in Section 5.3 of this Residential Declaration, and the power to employ the services of any person or corporation as Residential Association Manager (in accordance with Section 5.3), or other employees as may be directed by the Residential Association Board, to manage, conduct, and perform the business, obligations and duties of the Residential Association.

5.2.3 Budgets and Financial Statements. The Residential Association shall have the power and duty to cause to be regularly prepared financial statements for the Residential Association and copies thereof to be distributed to all Residential Association Members as follows:

5.2.3.1 A Residential Association Budget shall be distributed to Unit Owners not less than thirty (30) days before the beginning of each Fiscal Year, except the first Fiscal Year with respect to which the Residential Association Budget shall be distributed as soon as reasonably possible. The Residential Association Budget shall contain at least the following information:

(a) Estimated revenue and expenses of the Residential Association on an accrual basis or any other method as determined by the Residential Association or its accountants; and

(b) A summary of the total cash reserves of the Residential Association currently available for replacement or major repair of common facilities owned by the Residential Association and for contingencies.

5.2.3.2 A Residential Association Annual Report shall be distributed within one hundred twenty (120) days after the end of each Fiscal Year. The Residential Association Annual Report may be prepared by a licensed certified public accountant. If the Residential Association Annual Report is not prepared by such a licensed certified public accountant, the Residential Association Annual Report shall be prepared by the Residential Association Manager or by an officer of the Residential Association and shall be accompanied by the certificate of the person preparing the Residential Association Annual Report that the Residential Association Annual Report was prepared without audit from the books and records of the Residential Association.

In lieu of the distribution of the Residential Association Budget and the Residential Association Annual Report, the Residential Association Board may elect to distribute a summary of the Residential Association Budget and the Residential Association Annual Report to each Residential Association Member

with a written notice, in 10-point bold print type on the front page of the summary, that the Residential Association Budget and the Residential Association Annual Report are available at the business office of the Residential Association and that copies will be provided upon a Residential Association Member's request at the expense of the Residential Association. Any such summary requested shall be mailed to the requesting Residential Association Member by first-class United States Mail at the expense of the Residential Association.

#### 5.2.4 Inspection of Books and Records.

5.2.4.1 The Residential Association shall have the power and duty to open, at any reasonable time during usual business hours, the books and records of the Residential Association for inspection by any Residential Association Member upon the written demand by such Residential Association Member; provided, however, that the Residential Association shall be obligated to open its books and records for inspection by a Residential Association Member only if the Residential Association Member requests such inspection for a purpose reasonably related to the Residential Association Member's interests as a Residential Association Member. The inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts.

5.2.4.2 The Residential Association Board shall have the power and duty to establish reasonable rules with respect to: (A) notice to be given to the custodian of records by the person desiring to make the inspection; (B) hours and days of the week when such an inspection may be made; and (C) payment of the cost of reproducing copies of documents requested by a Residential Association Member or a Mortgagee.

5.2.4.3 Each member of the Residential Association Board shall have the absolute right at any time to inspect all books, records and documents of the Residential Association and the physical properties owned or controlled by the Residential Association. The right of inspection by a member of the Residential Association Board includes the right to make extracts and copies of documents.

#### 5.2.5 Insurance – Residential Association.

5.2.5.1 The Residential Association shall have the power and duty to obtain and pay the cost of insurance in accordance with Article XI.

5.2.5.2 The Residential Association shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies required hereunder has lapsed, been canceled, and is not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Residential Association receives any notice of non-renewal of such a policy, the Residential Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.



5.2.6 Levy and Collection of Residential Assessments and Other Charges.

5.2.6.1 Residential Association Assessment. The Residential Association shall have the power and duty to determine, levy, collect and enforce Residential Assessments against the Unit Owners in the manner provided in Articles V and VI hereof in order to pay the Residential Basic Expenses and do all things necessary to enforce each Unit Owner's obligations hereunder. The Residential Association shall determine the Residential Association Assessment by apportioning the Residential Basic Expenses among the Unit Owners based on each Unit Owner's Percentage Ownership Interest.

5.2.6.2 Empire Pass Payments. Pursuant to Article V of the Master Declaration, each Unit other than the AHU Units and any ADA Unit that is owned by the Hotel Owner shall be subject to the obligation to pay the Empire Pass Payments to the Empire Pass Association as provided therein. The Empire Pass Payments shall be payable by the applicable Unit Owner directly to the Empire Pass Association upon the Unit Owner's receipt of an invoice therefor from the Empire Pass Association, accompanied by a written statement of the manner by which the amount of the Empire Pass Payments described in the invoice were calculated. Pursuant to the terms of the Open Space/Transit Management Declaration, Hotel Owner and each Unit Owner shall be subject to the payment of the Open Space/Transit Management Fee upon the sale, conveyance or other transfer by Hotel Owner or any Unit Owner of its interest in any portion of the Resort. Hotel Owner and each Unit Owner shall pay the Open Space/Transit Management Fee to the Empire Pass Association in accordance with the terms and conditions of the Open Space/Transit Management Declaration. For the avoidance of doubt, it is expressly understood that Members of the Residential Association are not members of the Empire Pass Association.

5.2.7 Maintenance and Repair. The Residential Association shall have the power and duty to: (i) repair and maintain the Residential Furnishings; (ii) establish reserves for anticipated costs, including the costs of acquisition and replacement, of Residential Furnishings; and (iii) acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Residential Association deems necessary or proper for the management, operation, maintenance and repair of the Residential Furnishings. The Residential Association may delegate any or all of its duties under this Section 5.2.7 to Hotel Owner.

5.2.8 Minutes, Agenda and Policies. The Residential Association shall have the power and duty to provide each Residential Association Member with a copy of the minutes of Residential Association Board meetings in accordance with the Residential Bylaws.

5.2.9 Roster. The Residential Association shall have the power and duty to compile the Roster. Upon the written request of a Residential Association Member, the Residential Association shall furnish such Residential Association Member with a copy of the Roster and may charge such Residential Association Member a reasonable fee

therefor. Each Residential Association Member who requests and receives a copy of the Roster hereby agrees not to make any use of the Roster prohibited by applicable law (or to solicit money or property or for any other commercial purpose), or to distribute a copy of the Roster to any person who is not a Unit Owner or for any purpose unrelated to any Unit Owner's interest as a Unit Owner and Residential Association Member. Any Residential Association Member who uses or distributes the Roster in a manner prohibited under this Section shall, in addition to all other rights, powers and remedies available to the Residential Association under this Residential Declaration, indemnify and defend Hotel Owner, the Residential Association, the Residential Association Board and the Residential Association Manager against and hold Hotel Owner, the Residential Association, the Residential Association Board and the Residential Association Manager harmless from any and all claims arising from or related to such Residential Association Member's use or misuse of the Roster.

5.2.10 Rules and Regulations. The Residential Association shall have the power and duty to adopt, publish and enforce, from time to time, rules relating to the possession, use and enjoyment of the Residential Association Property which rules shall be consistent with the provisions of the Governing Instruments.

5.2.11 Statements of Status: Condominiums.

5.2.11.1 The Residential Association shall have the power and duty to issue a Statement of Status within ten (10) days of the Residential Association's receipt of a request therefor by any Unit Owner, Mortgagee, prospective Mortgagee, purchaser or other prospective transferee of a Unit. Such Statement of Status shall be binding upon the Residential Association in favor of any person who may rely thereon in good faith.

5.2.11.2 The Residential Association shall have the power and duty to provide to a Unit Owner a copy of this Residential Declaration, the Residential Articles and the Residential Bylaws, within ten (10) days of the Residential Association's receipt of a written request therefor by any Unit Owner.

5.2.11.3 The Residential Association shall have the power to charge a fee for providing the Statement of Status or any documents so requested by a Unit Owner, which fee shall not exceed the reasonable cost of preparation and/or reproduction thereof.

5.2.12 Taxes and Assessments. The Residential Association shall have the power and duty to pay the Taxes attributable to the Residential Association Property (other than Taxes assessed against a Unit that are to be paid by the related Unit Owner) and shall have the power to discharge, contest or protest liens or charges affecting the Residential Association Property (other than liens or charges assessed against a Unit that are to be paid by the related Unit Owner).

5.2.13 Utilities. The Residential Association shall have the duty to pay the charges for utility services provided to the Residential Association and the Units,

including power, water, sewer and cable television (whether payable directly to the utility company in question or as a reimbursement to Hotel Owner pursuant to the Master Declaration).

5.2.14 Professional Advisors. The Residential Association shall have the power to retain and pay the cost of professional advisors necessary or proper in the operation and management of the Residential Association Property, the maintenance and repair of the Residential Association Property, and the enforcement of this Residential Declaration, the Residential Articles and the Residential Bylaws, including, but not limited to, architects, planners, lawyers and accountants.

5.2.15 Right of Entry. The Residential Association shall have the power to enter any Unit, at any reasonable time and whether or not in the presence of the occupant, for the purposes and with the limitations set forth in Section 3.4.1.

5.2.16 Borrowing of Money. The Residential Association shall have the power to borrow and repay money for the purpose of performing its obligations under Section 5.2.7, and to encumber the Residential Furnishings as security for the repayment of such borrowed money.

5.2.17 Services. The Residential Association shall have the power to contract, directly or through the Residential Association Manager, or otherwise provide for all services necessary or convenient to the management, maintenance and operation of the Residential Association Property.

5.2.18 Designate Officers. Subject to the express terms and conditions of this Residential Declaration, the Residential Association shall have the power to select, appoint and remove the officers, agents and employees of the Residential Association, prescribe such powers and duties for them as are not inconsistent with law, the Residential Articles, the Residential Bylaws or this Residential Declaration, and, subject to the provisions of the Residential Bylaws, fix their compensation.

5.2.19 Reserves. The Residential Association shall have the power to establish, maintain and expend reserve funds for replacements relating to the Residential Association Property.

5.2.20 Power to Levy and Assess Fines, Discipline. The Residential Association shall have the power to levy, collect, enforce and assess fines against any Unit Owner who violates, or whose Permitted Users violate, this Residential Declaration in accordance with Article VII and the Act.

5.2.21 Litigation. The Residential Association shall have the power to prosecute or defend, in the name of the Residential Association, any action affecting or relating to the Residential Association and any action in which all or substantially all of the Unit Owners have an interest.

5.2.22 Other Necessary Acts. The Residential Association shall have the power to do all other things or acts deemed by the Residential Association to be

necessary, desirable or appropriate for the operation and maintenance of the Residential Association Property.

5.3 Authority and Duty to Engage Residential Association Manager. The Residential Association shall have the authority to engage and the obligation to use its best efforts to engage and maintain a reputable firm as the Residential Association Manager (which may be the Hotel Manager and/or Master Association Manager), to manage, conduct and perform the business, obligations and duties of the Residential Association pursuant to a Residential Association Management Agreement. The Residential Association Manager shall have the right of ingress and egress over such portions of the Residential Association Property as are necessary for the performance of such business, duties and obligations.

5.4 Limitation on Powers of the Residential Association Manager. The Residential Association Manager shall not, without having first obtained the consent of a majority of Non-Hotel Owners: (a) enter into a contract with a third person or entity whereby such person or entity will furnish goods or services for the management, operation, maintenance and repair of the Residential Association Property, for a term longer than one (1) year, except for: (i) a contract with a public utility company if the rates charged for the materials or services are regulated by the Utah Public Service Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; or (ii) a prepaid casualty and/or liability insurance policy not to exceed three (3) years duration provided that the policy permits pro rata cancellation by the insured; (b) incur aggregate expenditures for capital improvements to any Residential Association Property in any Fiscal Year in excess of available reserves; (c) during any Fiscal Year, sell any property of the Residential Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses for the Residential Association for that Fiscal Year; and (d) pay compensation to members of the Residential Association Board or to the officers of the Residential Association for services performed in the conduct of the Residential Association's business; provided, however, that the members of the Residential Association Board or officers of the Residential Association may be reimbursed for reasonable expenses incurred in carrying on the business of the Residential Association.

5.5 Limited Liability – Residential Association Manager and Residential Association. Neither the Residential Association nor the Residential Association Manager shall be responsible for the acts, omissions or conduct of any Unit Owner or Permitted User, or for the breach of any of the obligations of any Unit Owner or Permitted User. Notwithstanding the duty of the Residential Association to maintain and repair Residential Association Property, and except to the extent covered by insurance, the Residential Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Residential Association Property to be maintained and repaired by the Residential Association or caused by natural elements or other Unit Owners or persons. All users of the Residential Association Property and the Unit Owners shall use the Residential Association Property at their own risk.

5.6 Residential Association – Personal Liability, Indemnification. No director or officer of the Residential Association shall be personally liable to any Unit Owner, or to any other party, including the Residential Association, for any damage, loss or prejudice suffered or

claimed on account of any act, omission, error or negligence of the Residential Association, the Residential Association Board or any other representative or employee of the Residential Association or any officer of the Residential Association, provided that such person has, upon the basis of such information as may be possessed by him or her, acted in good faith, and without willful or intentional misconduct. The Residential Association hereby agrees to indemnify any director or officer of the Residential Association against any liability for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence by such director or officer in representing the Residential Association, provided that such person has, upon the basis of such information as may be possessed by him or her, acted in good faith, and without willful or intentional misconduct.

## **ARTICLE VI RESIDENTIAL ASSESSMENTS AND PERSONAL CHARGES**

6.1 Creation of Personal Obligations For Residential Assessments. From and after the date of the closing of escrow for the sale of the first Unit, Hotel Owner, for each Unit owned by Hotel Owner, hereby covenants, and each Unit Owner accepting the conveyance of a Unit, whether or not it shall be so expressed in the Original Deed, shall be deemed to have covenanted and agreed for each Unit owned, to pay the Residential Assessments which shall be established, made and collected as hereinafter provided. Except as provided in Section 2.9 above, each Unit Owner, including Hotel Owner, for each Unit which it owns, shall be liable for a proportionate share of the Residential Assessments, such share being the same as the Percentage Ownership Interest appurtenant to the applicable Unit. Hotel Owner may, to the extent permitted by law, in lieu of payment of the Residential Assessments, enter into a Subsidy Agreement with the Residential Association with respect to any Units owned by Hotel Owner, requiring Hotel Owner to pay monies which are sufficient, together with the Residential Association Assessments paid by all other Unit Owners, to enable the Residential Association to timely pay the Residential Basic Expenses as they become due and payable. Residential Assessments, together with interest thereon and costs and reasonable attorneys' fees shall be the personal obligation of each Unit Owner at the time each Residential Assessment becomes due and payable and shall be a lien and charge upon the Unit against which such Residential Assessment is made. The personal obligation for delinquent Residential Assessments shall pass to a successor-in-title to a Mortgagee and to all other successors-in-title except for a Mortgagee or Hotel Owner, or an affiliate of Hotel Owner, with respect to any Unit that Hotel Owner, or such affiliate, reacquires after the initial conveyance of such Unit by Hotel Owner. No Unit Owner may waive or otherwise avoid liability for the Residential Assessments by non-use of his or her Unit or any part thereof or any abandonment thereof.

6.2 Purpose of Residential Assessments. Residential Assessments shall be used exclusively to fund the Residential Basic Expenses and any other costs and expenses of the Residential Association.

6.3 Limitation on Residential Association Assessment. The aggregate of the Residential Association Assessments (not including real property taxes levied against or to be paid by the Unit Owners of any Unit) for any applicable Fiscal Year subsequent to the first full Fiscal Year shall not exceed one hundred twenty-five percent (125%) of the aggregate Residential Association Assessments (not including real property taxes levied against or to be

paid by the Unit Owners of any Unit) for the preceding Fiscal Year (without regard to any increase or decrease as set forth in Section 6.4 of this Residential Declaration), without the consent of a majority of the voting power of Unit Owners other than Hotel Owner.

6.4 Reduction of Residential Association Budget. Each Unit Owner hereby agrees that in the event the Residential Association Board shall determine at any time during the Fiscal Year that the amount the Residential Association Budget is, or will be, in excess of the amounts needed to meet the Residential Basic Expenses (other than Residential Reserve Expenses) for such Fiscal Year, the Residential Association Board shall have the authority, exercisable in its sole discretion, to cause to be prepared an estimate of the amount of such excess, which excess shall then be subtracted from the previously approved amount of the Residential Association Budget for the Fiscal Year to which such excess is applicable, provided, however, that the Residential Association Board may choose, at its discretion, to pay such excess into the Reserve Account or apply such excess to future Residential Basic Expenses. The Residential Basic Expenses reflected in the reduced amount of the Residential Association Budget shall then be allocated among the Unit Owners in the same manner as provided in Section 5.2.6 of this Residential Declaration. Except as may be determined by the Unit Owners on an annual basis: (i) no Unit Owner shall, by reason of such reduction, be entitled to a refund of all or any portion of any Residential Association Assessment previously paid; and (ii) each Unit Owner hereby agrees that any amount assessed and collected in excess of the amount required to meet the Residential Basic Expenses (other than Residential Reserve Expenses) shall be applied to reduce the amount assessed to meet the Residential Basic Expenses for the next succeeding Fiscal Year or to the Reserve Account, as determined by the Residential Association Board. Any reduction in the amount of the Residential Association Budget, as provided herein, shall not relieve any Unit Owner from his or her obligation to pay any past-due Residential Association Assessment.

6.5 Residential Association Assessment. The Residential Association Assessment shall commence as to each Unit on the date of the closing of escrow for the sale of the first Unit. The initial Residential Association Assessment for each Unit acquired by a Non-Hotel Owner may be prorated between Hotel Owner and such Non-Hotel Owner as more particularly provided in the Purchase Agreement for such Unit.

6.6 Payment of Residential Association Assessment and Taxes. The Residential Association Assessment and Taxes shall be paid as follows:

6.6.1 Residential Association Assessment. The Residential Association Assessment shall be paid as follows:

6.6.1.1 For any Fiscal Year in which a Non-Hotel Owner acquires a Unit, the Hotel Owner and such Non-Hotel Owner shall pay the Residential Association Assessment against such Unit in the manner provided in the Purchase Agreement for such Unit.

6.6.1.2 For each Fiscal Year thereafter, each Non-Hotel Owner shall pay to the Residential Association the Residential Association Assessment with respect to each Unit which such Non-Hotel Owner owns, either: (A) in one lump sum due on or before the date determined by the Residential Association Board;

or (B) in installments payable no more frequently than monthly, as determined by the Residential Association Board. Whether such Residential Association Assessment is paid through the method provided in (A) or (B) of the foregoing sentence shall be at the Residential Association Board's discretion.

6.6.1.3 For each Fiscal Year in which there is no Subsidy Agreement, Hotel Owner shall pay the Residential Association Assessment with respect to each Unit owned by Hotel Owner to the Residential Association in installments payable no more frequently than monthly, as determined by the Residential Association Board, commencing on January 1 of each Fiscal Year and continuing on the first day of each month thereafter until paid; provided, however, that for any Fiscal Year in which a Non-Hotel Owner acquires such a Unit, the Hotel Owner and such Non-Hotel Owner shall pay the Residential Association Assessment against such Unit for such Fiscal Year in the manner provided in the Purchase Agreement for such Unit.

6.6.1.4 That portion of the Residential Association Assessment which is attributable to: (A) Master Reserve Expenses shall be paid by the Residential Association to the Master Association pursuant to the Master Declaration; and (B) Residential Reserve Expenses shall be deposited by the Residential Association in a Reserve Account as determined by the Residential Association Board.

6.6.2 Taxes. The Taxes shall be paid as follows:

6.6.2.1 For any Tax Year in which a Non-Hotel Owner acquires a Unit, the Taxes attributable to such Unit shall be payable by the Hotel Owner and Non-Hotel Owner in the manner provided in the Purchase Agreement for such Unit, and for each Tax Year thereafter, the Taxes for such Unit shall be payable by the Non-Hotel Owner before delinquency;

6.6.2.2 For each Tax Year, the Taxes attributable to each Unit owned by Hotel Owner shall be payable by Hotel Owner before delinquency, provided, however, that for any Fiscal Year in which a Non-Hotel Owner acquires such a Unit, the Hotel Owner and such Non-Hotel Owner shall pay the Taxes for such Fiscal Year attributable to such Unit in the manner provided in the Purchase Agreement for such Unit; and

6.6.2.3 The Residential Association shall be responsible for the payment of its share of any Tax Assessment separately assessed and billed to the Master Association by the County pursuant to the Master Declaration.

6.7 Special Assessments. If the Residential Association Assessments collected or to be collected for a particular Fiscal Year are, or will be, inadequate to meet all expenses incurred by the Residential Association (other than for items constituting Personal Charges) for any reason, including, without limitation, nonpayment by any Unit Owner of any Residential Assessment on a current basis, the Residential Association shall immediately determine the approximate amount of such inadequacy, prepare and distribute a supplemental Residential

Association Budget and levy against each Unit in accordance with the method for determining the Residential Association Assessment, a Special Assessment. Any Special Assessment shall be payable in one lump sum or periodically, as determined by the Residential Association. Notwithstanding the foregoing, a Special Assessment against a Unit Owner or Unit Owners may not be imposed without the prior approval of a majority of the Non-Hotel Owners, except for Special Assessments: (i) for payment of the portion of the Master Association Expenses to be paid by the Residential Association; (ii) for the repair or rebuilding of a Unit which does not exceed ten percent (10%) of the budgeted gross expenses of the Residential Association for the Fiscal Year in which the Special Assessment is levied; or (iii) against a Unit Owner or Unit Owners for the purpose of reimbursing the Residential Association for costs incurred in bringing such Unit Owner or Unit Owners into compliance with provisions of the Governing Instruments.

6.8 Personal Charges.

6.8.1 Personal Charges are not Residential Assessments and the remedies available to the Residential Association against any Unit Owner for nonpayment of such Unit Owner's Personal Charges are those remedies provided in Section 7.1 of this Residential Declaration.

6.8.2 Personal Charges shall be paid by each Unit Owner to whom such Personal Charge relates.

**ARTICLE VII  
ENFORCEMENT OF RESTRICTIONS**

7.1 In General.

7.1.1 In the event that any Unit Owner or Permitted User(s) should fail to comply with any of the provisions of the Governing Instruments of the Residential Association or the Master Association, the Residential Association or any other Unit Owner(s) having the benefit of such provision, shall have full power and authority to enforce compliance with such Governing Instruments in any manner provided for therein, by law or in equity, including, without limitation, the right to enforce such Governing Instruments, by bringing an action for damages, an action to enjoin the violation or specifically enforce the provisions of such Governing Instruments, and with respect to any enforcement by the Residential Association, to enforce the liens provided for herein and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for a Unit Owner and the right to take possession of the Unit of any Unit Owner in any lawful manner. In the event the Residential Association or any Unit Owner(s) shall employ an attorney to enforce, pursuant to this Section 7.1.1., the provisions of the Governing Instruments of the Residential Association or the Master Association against any Unit Owner or Permitted User, the prevailing party shall be entitled to recover from the Unit Owner or Permitted User violating any such provisions reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein.



7.1.2 All sums payable hereunder by a Unit Owner or Permitted User which become Delinquent shall bear interest at the Agreed Rate commencing on the date such payment becomes Delinquent or, if advanced or incurred by the Residential Association, or any other Unit Owner or Permitted User pursuant to authorization contained in this Residential Declaration, commencing thirty (30) days after repayment is requested.

7.1.3 Each Unit Owner or Permitted User who becomes Delinquent in the payment of any amount due the Residential Association shall pay to the Residential Association a late charge of five percent (5%) of the delinquent amount, or such other amount as may be determined by the Residential Association Board from time to time, for each payment which is Delinquent.

7.1.4 All enforcement powers of the Residential Association shall be cumulative. Each Unit Owner accepting the conveyance of, and each Permitted User occupying, a Unit shall be deemed to have covenanted and agreed that the Residential Association shall have all of the rights, powers and remedies set forth in this Article VII and elsewhere in this Residential Declaration.

7.2 Certain Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified in Section 7.1 of this Residential Declaration, the Residential Association shall have the following rights and powers:

7.2.1 Enforcement by Lien. Subject to the provisions of Section 7.3 of this Residential Declaration, there shall be a lien upon the applicable Unit for all unpaid Residential Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Residential Declaration and the Act. The lien for unpaid Residential Assessments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Residential Association Board or the Residential Association Manager. The written notice of lien shall set forth the amount of the Residential Assessment, the date(s) due, the amount remaining unpaid, the name of the Unit Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Residential Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Annotated, as amended from time to time. In any such foreclosure, the Unit Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Unit Owner shall also be required to pay to the Residential Association any Residential Assessments against the Unit which shall become due during the period of foreclosure, and all such Residential Assessments shall be secured by the lien being foreclosed. The Residential Association Board shall have the right and power on behalf of the Residential Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Residential Association. In furtherance of such foreclosure rights, the Residential

Association may bring an action at law against the Unit Owner personally obligated to pay the same or the Residential Association may foreclose the lien in accordance with the provisions of the Act. The Hotel Owner, the Residential Association and each Unit Owner hereby appoint Park City Title Company as trustee for the purpose of exercising the power of sale in connection with any non-judicial foreclosures of the Units as provided in the Act; provided, however, the Residential Association reserves the right to substitute and appoint a successor trustee as provided for in the Act. Each Unit Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, for the sole purpose of securing each Unit Owner's obligations under this Residential Declaration, including but not limited to the obligation to pay all Residential Assessments. The Residential Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibits the Residential Association from taking a deed in lieu of foreclosure.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Residential Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Residential Assessments hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Unit Owner. The purchaser at any such sale shall obtain title to the Unit after the expiration of any applicable period of redemption free from the sums or performance claimed, except as stated in this Section 7.2.1, but otherwise subject to the provisions of the Governing Instruments, and no such sale or transfer shall relieve such Unit or the purchaser thereof from liability for any Residential Assessments, Taxes, other payments or performance thereafter becoming due or from the lien therefor as provided for in this Section. All sums assessed hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon; but if such sum should prove uncollectible, then it shall be deemed to be an Residential Basic Expense, collectable from all of the other Unit Owners, including the purchaser thereof at foreclosure, and shall be shared among such Unit Owners in the same manner as other Residential Basic Expenses are shared. Upon the timely curing of any default for which a notice of default or claim of lien was filed by the Residential Association, the officers of the Residential Association are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

In addition to the foregoing, after providing notice an opportunity to cure in accordance with Section 57-8-37 of the Act, the Residential Association may assess fines in accordance with and up to the maximum amount allowable under Section 57-8-37 of the Act.

7.3 Subordination to Certain Encumbrances. The lien provided for herein shall be prior to all encumbrances made by a Unit Owner or imposed by legal process upon any Unit Owner except: (i) taxes, bonds, assessments and other levies which by law are prior thereto; and (ii) the lien of any First Mortgage whether the notice of lien is recorded prior or subsequent to

any such First Mortgage. The sale or transfer of any Unit, including foreclosure of a First Mortgage, shall not defeat or affect the lien provided for herein. No such sale or transfer shall relieve such Unit or the purchaser thereof from liability for any Residential Assessment(s) thereafter becoming due or from the lien thereof.

7.4 Waiver of Homestead Exemption. Each Unit Owner hereby agrees that neither Hotel Owner's nor any Residential Association's rights or remedies nor any Unit Owner's obligations under the terms of any of the Governing Instruments shall be released, diminished, impaired, reduced or affected by, and the liability of each Unit Owner under the Governing Instruments shall be absolute and unconditional irrespective of, any homestead exemption or any other exemption under applicable law. Each Unit Owner hereby expressly waives all homestead exemption rights and rights under any other exemption under applicable law against the obligations of each Unit Owner pursuant to the Governing Instruments.

## **ARTICLE VIII RESIDENTIAL ASSOCIATION AS ATTORNEY-IN-FACT**

8.1 Appointment. Each and every Unit Owner hereby irrevocably constitutes and appoints the Residential Association as such Unit Owner's true and lawful attorney-in-fact in such Unit Owner's name, place and stead for the purpose of dealing with the Residential Association Property upon its damage, destruction or condemnation as provided below in Article IX. In addition, the Residential Association, or any insurance trustee or substitute insurance trustee designated by the Residential Association, is hereby appointed as attorney-in-fact under this Residential Declaration for the purpose of purchasing and maintaining insurance under Article XI, including: (i) the collection and appropriate disposition of the proceeds of such insurance; (ii) the negotiation of claims and the execution of releases of liability; (iii) the execution of all documents; and (iv) the performance of all other acts necessary to accomplish such purpose. The Residential Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Unit Owners and their Mortgagees, as their interests may appear. Acceptance by a grantee of a deed or other instrument of conveyance from Hotel Owner or from any Unit Owner shall constitute appointment of the attorneys-in-fact as provided above. If the Residential Association Board fails to so approve any exercise of authority as attorney-in-fact, the Residential Association shall have such authority as it may have pursuant to the Act. Each Unit Owner's appointment of the Residential Association as attorney-in-fact as provided herein is a power coupled with an interest, and no further document or instrument is necessary to evidence the Residential Association's appointment.

8.2 General Authority. As attorney-in-fact, the Residential Association shall have full and complete authority, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Unit Owner which may be necessary or appropriate to exercise the powers granted to the Residential Association as attorney-in-fact.

**ARTICLE IX  
DAMAGE, DESTRUCTION, OR CONDEMNATION**

9.1 In General. In the event of any damage or destruction other than by normal wear and tear, whether resulting from an insured or uninsured casualty, to all or any portion of the Residential Furnishings or other personal property owned by the Residential Association, the Residential Association shall promptly cause such to be repaired, restored or replaced as near as may be possible to its condition immediately prior to such damage or destruction. The Residential Association Board may levy a Repair Assessment on all of the Unit Owners in accordance with the method set forth below for the amount required to make up any deficiencies between the total insurance proceeds and the contract price for such repair (the "Shortfall"):

9.1.1 Shortfall Per Unit. For each Unit, the Repair Assessment against such Unit shall be based upon the Percentage Ownership Interest appurtenant to such Unit.

9.1.2 Exceptions. Notwithstanding Section 9.1.1 above, if the loss, damage or destruction was caused by the intentional or negligent act, or failure to act, of any Unit Owner or such Unit Owner's Permitted User(s), the cost of such repair shall be a Personal Charge of, and be paid by, such Unit Owner as provided in Section 6.8 of this Residential Declaration to the extent such loss, damage or destruction is not covered by insurance. All insurance monies recovered on account of such damage or destruction, less the cost, if any, of such recovery, shall be applied to the payment of the cost of repairing, and shall be paid out from time to time by the Residential Association Board as such work progresses.

9.2 Taking of All of Personal Property of Residential Association. In the event all the personal property owned by the Residential Association is taken under the power of eminent domain, that portion of the condemnation award which is paid to the Residential Association on account of the taking of such personal property shall be divided among and distributed to the Unit Owners (subject to rights of Mortgagees). The proportionate interest of each Unit Owner in such proceeds shall be equal to the Percentage Ownership Interest appurtenant to such Unit Owner's Unit.

9.3 Partial Taking of Personal Property of Residential Association. In the event of a partial taking of personal property owned by the Residential Association, which taking includes the Residential Furnishings, all condemnation awards shall be paid to the Residential Association. The Residential Association shall use all amounts awarded to it on account of such taking to repair or restore the remaining personal property owned by the Residential Association as nearly as may be possible to its condition immediately prior to such taking, or if that is not reasonably possible, to acquire and improve other personal property to replace the property or portions of the personal property which were taken; provided, however, that the Residential Association shall not be obligated to replace such personal property if seventy-five percent (75%) or more of the voting power of the Residential Association elects to distribute the condemnation award rather than make such replacement, in which case it shall be disbursed to each Unit Owner (subject to the rights of Mortgagees). If the Residential Association Members do not elect, within sixty (60) days after the taking of the personal property, to distribute the condemnation award, the Residential Association Board shall proceed with such repair and

restoration and the acquisition and improvement of new personal property, and may levy a Special Assessment on the Unit Owners in accordance with Section 6.7 to raise any funds needed for such purpose in excess of the condemnation award. If the Residential Association Members do not approve such Special Assessment, if such approval is required, the Residential Association Board shall perform such repair and restoration work and make such acquisitions as are possible with the available funds.

9.4 Taking of Units. In the event of a taking of some or all of the Units, those Unit Owners whose Units are taken shall be entitled to retain (subject to the rights of Mortgagees and any unpaid Residential Assessments) the award made to them for such taking, and any such award shall be paid only to such Unit Owners. The Residential Association shall, within ninety (90) days after the taking, cause an amended Condominium Plat to be prepared depicting the new configuration of the Units and the revised number of Units, and shall prepare an amendment to this Residential Declaration to be executed by all Unit Owners, Mortgagees, and other persons or entities required by law to execute such documents, and record such amendments in the Office of the County Recorder, and all Unit Owners and Mortgagees hereby agree, and such other persons or entities are deemed to agree, to execute all such documents. Upon the taking of a Unit, the Percentage Ownership Interests appurtenant to the remaining Units shall be reallocated in accordance with Section 57-8-32.5 of the Act.

9.5 No Limitation of Remedies. Nothing contained in this Article IX shall be deemed to limit the right of a Unit Owner to pursue all available legal remedies and obtain all compensation to which such Unit Owner may be entitled by reason of the taking of or damage to his or her Unit.

9.6 Hotel Owner's Right to Purchase; Casualty Purchase Right. Pursuant to the Master Declaration, and notwithstanding anything to the contrary herein, if the Building suffers material damage to more than fifty percent (50%) of the total square footage of the Building at any time after the fiftieth (50th) anniversary of the date of recordation of this Residential Declaration, then Hotel Owner at its option may elect under the Master Declaration to purchase all of the Units in accordance with the provisions of Section 12.6 of the Master Declaration.

## **ARTICLE X PROTECTION OF MORTGAGEES**

10.1 Conflict. The provisions and requirements of this Article X and any other provisions and requirements of this Residential Declaration relating to the rights of Mortgagees: (i) shall prevail over any conflicting provisions of this Residential Declaration, the Residential Articles or the Residential Bylaws; and (ii) are in addition to any other provisions of this Residential Declaration.

10.2 Application of Residential Assessments. No Mortgagee shall be liable for the payment of Residential Assessments against any Unit, except those accruing after such Mortgagee obtains title to such Unit pursuant to its remedies under its Mortgage.

10.3 Subordination of Residential Assessment Lien. The lien of any Residential Assessment created under this Residential Declaration which arises before the time at which a

Mortgagee obtains title to the mortgaged property shall be subordinate to the lien of the First Mortgage held by the Mortgagee. However, the sale or transfer of title to property by deed, assignment or conveyance in lieu of foreclosure, or any other voluntary conveyance of title, shall not relieve: (i) a Unit Owner or its grantee or other successors and assigns (whether as a result of a foreclosure or deed-in-lieu of foreclosure or otherwise, but specifically excluding any Mortgagee itself or Hotel Owner, or an affiliate of Hotel Owner, with respect to any Unit it, or such affiliate, reacquires after the initial conveyance of such Unit by Hotel Owner) from liability from any charges or assessments hereunder which become due and payable before such sale or transfer; or (ii) Unit Owner or its grantee or other successors and assigns from liability from any charges or assessments hereunder which thereafter become due and payable, as the case may be.

10.4 Limitation of Enforcement Against Mortgagees. No violation of this Residential Declaration by a Unit Owner or enforcement of this Residential Declaration against a Unit Owner shall impair, defeat or render invalid the lien of any Mortgage against the Unit Owner's property, but this Residential Declaration shall be enforceable against any Unit Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

10.5 Notice by Mortgagees. All persons and entities holding a Mortgage affecting any portion of the Residential Association Property shall give written notice to the Residential Association Board of the nature of their interests in the Residential Association Property, as well as the recording information pertaining to all deeds of trust, mortgages and other security instruments encumbering property in the Residential Association Property, and the amount of indebtedness secured by any such deed of trust, mortgage or security instrument. Any person who has not given the notice required by this Section 10.5 shall not be entitled to the rights of a Mortgagee accorded by this Residential Declaration.

10.6 Notice. All Mortgagees are entitled, upon written request and after furnishing their addresses in writing to the Residential Association Manager, to receive written notice from the Residential Association Manager of any default by a Unit Owner under this Residential Declaration which is not cured within thirty (30) days after written notice of such default is given by the Residential Association or the Residential Association Manager to the defaulting Unit Owner(s).

## **ARTICLE XI INSURANCE**

11.1 Residential Association. The Residential Association shall have the power and duty to obtain and pay the cost of:

11.1.1 Damage to Property. On and after the Starting Date, insurance against loss or damage to the Residential Furnishings, by fire and other risks. The stipulated amount of such insurance shall, to the extent full replacement cost coverage is available on commercially reasonable terms, be based on the full replacement cost thereof at the time and place of loss, and if such coverage is available on commercially reasonable terms, the Residential Association shall either: (A) annually update such stipulated full replacement cost amount to reflect then-current estimated full replacement cost thereof,

or (B) procure and maintain an endorsement which provides for full reimbursement for the actual cost of repair or replacement thereof, without deduction for depreciation.

11.1.2 Burglary and Theft. On and after the Starting Date, insurance against hazards such as burglary and theft covering the Residential Furnishings and any other personal property owned by the Residential Association.

11.1.3 Directors, Officers and Employees; Workers' Compensation; Other. Directors' and officers' liability insurance, workers' compensation insurance and, to the extent available on commercially reasonable terms, any other insurance deemed necessary or desirable by the Residential Association. Such other policies of insurance shall cover such risks, be written by such insurers, and be in such amounts as the Residential Association shall deem necessary and proper under the circumstances. The Residential Association shall cause to be covered by a fidelity bond or insurance providing for a blanket crime endorsement, any employee or agent of the Residential Association Manager or the Residential Association who may have charge of funds of any Unit Owner, Permitted User, or of the Residential Association. The loss coverage under any such bond or policy shall be not less than the maximum amount of funds of the Residential Association over which the principals under the bond or policy may reasonably be expected to have control or access at any time.

11.1.4 Liability Insurance. On and after the Starting Date, the Residential Association, at its sole expense, shall cause to be obtained any such liability insurance as may be required pursuant the Master Declaration.

11.1.5 General Requirements. All insurance policies obtained by the Residential Association hereunder shall comply with all requirements imposed under the Master Declaration and, in addition, all liability policies obtained by the Residential Association shall name all Unit Owners (as a class), Hotel Owner (individually), the Residential Association Manager (individually) and any holder of a first-priority Mortgage encumbering the Hotel that Hotel Owner designates by written notice to the Residential Association, as additional insureds, in each case as their interests may appear. Each liability insurance policy shall contain appropriate waivers of subrogation against Hotel Owner and any Unit Owner or member of such owner's household, and a provision that no act or omission by a Unit Owner, unless acting within the scope of his or her authority on behalf of the Residential Association, will void such policy or operate as a condition to recovery by any other person under such policy.

11.1.6 Insurance Obtained by Master Association. Each Unit Owner, by accepting an Original Deed or any other transfer of a Unit, acknowledges that the insurance against loss or damage by fire or other hazards required to be obtained and maintained by the Residential Association under the Act is, pursuant to the Master Declaration, being obtained and maintained by the Master Association. In the event the Master Association fails to provide such insurance as provided in the Master Declaration, the Residential Association shall obtain and maintain such insurance.

11.2 Unit Owners. Each Unit Owner shall have the obligation and duty to obtain, maintain and pay the cost of the insurance policies described below. All liability insurance policies obtained by a Unit Owner hereunder shall name Hotel Owner as an additional insured and any Mortgagee under a First Mortgage encumbering such Unit Owner's Unit as an additional insured, as their interests may appear.

11.2.1 Damage to Owner Personal Property. On and after the Starting Date, insurance against loss or damage to any personal property or F&E contained in the Unit Owner's Unit, by fire and other risks and hazards customarily covered by an insurance policy written on an all risk basis.

11.2.2 Burglary and Theft – Personal Property. On and after the Starting Date, insurance against hazards such as burglary and theft covering all personal property and F&E contained within a Unit Owner's Unit.

11.2.3 Liability Insurance. On and after the Starting Date, each Unit Owner, at his or her sole expense, shall cause to be obtained and continually maintained comprehensive public liability insurance against claims for personal injury, bodily injury, death and property damage occasioned by accidents occurring in his or her Unit in such amounts as such Unit Owner deems appropriate.

## **ARTICLE XII PURCHASE RIGHT UPON OBSOLESCENCE**

12.1 Hotel Owner's Determination of Obsolescence. Subject to the provisions of the Act and the Master Declaration, and as provided in the Master Declaration, at any time after the seventy-fifth (75th) anniversary of the date of recordation of this Residential Declaration, Hotel Owner may in its sole discretion determine at some time in the future that the Hotel has become obsolete, that it is no longer practical to continue to operate the Hotel as then constructed consistent with the Resort Quality Standard, and that it accordingly would be preferable to either demolish the Resort or to substantially renovate the Resort in such a manner that would make it impractical for the Units to continue to be used and occupied in the same locations and manner as before. In the event Hotel Owner makes such determination, Hotel Owner has the right under the Master Declaration to elect to purchase all of the Units in accordance with the provisions of Section 12.7 of the Master Declaration.

## **ARTICLE XIII BINDING ARBITRATION FOR ENFORCEMENT OF RESIDENTIAL ASSOCIATION GOVERNING INSTRUMENTS**

13.1 OPT-OUT RIGHT. IF A UNIT OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, SUCH OWNER MUST SEND A SIGNED LETTER TO THE RESIDENTIAL ASSOCIATION, ATTENTION: ARBITRATION OPT-OUT, POSTMARKED WITHIN THIRTY (30) DAYS OF THE DATE THE DEED OF CONVEYANCE TRANSFERRING THE UNIT IS RECORDED IN THE OFFICIAL RECORDS OF SUMMIT COUNTY, UTAH, STATING THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS ARTICLE



XIII. ANY DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL NOT RESULT IN AN OPT-OUT FROM ANY PRIOR ARBITRATION PROVISION IN ANY OTHER RESIDENTIAL ASSOCIATION GOVERNING INSTRUMENT AND WILL NOT BE A FACTOR IN HOTEL OWNER'S DECISION OF WHETHER OR NOT TO CONVEY, TRANSFER OR SELL THE UNIT TO SUCH UNIT OWNER.

13.2 Arbitration Terms Defined. Capitalized words, phrases or terms used in this Article XIII ("Arbitration Provision") that are not defined in this Article XIII shall have the meanings set forth in the Master Definitions attached hereto as Exhibit C.

13.3 Claims by Bound Parties. Subject to a Unit Owner's right to opt out of this Arbitration Provision, each Bound Party agrees that, upon the election of any Bound Party asserting or defending a Claim (other than an Exempt Claim), such Claim shall be resolved by binding individual (and not class) arbitration. A notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

13.4 Arbitration Fees. If a Unit Owner cannot obtain a waiver of any arbitration fees, the Institutional Parties will consider in good faith any request a Unit Owner submits for them to pay fees for such Unit Owner. In any event, if applicable law requires an Institutional Party to pay or reimburse a Unit Owner for any such fees, such law will control. Each Bound Party shall bear the costs and expenses of that Bound Party's attorneys, experts, and witnesses, regardless of which Bound Party prevails in the arbitration, unless applicable law and/or this Arbitration Provision gives a Bound Party the right to recover any of those costs and expenses from any other Bound Party.

13.5 Governing Law. The Bound Parties contract, agree and acknowledge that this Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "FAA") and not state arbitration laws. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any dispute. Subject to the provisions of this Section 13.5, the arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory and statutory damages; declaratory, injunctive and other equitable relief; and attorneys' fees and costs. In no event whatsoever shall a Bound Party be liable to another Bound Party for, and each Bound Party waives, releases and covenants not to sue or make demand for any consequential damages or punitive damages. In addition to the rights of a Bound Party to obtain information under the Administrator's rules, a Bound Party may ask the arbitrator for more information from any other Bound Party.

13.6 Appeal of Arbitrator's Decision. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than \$100,000.00, any Bound Party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing Bound Party will pay the costs and expenses of pursuing

the appeal, regardless of its outcome. However, the Institutional Parties to such an appeal will consider in good faith any reasonable written request for them to bear such costs and expenses if the Unit Owner is the appealing Bound Party.

13.7 Binding Individual Arbitration. IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM: (i) NO BOUND PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM; (ii) NO BOUND PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER OR OTHERWISE; (iii) NO BOUND PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN THE ARBITRATION; AND (iv) THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION OR PRIVATE ATTORNEY GENERAL ARBITRATION. Notwithstanding any language in this Arbitration Provision to the contrary, any dispute about the validity or effect of the prohibitions against class proceedings and private attorney general proceedings in this Arbitration Provision shall be resolved by a court and not an arbitrator or the Administrator.

13.8 Severability. If a determination is made that any part of this Arbitration Provision is unenforceable (other than the prohibition against class proceedings and private attorney general proceedings) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If after all available appeals a determination is made that the prohibition against class proceedings or private attorney general proceedings is unenforceable in connection with any Claim brought on such basis, this Arbitration Provision (other than this sentence) shall be null and void with respect to such Claim.

13.9 Master Declaration Arbitration. In addition to the above, the Residential Association, the Residential Board and the Unit Owners shall each be subject to the arbitration provisions set forth in Section 15.16 and Section 15.17 of the Master Declaration. In the event the arbitration provisions of this Residential Declaration and the arbitration provisions of the Master Declaration are in conflict with respect to a given Claim, the arbitration provisions of the Master Declaration shall govern.

#### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

14.1 Amendment. Subject to Lessor's approval rights under the Talisker Lease, this Residential Declaration may be amended as set forth below:

14.1.1 Except as otherwise provided elsewhere in this Residential Declaration, any amendment to this Residential Declaration or the Condominium Plat shall require the affirmative vote of at least sixty-seven percent (67%) of the total voting power of the Residential Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Unit Owners without a meeting. Any amendment authorized pursuant to this subsection shall be accomplished through the recordation in the office of the Summit County Recorder of an instrument executed by the Residential Association. In such instrument an officer or trustee of the Residential

Association shall certify that the vote required by this subsection for amendment has occurred.

14.1.2 Hotel Owner alone may amend or terminate this Residential Declaration prior to the Starting Date. Notwithstanding anything contained in this Residential Declaration to the contrary, this Residential Declaration and the Condominium Plat may be amended unilaterally at any time and from time to time by Hotel Owner: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to make technical corrections to fix mistakes or remove/clarify ambiguities; or (c) if such amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Resort or any Unit.

14.1.3 Anything in this Residential Declaration to the contrary notwithstanding, Hotel Owner also reserves the unilateral right to amend all or any part of this Residential Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Residential Declaration or approval of the sale of Units, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Hotel Owner of an amendment duly signed by Hotel Owner, specifying the nature of the qualifying reason for such amendment pursuant to this Section 14.1. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all Units and all persons having an interest therein. It is the desire of Hotel Owner to retain control of the Residential Association and its activities during the Period of Hotel Owner Control. If any amendment requested pursuant to the provisions of this Section 14.1 deletes, diminishes or alters such control, Hotel Owner alone shall have the right to amend this Residential Declaration to restore such control.

14.1.4 Notwithstanding anything contained in this Residential Declaration to the contrary, Hotel Owner reserves the right to unilaterally amend the Condominium Plat at any time and from time to time by Hotel Owner if such amendment is necessary to make technical corrections, to satisfy the requirements of Park City or any other governmental authority, to correct mistakes, remove/clarify ambiguities or to accurately reflect the "as-built" Units on the Condominium Plat.

14.1.5 Any amendment under the provisions of this Section 14.1 shall be binding upon every Unit Owner and every Unit whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its recordation in the Office of the County Recorder.

14.1.6 Concurrent with or subsequent to completing a withdrawal of a Unit from the condominium regime created by this Residential Declaration in accordance with Section 3.3.5 or expansion of the Residential Association Property in accordance with Section 3.3.6, Hotel Owner may, without the consent of the Residential Association Board or the Residential Association Members, amend this Residential Declaration and the Condominium Plat for the purpose of revising or deleting any provisions or exhibits herein rendered inaccurate as a result of such withdrawal or expansion, or adding, deleting or revising related provisions or exhibits necessary to effectuate such withdrawal or expansion.

## 14.2 Termination.

14.2.1 Consent. Subject to the provisions of Article IX of this Residential Declaration, Section 20.3 of the Talisker Lease and Article 12 of the Master Declaration, this Residential Declaration shall remain in effect from the date of recordation hereof until such time as it is terminated. This Residential Declaration may be terminated at any time after the date of recordation of this Residential Declaration by approval of all Unit Owners in accordance with Section 57-8-22 of the Act and authorizing the Residential Association, as trustee for all Unit Owners, to sell the interests of the Unit Owners in the Residential Association Property subject to the rights of any Mortgagees of the Unit Owners. In the event of such termination, Hotel Owner, for each Unit owned by Hotel Owner, and each Unit Owner, by accepting the conveyance of a Unit, whether or not it shall be so expressed in the Original Deed, hereby confers upon the Residential Association, as trustee, the power and authority to sell, convey or otherwise transfer the interests of the Unit Owners in the Residential Association Property, and this Residential Declaration shall terminate upon the consummation of such sale and the recordation of an instrument stating that this Residential Declaration is terminated pursuant to this Section 14.2.1. Notwithstanding the termination of this Residential Declaration as hereinabove provided in this Section 14.2.1 and the termination thereby of all of the covenants, conditions, restrictions, easements, rules and regulations, liens and equitable servitudes created by this Residential Declaration, the existence of the Residential Association shall continue for so long as reasonably required to provide for the collection and disbursement of the proceeds from the sale, conveyance or transfer of interests of the Unit Owners in the Residential Association Property. Upon termination of this Residential Declaration, all Units shall be deemed to be owned in common by all Unit Owners, together with the easement rights described in Section 2.3.2, in proportion to each Unit Owner's Percentage Ownership Interest.

14.2.2 Sale in Lieu of Partition. In the event that no conveyance, sale or transfer of the interests of the Unit Owners in the Residential Association Property shall have been effected by the Residential Association within nine (9) months after the events described in Section 14.2.1 have occurred, any Unit Owner, as well as Hotel Owner, shall have the right to petition a court of competent jurisdiction for the sale of the interests of the Unit Owners in the Residential Association Property in lieu of partition. Such court shall recognize and give effect to any agreement, document or instrument made or entered into by the Residential Association within such nine (9) month period, and

pursuant to which the interests of the Unit Owners in the Residential Association Property shall be conveyed, sold or transferred.

14.2.3 Proceeds. The proceeds from a sale of the interests of the Unit Owners in the Residential Association Property: (i) by the Residential Association pursuant to the power of sale conferred upon the Residential Association, as set forth in Section 14.2.1, or (ii) by a referee appointed to do so pursuant to a decree of partition and sale obtained pursuant to Section 14.2.2, above, shall be distributed by the Residential Association, as trustee, to each Unit Owner, including Hotel Owner, with respect to each Unit, subject to the rights of each Unit Owner's Mortgagee and in accordance with the method for determining the Residential Association Assessment; provided, however, that there shall be deducted from the amount due any Unit Owner, the amount, if any, of all sums due to the Residential Association from such Unit Owner. It is acknowledged that the Unit Owners do not own any interest in the Development Land or the Hotel, except for the air space rights constituting the Units and the easement rights appurtenant thereto, and any sale of the interests of the Unit Owners in and to the Residential Association Property shall not include any interest in the Development Land or the Hotel other than easements created by and existing under the Master Declaration.

14.3 Notices. Notices provided for in this Residential Declaration shall be in writing and shall be deemed sufficiently given either when delivered personally at the appropriate address set forth below (in which event, such notice shall be deemed effective only upon such delivery), forty-eight (48) hours after deposit of same in any United States post office box in the state to which the notice is addressed, or seventy-two (72) hours after deposit of same in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth below. Any notice to a Unit Owner required under this Residential Declaration shall be addressed to the Unit Owner at the last address for such Unit Owner appearing in the records of the Residential Association.

Notices to the Residential Association shall be addressed as follows:

Empire Canyon Resort Residences Association  
9100 Marsac Avenue  
Park City, Utah 84060

Notices to Hotel Owner shall be addressed as follows:

DV Luxury Resort LLC  
136 Heber Avenue, Suite 103  
Park City, Utah 84060

The addresses and addressees for purposes of this Section 14.3 may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is received, the last address and addressee as stated by notice or as provided herein, if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

14.4 Notification of Sale of Unit. No later than thirty (30) days after the sale or transfer of any Unit under circumstances whereby the transferee becomes the Unit Owner thereof, the transferor or the transferee shall notify the Residential Association in writing of: (a) the name and address of the transferee and transferor; (b) the date on which such sale or transfer is to be or was consummated; (c) a statement executed by the transferee that the transferee has received from the Unit Owner, and acknowledges receipt of, a copy of the Governing Instruments and a Statement of Status; (d) a statement executed by the transferee that the transferee has received a copy of the then effective Residential Association Budget; (e) a statement executed by the transferee that the transferee agrees to be bound by all of the provisions of the Governing Instruments; and (f) the name and address of any Mortgagee of such transferor and transferee. Any outstanding and unpaid Residential Assessments, Personal Charges and Transfer Assessment shall be paid to the Residential Association prior to the transfer of such Unit. Any outstanding and unpaid Residential Assessments and Transfer Assessment shall be the obligation of the transferee unless paid prior to transfer by the transferor. Unless and until such notice is given and any unpaid Residential Assessments, Personal Charges and Transfer Assessment have been paid to the Residential Association on behalf of the transferor, the Residential Association shall not be required to recognize the transferee for any purpose. Prior to: (i) receipt of any such notification by the Residential Association; and (ii) the payment of Residential Assessments, Personal Charges and Transfer Assessment by the transferor, any and all communications required or permitted to be given by the Residential Association shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

14.5 Severability and the Rule Against Perpetuities. If any provision of this Residential Declaration, or any Section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Residential Declaration and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected thereby. If any provision of this Residential Declaration would violate the Rule Against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President George H. Bush or President George W. Bush, whichever is later.

14.6 Successors. The provisions of this Residential Declaration shall be binding upon all parties owning a Unit or having or acquiring any right, title or interest therein and shall be for the benefit of each Unit Owner and such Unit Owner's heirs, successors and assigns. Each Unit Owner and Hotel Owner shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Unit upon ceasing to own such Unit and paying all sums and performing all obligations hereunder insofar as the same relate to each Unit up to the time his or her ownership of such Unit is terminated. The obligations and rights of Hotel Owner under this Residential Declaration shall be binding upon, and inure to the benefit of, any and all successors in Ownership Interest to the Hotel. Any person having an Ownership Interest in the Hotel shall be fully discharged and relieved of liability on the covenants herein upon ceasing to own such Ownership Interest in the Hotel and paying all sums and performing all obligations hereunder insofar as the same relate to the time prior to the termination of such Ownership Interest.

14.7 Violation or Nuisance. Every act or omission whereby any provision of this Residential Declaration is 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, by Hotel Owner and the Residential Association.

14.8 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulations pertaining to the ownership, occupancy or use of any of the Residential Association Property is hereby declared to be a violation of this Residential Declaration and subject to any or all of the enforcement procedures set forth herein.

14.9 Interpretation. The captions of the Articles and Sections hereof are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Residential Declaration. As used herein the singular shall include the plural and the masculine shall include the feminine and neuter.

14.10 Construction; Waiver. The provisions of this Residential Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development of a transient residential community. The failure to enforce any provision of this Residential Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

14.11 Termination. The plan of condominium ownership and the Residential Association created by this Residential Declaration and the Residential Articles and Residential Bylaws shall terminate and be of no force and effect when this Residential Declaration is terminated in the manner provided in this Residential Declaration.

14.12 Indemnity. To the extent not covered by insurance maintained or required to be maintained by the claiming Unit Owner, each Unit Owner shall indemnify, defend and hold each other Unit Owner, the Residential Association, the Residential Association Manager, Hotel Owner, the Master Association and the Master Association Manager harmless from and against any and all claims, damages, liabilities and expenses (including costs and attorneys' fees incurred in the defense of any claim) arising from the use or occupancy of such indemnifying Unit Owner's Unit or from the conduct of its business or from any activity, work or things done, permitted or suffered by the indemnifying Unit Owner, or by the Permitted Users of the indemnifying Unit Owner, in or about the Unit or elsewhere in the Resort. This provision shall not permit any person to be indemnified for claims, damages, liabilities and expenses arising from the negligence or willful misconduct of that person.

14.13 Constructive Notice and Acceptance; Incorporation of Residential Declaration into Deeds. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Residential Association Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Residential Declaration, whether or not any reference to this Residential Declaration is contained in the instrument by which such person acquired an interest in the Residential Association Property. Any deed or other instrument by which all or any portion of the Residential Association Property is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Residential Declaration and any instrument of

conveyance shall be deemed to incorporate the provisions of this Residential Declaration, whether or not such instrument makes reference to this Residential Declaration.

14.14 Cumulative Remedies. Each remedy provided for in this Residential Declaration shall be cumulative and not exclusive. The failure to exercise any remedy provided for in this Residential Declaration shall not constitute a waiver of such remedy or of any other remedy provided herein.

14.15 Attorneys' Fees and Costs. Except as otherwise provided in Section 13.4 above, if any party shall bring an action or proceeding (including, without limitation, any cross-complaint, counter-claim, third party claim or arbitration proceeding) against the Hotel Owner, a Unit Owner, the Residential Association or the Residential Association Manager, by reason of the alleged breach or violation of any provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Residential Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including, but not limited to, its actual attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award. For the purposes of this Residential Declaration, the term "attorneys' fees" shall mean the fees and expenses of counsel to the parties to such action or proceeding, which may include fees incurred with respect to post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, bankruptcy, litigation, and may include expenses such as printing, photostating, duplicating, facsimiles, filing fees, air freight charges and fees billed for law clerks, paralegal and other persons not admitted to the bar but performing services under the supervision of an attorney, all of which shall be deemed to have accrued upon the occurrence of the act or omission giving rise to the incurrence of such fees.

14.16 No Public Dedication. Nothing herein contained shall be deemed a gift or dedication of any portion of the Residential Association Property or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the parties hereto that this Residential Declaration shall be limited to and for the purposes herein expressed solely for the benefit of the Unit Owners.

14.17 Governing Law. This Residential Declaration shall be governed by the laws of the State of Utah without giving effect to the principles of conflict of laws thereof.

14.18 Provisions Run With Land. The provisions of this Residential Declaration are intended to run with the land. When any interest in real property in the Residential Association Property is conveyed, the interest shall be burdened by the provisions of this Residential Declaration for the benefit of the remaining portions of the Residential Association Property and the interest conveyed shall be entitled to the benefit of this Residential Declaration until terminated pursuant to Section 14.2.

14.19 Conflict of Provisions. This Residential Declaration is subordinate and subject to the provisions of the Master Declaration recorded in the office of the County Recorder. In the event of any conflict between this Residential Declaration and the Governing Instruments of the Master Association, the latter shall control. In the event of any conflict between this Residential



Declaration and the Residential Articles, this Residential Declaration shall control. In the event of any conflict between the Residential Articles and the Residential Bylaws, the Residential Articles shall control.

14.20 Acknowledgements. Each Unit Owner is hereby advised of the following matters affecting the Units, the Resort and the Unit Owners' use and enjoyment thereof:

14.20.1 Disturbances. The Resort represents a unique and desirable amenity that includes many year-round activities and is located adjacent to a ski facility (the "Ski Facility"). As such, the Resort and/or the Ski Facility may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof. The activities associated with the Resort and/or the Ski Facility include, without limitation: (i) vehicular and non-vehicular traffic, including, without limitation, (a) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests of Resort over, around and through the Resort, and (b) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels, including, without limitation, (a) construction, operation and maintenance of access roads, snow-making equipment and chair lifts, gondolas and other skier transportation systems, and (b) operation of snow-grooming vehicles and equipment and safety and supervision vehicles; (iii) various avalanche control activities; (iv) operation of a fire station and concert hall; and (v) activities relating to the use of the Resort and/or the Ski Facility, including, without limitation, skiing, snow boarding, hiking, horseback riding, bicycling and other recreational activities.

14.20.2 Rules and Regulations, Easements. Roads within the Resort are or may be subject to restricted or gated access limitations, and are or may be subject to the Hotel Rules and Regulations.

14.20.3 Construction. Substantial construction-related activities relating to the development of the Resort or other developments within or near the Resort, including the Ski Facility, may cause considerable noise, dust and other inconveniences to the Unit Owners.

14.20.4 Land Use Restrictions. The Resort may be developed pursuant to certain land uses and restrictions set forth in a plan approved by a governmental authority with no representation being made herein concerning the planned uses of other properties.

14.20.5 Amenities. No interest in or right to use any amenity located on or near the Resort shall be conveyed to any Unit Owner pursuant to this Residential Declaration. The owners of any facilities that are not part of the Residential Association Property shall have the right, in their sole discretion, to remove, relocate, discontinue operation of, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any Unit Owners.

14.20.6 Operation of Ski Facility. Hotel Owner is not the owner or operator of the Ski Facility, and accordingly, Hotel Owner cannot make any representations relating thereto. Neither Hotel Owner nor any of its employees or agents have made representations regarding the opening or closing dates of the Ski Facility in any given year. The owner or operator of the Ski Facility may decide, in its sole discretion, whether any or all of the chair lifts (including those that serve the Resort) within the Ski Facility, or the Ski Facility itself, will be operated.

14.20.7 Inconveniences. Ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to: (a) dripping water onto decks and porches from snow melt; (b) snow and ice build-up on decks and porches and sliding from these surfaces during winter months; and (c) other inconveniences arising from the sometimes variable weather conditions in the Rocky Mountains.

14.20.8 Fractional Interest Units. Each Unit Owner acknowledges that, in accordance with Section 2.7, Hotel Owner has the right to create timeshare and fractional interest regimes or units within the Resort.

14.20.9 Agent for Service of Process. The agent for service of process on the Residential Association under the Act until the expiration of the Period of Hotel Owner Control shall be Thomas Bennett whose address is 201 South Main Street, Salt Lake City, Utah 84111. Thereafter, the agent for service of process on the Residential Association shall be the Residential Association Manager, or such other persons as the Residential Association Board may designate.

14.20.10 Third-Party Beneficiaries. The Hotel Owner and Lessor are and shall be express third-party beneficiaries under this Residential Declaration, whether or not Hotel Owner or Lessor owns any Unit, and Hotel Owner and Lessor shall have the right to enforce the provisions of this Residential Declaration. This Residential Declaration shall not be amended in a manner that adversely affects any benefit, right or remedy of Hotel Owner or Lessor hereunder without the prior written consent of the Hotel Owner or Lessor, which consent may be given or denied in the Hotel Owner's or Lessor's sole discretion.

[Signature Page Follows]

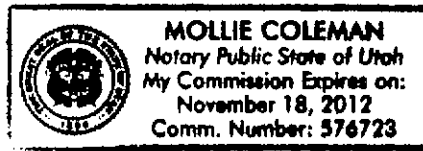
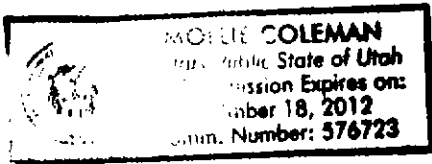
IN WITNESS WHEREOF, Hotel Owner has caused this Residential Declaration to be executed as of the day and year first-above written.

HOTEL OWNER

DV LUXURY RESORT LLC, a Delaware limited liability company

By: Ohana DV LLC, a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Name: Alex Hill  
Its: Vice President



STATE OF Utah )  
COUNTY OF Wasatch ) :SS.

The foregoing instrument was acknowledged before me on December 1, 2009, by Alex Hill, as Vice President of DV Luxury Resort LLC, a Delaware limited liability company, vice president of Ohana DV Luxury Resort LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

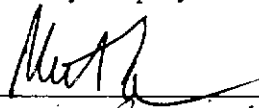
11/18/2012  
(SEAL)

**CONSENT TO RECORD AND ACKNOWLEDGEMENT  
(Talisker Empire Pass Hotel LLC)**

The undersigned Talisker Empire Pass Hotel LLC (“Lessor”), is the lessor under that certain Agreement of Lease dated May 23, 2007, by and between Lessor and Hotel Owner, as amended by that certain First Amendment to Agreement of Ground Lease dated July 17, 2008 and as the same may hereafter be amended (collectively, the “Talisker Lease”). Lessor hereby consents to the recordation of this Residential Declaration. Lessor, for itself and its successors and assigns, covenants and agrees that notwithstanding any termination of the Talisker Lease pursuant to the terms thereof, Lessor shall not, in the exercise of any of its rights to terminate under the Talisker Lease or thereafter as fee owner of the land and the interests therein that were subject to the Talisker Lease at the time of such termination, disturb or interfere with the rights or privileges of Unit Owners (or any of them) or the Residential Association under this Residential Declaration (but without limiting or restricting Lessor’s exercise of its rights and remedies, in its capacity as successor to the interests of Hotel Owner, under this Residential Declaration), and Lessor hereby acknowledges and agrees that this Residential Declaration shall remain in full force and effect and that such land and the interests therein shall be subject to all of the terms and conditions of this Residential Declaration, notwithstanding any such termination of the Talisker Lease. In addition, in the event of the termination of the Talisker Lease, Lessor acknowledges and agrees that it shall honor and assume all of the obligations and responsibilities of Hotel Owner under this Residential Declaration to the same extent as if the termination of the Talisker Lease had not occurred.

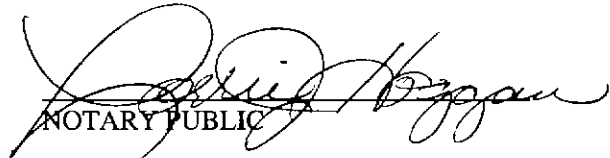
The above consent and acknowledgement shall not act to modify, affect, vitiate, limit or alter the obligations of: (i) Hotel Owner under the Talisker Lease, as between Hotel Owner and Lessor; or (ii) the obligations and conditions of the Hotel Owner and/or owners of the Units with respect to those terms, conditions and other provisions set forth in the Talisker Lease and referenced or otherwise incorporated in this Residential Declaration, all of which shall remain enforceable against and/or binding upon all persons bound by this Residential Declaration so long as the Talisker Lease remains effective.

Talisker Empire Pass Hotel LLC, a Delaware  
limited liability company

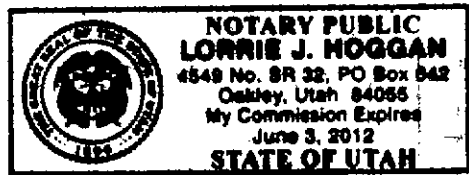
By:   
Its: Vice President

STATE OF Utah )  
COUNTY OF Summit ) :ss.

The foregoing instrument was acknowledged before me on December 8, 2009, by Mark R. Thorne, as Vice President of Talisker Empire Pass Hotel LLC, a Delaware limited liability company.

  
NOTARY PUBLIC

My Commission Expires: 6-3-12  
Residing at: Oakley, Utah



**CONSENT TO RECORD AND SUBORDINATION**

**(EUROHYPO AG)**

The undersigned EUROHYPO AG, New York Branch, is the holder of that certain Leasehold Construction Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement dated as of August 5, 2008, recorded October 7, 2008, as Instrument No. 856376 in the official records of Summit County, Utah, as amended by that certain Agreement Amending Leasehold Construction Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement dated as of December 2, 2009, recorded December 2, 2009, as Instrument No. 887584 in the official records of Summit County, together with related loan documents (collectively, the "Deed of Trust") which constitutes a lien of record against the property subject to the foregoing Residential Declaration. EUROHYPO AG, New York Branch, hereby subordinates the lien and encumbrance of the Deed of Trust to this Residential Declaration, and to the rights of the Members as set forth in such Residential Declaration, and consents to the recordation of such Residential Declaration and the related Condominium Plat..

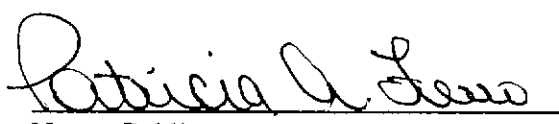
By:   
\_\_\_\_\_  
**Stephen Cox**  
**Executive Director**

EUROHYPO AG, NEW YORK BRANCH

By:   
\_\_\_\_\_  
Its: LISA ROMAN

STATE OF New York  
COUNTY OF New York :ss.

The foregoing instrument was acknowledged before me this 7 day of December, 2009, by Stephen Cox the Executive Director of EUROHYPO AG, New York Branch.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
July 2, 2011  
(SEAL)

**PATRICIA A. FERRO**  
Notary Public - State of New York  
No. 01FE6170163  
Qualified in Kings County  
My Commission Expires July 2, 2011

**EXHIBIT A**  
**LEGAL DESCRIPTION OF DEVELOPMENT LAND**

Lot C of Parcel B-2 EMPIRE VILLAGE SUBDIVISION, according to the Official Plat recorded as of May 23, 2007 as Entry No. 814178 in the office of the Summit County Recorder, Summit County, Utah. EV-B-2-C.

**EXHIBIT B**  
**SCHEDULE OF UNIT AREAS; PERCENTAGE OWNERSHIP INTERESTS\***

Unit Number	Unit Area* (in square feet)	Percentage Ownership Interest**
1	624	0.26%
2	623	0.26%
3	624	0.26%
4	623	0.26%
5	624	0.26%
6	623	0.26%
7	624	0.26%
8	623	0.26%
9	624	0.26%
10	623	0.26%
601	924	0.39%
733	1,656	0.69%
740	2,684	1.12%
771	2,309	0.97%
801	2,827	1.18%
802	2,470	1.03%
807	2,325	0.97%
808	2,325	0.97%
820	2,787	1.17%
821	2,789	1.17%
830	3,383	1.42%
831	2,630	1.10%
840	2,212	0.93%
841	2,212	0.93%
844	2,215	0.93%
845	2,215	0.93%
850	1,889	0.79%
851	1,891	0.79%
852	2,477	1.04%
853	2,489	1.04%
860	2,127	0.89%
861	1,233	0.52%
863	2,284	0.96%
864	2,224	0.93%
880	2,216	0.93%
881	1,221	0.51%
883	2,284	0.96%



Unit Number	Unit Area* (in square feet)	Percentage Ownership Interest**
886	2,249	0.94%
901	2,853	1.19%
902	2,515	1.05%
905	2,130	0.89%
906	2,127	0.89%
920	2,787	1.17%
921	2,789	1.17%
930	3,376	1.41%
933	2,644	1.11%
940	2,247	0.94%
941	2,240	0.94%
944	2,238	0.94%
945	2,231	0.93%
950	1,886	0.79%
951	1,877	0.79%
952	2,605	1.09%
953	2,251	0.94%
960	2,120	0.89%
961	1,999	0.84%
962	2,080	0.87%
963	2,196	0.92%
980	2,204	0.92%
981	3,090	1.29%
983	2,180	0.91%
984	2,071	0.87%
1001	4,407	1.87%
1002	3,800	1.59%
1003	3,391	1.42%
1004	3,720	1.56%
1005	3,668	1.54%
1020	2,770	1.16%
1021	2,770	1.16%
1031	3,533	1.48%
1032	3,373	1.41%
1034	3,417	1.43%
1040	2,201	0.92%
1041	2,202	0.92%
1042	2,195	0.92%
1043	2,195	0.92%
1050	2,712	1.14%
1051	2,683	1.13%
1052	4,367	1.83%

Unit Number	Unit Area* (in square feet)	Percentage Ownership Interest**
1062	3,754	1.57%
1063	2,228	0.93%
1081	4,086	1.71%
1082	4,067	1.71%
1083	2,251	0.94%
1150	2,682	1.12%
1151	2,699	1.13%
1152	4,367	1.83%
1162	4,667	1.95%
1182	6,858	2.87%
1202	1,851	0.77%
1250	4870	2.04%
1252	5,438	2.28%
PS1	4875	2.04%
PS2	5,318	2.23%
Total	238,933	100%

\*The Unit Areas set forth above represent the approximate square footage of the airspace comprising each Unit which were determined by measuring from the face of the interior surfaces of the perimeter walls bounding each Unit as well as from the interior surfaces of all interior walls and columns (i.e., the square footage comprising the spaces within all interior walls and columns located within the perimeter of each Unit are not included in the square footages set forth above). The Unit Areas set forth above are deemed accurate for all purposes under this Residential Declaration regardless of subsequent square footage measurement(s).

\*\* May total slightly more or less than 100% (or 10,000) due to rounding.

**EXHIBIT C**  
**MASTER DEFINITIONS**

As used herein, the following terms shall have the following meanings:

“A la Carte Services” means those services (other than Basic Services) that may be provided from time to time to the Unit Owners by or on behalf of Hotel Owner which are completely discretionary at the election of Hotel Owner (or at Hotel Owner’s election, Hotel Manager acting on behalf of Hotel Owner) and each individual Unit Owner, and are paid for by that Unit Owner on a per use, per diem or other periodic basis established by Hotel Owner (or, at Hotel Owner’s election, Hotel Manager acting on behalf of Hotel Owner) and accepted by the Unit Owner pursuant to an A la Carte Services Agreement.

“A la Carte Services Agreement” means an agreement between a Unit Owner and Hotel Owner (or, at Hotel Owner’s direction, Hotel Manager), pursuant to which A la Carte Services will be provided to such Unit Owner by Hotel Owner (or at Hotel Owner’s election, Hotel Manager acting on behalf of Hotel Owner).

“Access Areas” means those areas designated as such on the Condominium Plat (including, but not limited to, hallways, walkways, entryways, elevators, lobbies, etc.), the use and rights of which are set forth in the Master Declaration.

“Act” means the Utah Condominium Ownership Act (U.C.A. 1953 § 57-8-1 et seq.), as amended and supplemented from time to time.

“ADA Units” means certain Units that will be designed and constructed to be accessible to disabled persons, in compliance with the Americans With Disabilities Act and which will be designated as “ADA Units” on the Condominium Plat.

“Administrator” means either of the following companies selected by the party initiating the arbitration under Article XIII of the Residential Declaration: National Arbitration Forum (“NAF”), P.O. Box 50191, Minneapolis, MN 55405, <http://www.arb-forum.com>, or the American Arbitration Residential Association (“AAA”), 335 Madison Avenue, New York, NY 10017, <http://www.adr.org>.

“Agreed Rate” is the prime rate of interest commonly called the “prime rate” which is charged from time to time by Wells Fargo Bank in Salt Lake City, Utah (or such other bank as shall be selected by the Master Association, if Wells Fargo Bank ceases to conduct banking operations), to corporate borrowers of the highest credit standing for short term unsecured loans, plus six hundred (600) basis points, but not to exceed an amount of interest which is the maximum amount which can be charged by law under the circumstances.

“AHU Units” means certain Units that will be designed and constructed to satisfy and be subject to the requirements of the City and the Park City Land Management Code with respect to affordable housing and further subject to the restrictions which may be included in any conveyancing deed, lease or further restrictive covenants that may be recorded with respect to the AHU Units, and which will be designated as “AHU Units” on the Condominium Plat.

“Alleged Defect” means, pursuant to Section 15.17 of the Master Declaration, any claim, contention or allegation that any portion of the Residential Association Property and/or any improvements constructed on the Residential Association Property, is defective or that Hotel

Owner or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof.

“Association” shall mean either the Master Association or the Residential Association, as the context requires.

“Balcony/Patio Areas” means those areas designated on the Condominium Plat and consisting of the balconies, patios and decks that are contiguous and related to a Unit, the use and rights of which are set forth in the Master Declaration.

“Basic Services” means those services provided by Hotel Owner to the Unit Owners that generally are essential to the use of their Units for residential purposes and specifically are set forth on the list of services attached as Exhibit C to the Master Declaration.

“Bound Party” means the Residential Association, Hotel Owner, affiliates of Hotel Owner and any Residential Association Manager; the successors and assigns of such Bound Parties; the Unit Owners and their heirs, successors and assigns; and all other persons to the extent subject to the Residential Declaration. “Bound Party” also includes any person or entity not otherwise subject to the Residential Declaration who agrees to submit to the arbitration provision therein, and the agents, representatives, members, employees, officers and/or directors of such person or entity, if a Claim is also asserted at the same time against such person or entity and/or such person or entity may have a financial obligation for any recovery of the party asserting the Claim.

“Brand Affiliation Management Fee” means the fee charged by Hotel Owner to each Unit Owner in accordance with Section 10.7 of the Master Declaration.

“Brand Name” means the principal brand name of the Hotel Company.

“Building” means the main hotel building on the Development Land

“Casualty Purchase Closing Date” means the date of closing of the purchase and sale of a Unit pursuant to Hotel Owner’s exercise of its Casualty Purchase Right under Section 12.6 of the Master Declaration.

“Casualty Purchase Election Notice” means the notice given to Unit Owners pursuant to Section 12.6 of the Master Declaration in the event Hotel Owner elects to exercise its Casualty Purchase Right.

“Casualty Purchase Price” means the purchase price to be paid to Unit Owners in the event Hotel Owner elects to exercise its Casualty Purchase Right, as such price is determined pursuant to Section 12.6 of the Master Declaration.

“Casualty Purchase Right” means the right of Hotel Owner to purchase the Units pursuant to Section 12.6 of the Master Declaration.

“City” means Park City Municipal Corporation.

“Claim” means any claim, dispute or controversy of one or more Bound Parties against one or more other Bound Parties arising out of or relating to the Residential Declaration.

“Claimant” means, pursuant to Section 15.17 of the Master Declaration, the Residential Association, Residential Association Board or any Unit Owner or Unit Owners.

“Commencement of Construction” means the commencement of construction of the Resort which shall be deemed to be the first day that excavation begins on the Development Land.

“Condominium Plat” means the condominium plat for “The Hotel and Residences at Empire Canyon Resort” recorded or to be recorded in the Office of the County Recorder, as the same may be amended from time to time, which depicts the Units.

“County” means Summit County, Utah.

“Curing Entity” means any Mortgagee, any Unit Owner, Hotel Owner, any Member, any Association or other entity that pays the amount due by and cures the default of any Defaulting Entity.

“Defaulting Entity” means a Unit Owner, Hotel Owner, a Member, an Association or other entity which defaults in its obligations under any of the Governing Instruments.

“Delinquent” means any payment due to an Association which remains unpaid for more than the number of days after the due date therefor as may be determined by such Association from time to time, or if no such number of days is determined by such Association, fifteen (15) days after the due date therefor.

“Development Land” means the land located in Park City, Utah, as more particularly described in Exhibit A to both the Master Declaration and the Residential Declaration.

“Empire Pass Association” means the Empire Pass Master Owners Association, Inc., and its successors and assigns.

“Empire Pass Declaration” means that certain Certificate of Amendment and Amended and Restated Empire Pass Declaration of Covenants, Conditions and Restrictions of Empire Pass, recorded in the Office of the County Recorder on December 14, 2004 as Document No. 00719855, as the same may be amended and supplemented from time to time.

“Empire Pass Payments” means those annual and special payments to be made by each Unit Owner to the Empire Pass Association pursuant to the provisions of the Empire Pass Declaration and the Master Declaration. The Empire Pass Payments attributable to each Unit shall consist of an amount equal to a portion of: (i) the Annual Assessments (as defined in the Empire Pass Declaration); (ii) the Special Assessments (as defined in the Empire Pass Declaration); and (iii) those certain assessments described in Section 10.4 of the Empire Pass Declaration for the maintenance of Community Areas pursuant to the Maintenance Agreement, as applicable (as defined in the Empire Pass Declaration), that would have been assessed by the Empire Pass Association against the Unit if the Resort was subject to the governing documents of the Empire Pass Project, less the portion of any such Annual Assessment or Special Assessment that is attributable to the provision of transportation services by the Empire Pass Association. The amount to be paid by each Unit Owner shall be based on the amount of Annual Assessments, Special Assessments, assessments described in the immediately preceding clause and any other assessments (iii) that are levied by the Empire Pass Association during the applicable fiscal year on residential condominium units that are subject to the Empire Pass Declaration and are of a substantially similar type or nature as the Unit owned by such Unit Owner. In no event shall the payments in lieu of Annual Assessments, Special Assessments or Community Assessments required of each Unit Owner by the Master Declaration be greater than those required of or imposed on the Members (as defined in the Empire Pass Declaration) of the

Empire Pass Association generally, or on the comparable residential condominium units that are subject to the Empire Pass Declaration, in each case less the portion of such Annual Assessments and/or Special Assessments that is attributable to the provision of transportation services by the Empire Pass Association.

“Empire Pass Project” means the larger project of which the Resort is physically a part, known as Empire Pass, and which includes and/or is expected to include a mixture of single-family, multi-family, commercial and recreational uses as well as open space, ski runs, ski ways, trails, private roadways and other amenities.

“Excluded Disputes” means any disputes excluded from the provisions of Section 15.17 of the Master Declaration.

“Exempt Claim” means any of the following Claims, which will not be subject to Article XIII of the Residential Declaration: (A) any individual action brought by a Unit Owner in small claims court or such Unit Owner’s state’s equivalent court, unless such action is transferred, removed, or appealed to a different court; (B) any action to effect a judicial or non-judicial foreclosure; (C) any eviction or other summary proceeding to secure possession of real property or an interest therein; (D) any action in any bankruptcy proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; (E) any action to quiet title; (F) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; and (G) any dispute concerning the validity and effect of the ban set forth in Article XIII of the Residential Declaration on class actions and private attorney general proceedings.

“Expandable Property” means that portion of the Development Land designated as such on the Condominium Plat and which may be annexed to and become subject to the Residential Declaration by Hotel Owner without the approval, assent or vote of any other Unit Owners in accordance with the Residential Declaration.

“F&E” means fixtures and equipment contained in a Unit, including, without limitation the items listed below; provided, however, such items should in no way be construed as being an obligation of Hotel Owner to provide such items or include such items in a Unit:

- (a) Carpet, hard surface flooring and other flooring materials
- (b) Ceramic tile, stone, slate, marble, granite and other similar materials (e.g., for shower, vanity, tub enclosure, counter top)
- (c) Shower door and tub enclosure
- (d) Cabinets and shelves
- (e) Wall coverings (e.g., paint, wallpaper, cloth coverings)
- (f) Interior doors and door frames
- (g) Interior window coverings (e.g., shutters, drapes, blinds, curtains)
- (h) Fireplace, hearth and mantle
- (i) Kitchen and bath counter tops and splashes
- (j) Interior wood work and other finish work (e.g., wainscoting, molding, thresholds)

- (k) Light fixtures, recessed lighting and can lights, electrical outlets, light switches, switch plate covers, cable TV connectors, phone jacks
- (l) Alarm system components within a Unit
- (m) Fire sprinkler heads and other fire suppression equipment
- (n) Stairways and railings
- (o) Hardware (e.g., hinges, knobs, handles)
- (p) Toilet
- (q) Sinks, sink faucets and drain covers
- (r) Shower head
- (s) Bathtub
- (t) Built-in furniture
- (u) Towel bars, toilet paper holders, paper towel holders
- (v) Closets and any built-ins therein (e.g., shelving, clothes bars)
- (w) Appliances (e.g., range, microwave, stove, refrigerator, washer, dryer, dishwasher, trash compactor, wine storage units, oven hood, warming drawers, garbage disposal)
- (x) Exhaust fans and vent covers
- (y) Mirrors and medicine cabinets
- (z) Water heaters and air conditioning units (if located within a Unit)
- (aa) Home theaters
- (bb) Networking equipment.

“First Mortgage” means, with respect to each Unit, any first Mortgage recorded in the Office of the County Recorder and given in good faith and for value.

“Fiscal Year” means, for any Association, the one (1) year period commencing on the first day of January of each year and ending on the last day of December of the same year, which shall be the fiscal year of such Association; provided, however, that the first Fiscal Year shall be the partial one (1) year period commencing on the Starting Date and ending on December 31 of that year; provided, further, that the Fiscal Year may be changed by each Association as it deems appropriate.

“Force Majeure Event” means: (a) act of God or other deity, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, act of terrorism, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; (b) failure of normal transportation, strike, lockout, action of labor unions; (c) condemnation, requisition, law, order of governmental or civil or military authorities; (d) the inability to obtain governmental approvals or permits despite the exercise of due diligence and good faith efforts; or (e) or any other cause, whether similar or

dissimilar to the foregoing, not within the reasonable control of the person or entity affected thereby (financial ability or negligence excepted).

“Governing Instruments” means, collectively, the Master Declaration, the Master Articles, the Master Bylaws, the Hotel Rules and Regulations, the Condominium Plat, the Residential Declaration, the Residential Articles and the Residential Bylaws.

“Hotel” means all improvements on the Development Land other than the Units.

“Hotel Areas” means those areas designated as such on the Condominium Plat, the use and rights of which are set forth in the Master Declaration.

“Hotel Company” means the current hotel brand name owner as described in Section 8.5 of the Master Declaration.

“Hotel Management Agreement” means an agreement between Hotel Owner and Hotel Manager providing for the management for the Hotel (including the Access Areas, Restricted Areas, Balcony/Patio Areas and the Hotel Areas).

“Hotel Manager” means the managing agent engaged by Hotel Owner to manage the Hotel, pursuant to the Hotel Management Agreement (and which may be Hotel Owner or an affiliate of Hotel Owner).

“Hotel Owner” means DV Luxury Resort LLC, a Delaware limited liability company, or any successor(s) in-interest to Hotel Owner either (a) by express assignment of the rights of Hotel Owner under the Master Declaration and/or Residential Declaration by an instrument executed by Hotel Owner, recorded in the Office of the County Recorder, and filed with the Secretary of the Master Association or Residential Association, as applicable, or (b) through foreclosure of the interest of a beneficiary or mortgagee under a First Mortgage of Hotel Owner’s interest in the Resort provided that such beneficiary or mortgagee also executes, records in the Office of the County Recorder and files with the Secretary of the Master Association or the Residential Association, as applicable, an express assignment of the rights of Hotel Owner hereunder. In the event of a termination of the Talisker Lease pursuant to the terms thereof, at the time of such termination, Lessor shall be deemed to be the Hotel Owner as the successor in interest to the tenant under the Talisker Lease, so long as Hotel Owner agrees, in writing, to honor and assume all of the obligations and responsibilities of Hotel Owner under the Master Declaration and/or Residential Declaration to the same extent as if the termination of the Talisker Lease had not occurred.

“Hotel Rules and Regulations” means the rules and regulations relating to the possession, use and enjoyment of the Resort promulgated by Hotel Owner from time to time.

“Indexed” shall mean, as to any sum of money, that such amount shall be cumulatively adjusted annually, upon each anniversary of the recordation of the Master Declaration in the Office of the County Recorder, to reflect any change in the Consumer Price Index, as compared with such Index from the immediately preceding year. Such adjustment shall be calculated by multiplying the amount in question by a fraction, the numerator of which is the Consumer Price Index as of the month in which the adjustment occurs, and the denominator of which is the Index for the month one year earlier. “Consumer Price Index” means the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for all urban consumers, all items, all consumers, for the market area that includes the Hotel, using the years 1982-84 as a base of 100, or the successor of such Index. If such Index or successor ceases to be published, then amounts



which are Indexed shall be adjusted in accordance with changes in a similar measure of the cost of living as selected by the Master Association.

“Institutional Party” means each Bound Party except a Unit Owner other than Hotel Owner.

“Lessor” means Talisker Empire Pass Hotel LLC, a Delaware limited liability company.

“Master Articles” means the Articles of Incorporation of the Master Association, which are, or shall be, filed in the Office of the Secretary of State of Utah, as such Master Articles may be amended from time to time.

“Master Association” means the Empire Canyon Resort Master Association, Inc., a Utah non-profit corporation, the Members of which are Hotel Owner and the Residential Association.

“Master Association Annual Report” means a report to the Master Association Members comprising: (a) a balance sheet relating to the Master Association as of the last day of the Fiscal Year; (b) an operating statement for such Fiscal Year; (c) a statement of changes in financial position for such Fiscal Year; and (d) a list of the names, mailing addresses and telephone numbers of the members of the Master Association Board.

“Master Association Assessment” means for each Master Association Member an assessment levied by the Master Association against such Master Association Member to cover Master Association Expenses in an amount determined in accordance with the Master Declaration and shall include Master Special Assessments.

“Master Association Board” means the Board of Directors of the Master Association.

“Master Association Budget” means the annual budget of the Master Association providing for the Shared Expenses and the Master Association Expenses.

“Master Association Expenses” means the estimated aggregate amount of expenses, as set forth in the Master Association Budget, to be incurred by the Master Association during the applicable Fiscal Year:

(a) to provide for the collection of funds from the Master Association Members on an annual basis for the purchase, maintenance and repair of fixtures and equipment owned by the Master Association;

(b) to replace any deficit arising because of any Master Association Member’s failure to pay any amount required under the Master Declaration;

(c) to pay the cost of any arbitration or enforcement proceeding to be initiated by the Master Association or the Master Association Manager under the Master Declaration;

(d) to pay the cost of providing insurance (including any earthquake insurance required by a Mortgagee or otherwise obtained by the Master Association) obtained pursuant to the Master Declaration;

(e) to pay the costs of repairs to the Non-Hotel Use and Support Areas to the extent not covered by insurance;

(f) to pay the cost of accounting, legal fees and other professional fees incurred by the Master Association;

(g) to pay the fees of the Master Association Manager pursuant to the Master Association Management Agreement; and

(h) to pay any costs incurred by the Master Association in performing any act (other than payment of Master Association Expenses) or obligation of the Master Association pursuant to the Master Declaration.

“Master Association General Account” means the separate account(s) with a bank and/or savings and loan association located within Utah and selected by the Master Association into which all cash and cash equivalent receipts of the Master Association shall be deposited.

“Master Association Management Agreement” means an agreement between the Master Association and the Master Association Manager providing for the management of the Master Association.

“Master Association Manager” means the managing agent engaged by the Master Association Board to manage the Master Association (and which may be Hotel Owner, Hotel Manager or an affiliate of either Hotel Owner or Hotel Manager).

“Master Association Member” means a member of the Master Association.

“Master Bylaws” means the Bylaws of the Master Association as such Master Bylaws may be amended from time to time.

“Master Declaration” means that certain Master Declaration of Covenants, Conditions and Restrictions for The Hotel and Residences at Empire Canyon Resort recorded or to be recorded in the Office of the County Recorder, as the same may be amended from time to time in the manner provided therein.

“Master Operating Expenses” means, collectively, the specific non-capital operating expenditures (whether incurred by Hotel Owner or the Master Association) required to be made at any time and from time to time to provide for the operation and maintenance of the Non-Hotel Use and Support Areas at the Resort Quality Standard and for provision of pest control throughout the Building, as well as the cost and expense of all Basic Services.

“Master Reserve Expenses” means the specific capital expenditures (whether incurred by Hotel Owner or the Master Association) required to be made at any time and from time to time to provide for the repair and replacement, at the Resort Quality Standard, of the Non-Hotel Use and Support Areas, other than anything whatsoever that is the maintenance or repair responsibility of a Unit Owner or the Residential Association pursuant to the Master Declaration or the Residential Declaration.

“Master Special Assessment” means an assessment levied against a Master Association Member as provided in the Master Declaration.

“Master Utility Expenses” means, collectively, the specific expenditures (whether incurred by Hotel Owner or the Master Association) required to be made at any time and from time to time to provide for the provision of utilities to the Non-Hotel Use and Support Areas, including, but not limited to, assessments for capital improvements levied by governmental agencies.

“Member” means a member of the Residential Association or the Master Association, as the context requires.

“Mortgage” means a mortgage or deed of trust encumbering a Unit or, so long as the Talisker Lease is in effect, the leasehold interest in the Hotel under the Talisker Lease.

“Mortgagee” means the beneficiary or mortgagee pursuant to a recorded Mortgage.

“Non-Hotel Owners” means all Unit Owners, other than Hotel Owner, as the context requires.

“Non-Hotel Use and Support Areas” means the Access Areas, Restricted Areas, Parking Areas, Balcony/Patio Areas and/or Storage Areas and the subsurface areas and the improvements providing Structural and Mechanical Support to the extent not included in the Access Areas, Restricted Areas, Parking Areas, Balcony/Patio Areas and/or Storage Areas.

“Notice of Alleged Defect” means the notice given to Hotel Owner pursuant to Section 15.17 of the Master Declaration in the event a Claimant claims or asserts any Alleged Defect.

“Obsolescence Fair Market Value” means the fair market value of a Unit as it existed as of the date on which Hotel Owner delivered the Obsolescence Purchase Election Notice, as determined in accordance with Section 12.7 of the Master Declaration.

“Obsolescence Purchase Closing Date” means the date of closing of the purchase and sale of a Unit pursuant to Hotel Owner’s exercise of its Obsolescence Purchase Right under Section 12.7 of the Master Declaration.

“Obsolescence Purchase Election Notice” means the notice given to Unit Owners pursuant to Section 12.7 of the Master Declaration in the event Hotel Owner elects to exercise its Obsolescence Purchase Right.

“Obsolescence Purchase Right” means the right of Hotel Owner to purchase the Units pursuant to Section 12.7 of the Master Declaration.

“Occupancy Agreement” means any arrangement for the occupancy of a Unit as more further described in Section 8.5 of the Master Declaration.

“Occupant” means any person, other than a Unit Owner, Hotel Owner or their Permittees, who is legally entitled to the use and enjoyment of a Unit under an Occupancy Agreement.

“Office of the County Recorder” means the Office of the County Recorder of Summit County, Utah.

“Open Space/Transit Management Declaration” means that certain Declaration of Covenants, Conditions and Restrictions and Agreement regarding Open Space/Transit Management Fee, dated May 17, 2007 and recorded May 23, 2007, as Entry No. 814179, in Book 1867, at Page 842, Summit County Recorder’s Office.

“Open Space/Transit Management Fee” means, pursuant to the Open Space/Transit Management Declaration, a fee assessed against Hotel Owner or a Unit Owner in the amount of one percent (1%) of the “gross sales price” upon the sale, conveyance or other transfer by Hotel Owner or any Unit Owner of its interest in any portion of the Resort, as more particularly set forth in the Open Space/Transit Management Declaration.

“Original Deed” means each deed from Hotel Owner and Lessor recorded after the date hereof conveying a Unit, excluding, however, any deed which conveys all or substantially all of

the interest in the Resort then owned by Hotel Owner and which expressly recites that it is not an Original Deed.

“Ownership Interest” means a fee title interest to any part of the Resort which is real property.

“Parking Area Operator” means Hotel Manager or any other third party hired or engaged by Hotel Owner to manage or lease the Parking Areas.

“Parking Areas” means those areas designated as such on the Condominium Plat, the use and rights of which are set forth in the Master Declaration.

“Percentage Ownership Interest” means, with respect to a Unit, the applicable percentage ownership interest based upon the square footage of such Unit, as set forth in Exhibit B to the Residential Declaration.

“Period of Hotel Owner Control” means the period during which Hotel Owner or persons designated by it shall have the authority to appoint and remove the Residential Association officers and members of the Residential Association Board. The Period of Hotel Owner Control shall terminate no later than the earlier of:

- (i) six (6) years after the first Unit is conveyed to a Unit Owner; or
- (ii) after Units to which three-fourths (3/4) of the Percentage Ownership Interest appertain have been conveyed to Unit Owners, or after all Expandable Property has been added as Association Property, whichever occurs last.

“Permitted User” means any person who occupies a Unit or any part thereof with the permission of a Unit Owner, including, without limitation, Occupants, members of such Unit Owner’s family and his or her guests, licensees or invitees.

“Permittee” means any person other than a Unit Owner, Hotel Owner or their Occupants or Permitted Users, who is invited to be and remain on the Resort, and includes, without limitation, employees, customers, and business invitees of Unit Owners, Hotel Owner and their respective Occupants or Permitted Users.

“Personal Charges” means, to the extent not covered by any applicable insurance, any expense resulting from the act or omission of any Unit Owner or his or her Permitted User or Permittee, including, without limitation the cost to repair any damage to any portion of the Residential Association Property or to repair or replace any Residential Furnishings on account of loss or damage caused by such Unit Owner or his or her Permitted Users or Permittees and the cost to satisfy any expense to any other Unit Owner(s) or to an Association due to any intentional or negligent act or omission of such Unit Owner or Permitted User, or resulting from the breach by such Unit Owner or Permitted User of any provisions of the Governing Instruments. In amplification of the foregoing, the act or negligence of a Permitted User shall be deemed to be the act or negligence of the Unit Owner who permits such Permitted User to use and occupy any portion of the Residential Association Property.

“PLA” means that certain Agreement Not to Sue DV Luxury Resort LLC (Docket No. CERCLA 08-2007-0001) by and between the United States Environmental Protection Agency and DV Luxury Resort LLC and dated effective December 11, 2006.

“Post-Casualty Fair Market Value” means the fair market value of a Unit subsequent to any casualty, as determined pursuant to Section 12.2 of the Master Declaration.

“Post-Casualty Unit ROFO” means the right of Unit Owners to have the first opportunity to purchase any available residential condominium units being offered for sale to the general public as such right is set forth in Section 12.6(f) of the Master Declaration.

“Pre-Casualty Fair Market Value” means the fair market value of a Unit prior to any casualty, as determined pursuant to Section 12.6 of the Master Declaration.

“Purchase Agreement” means a purchase and sale agreement by and between Hotel Owner and the person or entity named therein as “Buyer” or “Purchaser” providing for the sale by Hotel Owner and the purchase by such Buyer or Purchaser of a Unit.

“Repair Assessment” means an assessment levied by the Residential Association for the purpose of raising funds to rebuild, restore or replace any portion of the Residential Association Property, respectively, suffering damage, as set forth in the Residential Declaration.

“Reserve Account” means: (a) one or more interest-bearing accounts with one or more banks and/or savings and loan associations selected by the Hotel Owner or the Residential Association, as applicable; or (b) one or more Treasury Bills and/or Certificates of Deposit, which accounts, Treasury Bills and/or Certificates of Deposit shall contain funds collected as and for Master Reserve Expenses or Residential Reserve Expenses, as the case may be.

“Residential Articles” means the Articles of Incorporation of the Residential Association, which is, or shall be, filed in the Office of the Secretary of State of Utah, as such Articles may be amended from time to time.

“Residential Assessments” means, collectively, the Residential Association Assessment, Tax Assessment, Special Assessment and Repair Assessment.

“Residential Association” means the Empire Canyon Resort Residences Association, Inc., a Utah non-profit corporation which is established for the administration, management and operation of the Units, the members of which are the Unit Owners.

“Residential Association Annual Report” means a report to the Unit Owners comprising: (a) a balance sheet relating to the Residential Association as of the last day of the Fiscal Year; (b) an operating statement for such Fiscal Year; (c) a statement of changes in financial position for such Fiscal Year; and (d) a list of the names, mailing addresses and telephone numbers of the members of the Residential Association Board.

“Residential Association Assessment” means for each Unit an assessment levied by the Residential Association against such Unit to cover Residential Basic Expenses and Empire Pass Payments in an amount determined in accordance with the Residential Declaration.

“Residential Association Board” means the Board of Directors of the Residential Association.

“Residential Association Budget” means a pro forma operating statement for a particular Fiscal Year providing for the Residential Basic Expenses as further provided in the Residential Declaration including, but not limited to: (a) the Residential Association’s share of all Shared Expenses allocated thereto under the Master Declaration; and (b) the Residential Association’s share of the Master Association Budget allocated thereto under the Master Declaration.

“Residential Association General Account” means the separate account(s) with a bank and/or savings and loan association located within Utah and selected by the Residential Association into which all cash and cash equivalent receipts of the Residential Association shall be deposited.

“Residential Association Governing Instruments” means the Residential Declaration, Residential Articles, Residential Bylaws, the Condominium Plat and such other documents promulgated by the Residential Association Board thereunder.

“Residential Association Management Agreement” means an agreement between the Residential Association and the Residential Association Manager providing for the management of the Residential Association and the Residential Association Property (excluding the Units).

“Residential Association Manager” means the managing agent engaged by the Residential Association Board to manage the Residential Association (and which may be the Master Association Manager, or an affiliate of the Master Association Manager).

“Residential Association Property” means the Units and the Residential Furnishings.

“Residential Basic Expenses” means the estimated aggregate amount of expenses, as set forth in the Residential Association Budget, to be incurred by the Residential Association during the applicable Fiscal Year as is necessary:

(a) to operate, maintain, improve, repair and replace the Residential Association Property;

(b) to operate and manage the Residential Association;

(c) to provide for the collection of funds on an annual basis in an amount sufficient to provide financing for Residential Association-sponsored activities for the benefit of Members;

(d) to provide for the collection of funds on an annual basis over the useful life of the Residential Association Property in an amount sufficient to meet the Residential Reserve Expenses;

(e) to provide for a contingency fund in the event that some Residential Assessments may not be paid on a current basis;

(f) to carry out the other duties and powers of the Residential Association under the Residential Declaration; and

(g) to provide for the payment of the fees of the Residential Association Manager.

Without limiting the generality of the foregoing, Residential Basic Expenses shall include:

(i) all charges, costs, and expenses whatsoever incurred by the Residential Association for or in connection with the administration of the Residential Association Property;

(ii) Taxes, to the extent such Taxes are not separately levied by the County or other governmental agency against each Unit, specifically excluding that portion of the

Taxes constituting real property taxes that are assessed to Unit Owners as part their Tax Assessment in accordance with the Residential Declaration;

(iii) assessments and other similar governmental charges levied on or attributable to the Residential Association Property;

(iv) insurance obtained pursuant to the Residential Declaration;

(v) to the extent not covered by proceeds of insurance, any liability whatsoever for loss or damage, fire, accident, or nuisance to or arising from the Residential Association Property;

(vi) to the extent not covered by proceeds of insurance, the cost of repair, reinstatement, rebuilding and replacement of the Residential Association Property;

(vii) the cost of all basic utility expenses billed to the Residential Association;

(viii) the unpaid share of any Residential Assessment levied during the previous Fiscal Year against any Unit Owner for which a default in payment thereof has occurred, to the extent that the same becomes uncollectible;

(ix) wages, accounting and legal fees, management fees, maid service, and cleaning fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred with respect to the Residential Association Property; and

(x) all charges, costs, expenses and reserves whatsoever incurred or to be paid by Hotel Owner, or by the Master Association in connection with its duties under the Master Declaration, to the extent any portion thereof is allocated to the Residential Association in accordance therewith (including, without limitation, the portions of the Shared Expenses allocated to the Residential Association pursuant to the Master Declaration).

Residential Basic Expenses shall not include any expense constituting a Personal Charge.

“Residential Bylaws” means the Bylaws of the Residential Association as such Residential Bylaws may be amended from time to time.

“Residential Declaration” means the Declaration of Covenants, Conditions and Restrictions for The Residences at Empire Canyon Resort recorded or to be recorded in the Office of the County Recorder, as the same may be amended from time to time in the manner provided therein.

“Residential Furnishings” means all furniture, furnishings, appliances and other personal property from time to time owned, leased or held for use in common by the Residential Association.

“Residential Lounge” means that certain area within the Resort for the use and enjoyment of the Unit Owners to the exclusion of Hotel guests, as shown within the Access Area on the Condominium Plat.

“Residential Reserve Expenses” means the specific capital expenditures required to be made at any time and from time to time to provide for the repair, replacement or restoration of the Residential Association Property, or for such other purposes as prudent business practice requires.

“Residential Services” means, collectively, the Basic Services and the A la Carte Services.

“Resort” means the Development Land, the Hotel and the Units.

“Resort Design Guidelines” means those certain Site, Landscape and Architectural Guidelines for The Hotel and Residences at Empire Canyon Resort promulgated pursuant to Article 11 of the Master Declaration and approved and adopted by the Master Association and the Resort Design Review Board.

“Resort Design Review Board” means the design review board which shall be responsible for the administration and enforcement of the Resort Design Guidelines has more particularly described in Section 11.3.2 of the Master Declaration.

“Resort Quality Standard” means the highest of the following standards: (a) the standard required to maintain and operate the Resort in a condition and a quality level no less than that which existed at the time that the Resort was initially completed (ordinary wear and tear excepted), and (b) the standard required under the Talisker Lease.

“Restricted Areas” means those areas designated as such on the Condominium Plat, the use and rights of which are set forth in the Master Declaration.

“Roster” means a compilation of the names and addresses of each Unit Owner.

“Shared Expenses” means, collectively:

- (a) all Master Operating Expenses;
- (b) all Master Reserve Expenses;
- (c) all Master Utility Expenses;
- (d) all Shared Hotel Amenities and Services Expenses; and
- (e) any and all costs and expenses incurred (whether by the Hotel Owner or the Master Association) in providing Structural and Mechanical Support that are not included within the definitions of “Master Operating Expenses,” “Master Reserve Expenses” or “Master Utility Expenses.”

“Shared Hotel Amenities and Services Expenses” means the costs and expenses incurred by the Hotel Owner in providing personnel and staffing (sufficient to meet the Resort Quality Standard) for the amenities and facilities in the Hotel Areas, and the services provided by the Hotel Owner (or the Hotel Manager on the Hotel Owner’s behalf) from the Hotel Areas, that are, at any given time, made available to Unit Owners and their Permitted Users pursuant to Section 2.3 of the Master Declaration.

“Special Assessment” means an assessment levied against each Unit to provide funds to the Residential Association in the event the Residential Association Assessment proves inadequate, in an aggregate amount sufficient to provide for such inadequacy.

“Starting Date” means the date on which the first Original Deed for a Unit is recorded.



“Statement of Status” means with respect to a Unit, a written statement setting forth the amount of any delinquent Residential Assessments, Personal Charges or any other amounts unpaid with respect to such Unit.

“Storage Areas” means those areas designated as such on the Condominium Plat, the use and rights of which are set forth in the Master Declaration.

“Structural and Mechanical Support” means the support and the enclosure from the elements that the Development Land and the Hotel provide to the Units which is structural (e.g., columns, beams, walls, floors, roofs, exterior windows, exterior doors, etc. providing enclosure for and/or structural support of, as well as access through and over driveways, parking areas, lobbies, corridors, elevators, etc. to, the Units) and/or mechanical (e.g., by virtue of the provision of utilities, HVAC, fire suppression, life safety devices and systems, etc.).

“Subsidy Agreement” means a subsidy agreement between the Residential Association and Hotel Owner.

“Talisker Lease” means that certain Agreement of Lease dated May 23, 2007, by and between Lessor and Hotel Owner, as amended by that certain First Amendment to Agreement of Ground Lease dated July 17, 2008, and as the same may hereafter be amended.

“Tax Assessment” means, for each Tax Year, an amount levied by the Master Association against the Residential Association and the Hotel Owner, equal to a portion of the real property taxes levied against the Resort and not billed directly to Unit Owners or the Hotel Owner by the County. The Residential Association shall be solely responsible for the amount of any such taxes as the Master Association deems applicable to the Residential Lounge.

“Taxes” means: (i) any form of personal property, assessment, real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes), and/or license fee imposed upon, levied against or affecting in any way, any legal or equitable interest in the Resort, or any portion thereof, by any authority having the power to tax or assess and where the funds are generated with reference to the Resort and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Resort is located; and (ii) any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring in connection with the Resort, including but not limited to, a change in the ownership of the Resort, or any portion thereof, and/or any improvements constructed within the Resort.

“Tax Year” means the one (1) year period beginning January 1 each year and ending December 31 of the following year or such other tax year established by the State of Utah for the assessment of real and personal property taxes attributable to the Resort.

“Unit” means an individual air space unit consisting of any enclosed room or rooms occupying all or any part of a floor or floors of the Hotel to be used for residential purposes and designated for separate ownership or occupancy, each of which: (i) is or shall be separately shown, numbered and designated as such on the Condominium Plat; (ii) is or shall be bounded by and contained within the interior finished surfaces of the perimeter walls, interior walls, floors, ceilings, windows and doors thereof, and the interior surfaces of the firebox of the fireplace, if any, located therein extending from the floor to the top of the fireplace; and (iii) does or shall include the airspace so encompassed, excepting therefrom: (1) the bearing walls, windows and window frames, exterior door and door frames, columns, exterior floors, roofs,

railings, fences, foundation slabs, exterior wall surfaces and central services, pipes, ducts, chutes, and flues, conduits, wires and other utility installations wherever located within each such individual air space unit; and (2) all balconies and patios contiguous and related to each such individual air space unit. A Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be defined by its boundaries rather than by the metes and bounds (or other description) expressed in the deed or Condominium Plat, regardless of settling or minor variance between boundaries.

“Unit Owner” means the owner of a Unit.

“Units” means, collectively, each and every Unit or more than one Unit, as the context requires.

“Use Area” or “Use Areas” means individually or collectively, as applicable, the Hotel Area, Access Areas, Restricted Areas, Parking Areas, Balcony/Patio Areas, and/or the Storage Areas.

“Warranty Claim” means any dispute by a Unit Owner, the Residential Association or the Residential Board with respect to any written warranty provided by Hotel Owner.

**BYLAWS**  
**EMPIRE CANYON RESORT RESIDENCES ASSOCIATION**

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## BYLAWS

### EMPIRE CANYON RESORT RESIDENCES ASSOCIATION

The administration of Empire Canyon Resort Residences Association, Inc., a Utah non-profit corporation ("Residential Association") shall be governed by the Declaration of Covenants, Conditions and Restrictions for The Residences at Empire Canyon Resort, recorded in the Office of the Recorder for Summit County, Utah ("Residential Declaration"), the Articles of Incorporation of Empire Canyon Resort Residences Association, Inc. ("Residential Articles"), these Bylaws, the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann.) (the "Act") and the Utah Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Ann.) (the "Nonprofit Act"). Terms which are capitalized in these Bylaws and which are not otherwise defined herein shall have the meanings set forth in the Residential Declaration, unless the context clearly indicates otherwise.

1. Application of Bylaws. All present and future Unit Owners, Mortgagees, and occupants of Units and their employees and guests are subject to the Residential Declaration, these Bylaws and all rules and regulations made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance of a Unit, or the occupancy of any Unit, shall constitute an acceptance and ratification of and an agreement to comply with the provisions of the Residential Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time.

2. Residential Association Board.

2.1. Administration of Residential Association. The administration of the affairs of the Residential Association shall be conducted by the Residential Association Board consisting of not less than three (3) persons who, except for members appointed by Hotel Owner, shall be Unit Owners. Upon expiration of the Period of Hotel Owner Control, Unit Owners holding a majority of the total votes present in person or by proxy at any meeting of the Residential Association where a quorum is present may determine by vote or written assent to increase the members of the Residential Association Board.

2.2. Hotel Owner's Management Rights. The Residential Declaration establishes a Period of Hotel Owner Control, during which time Hotel Owner or persons designated by it have authority to appoint and remove the members of the Residential Association Board and officers of the Residential Association. In accordance with the Residential Declaration, the Period of Hotel Owner Control shall terminate no later than the earlier of:

2.2.1. Six (6) years after the first Unit is conveyed to a Unit Owner other than Hotel Owner; or

2.2.2. After Units to which three-fourths (3/4) of the Percentage Ownership Interest appertain have been conveyed to Unit Owners other than Hotel Owner, or after all Expandable Property has been added as Residential Association Property, whichever last occurs.



nominee named therein indicating his or her willingness to serve as a member of the Residential Association Board, if elected.

2.6. Voting for the Residential Association Board. Voting for the Residential Association Board shall be by secret written ballot. At any meeting of the Residential Association, each Unit Owner, either in person or by proxy, shall be entitled to the number of votes equal to the Percentage Ownership Interest applicable to such Unit Owner's Unit multiplied by the number of Residential Association Board seats to be filled. Each Unit Owner may cumulate his or her votes with respect to the Units for which he or she is voting and cast all of them in favor of a single candidate, or distribute his or her votes among as many candidates as the Unit Owner sees fit.

2.7. Term. Members of the Residential Association Board shall serve for terms of two (2) years beginning immediately upon their election by the Residential Association; provided, however, that the initial Residential Association Board shall serve those terms as outlined in Section 2.4 above. Notwithstanding the foregoing, once the Period of Hotel Owner Control has expired, the vote of Unit Owners holding a majority of the total voting power present in person or by proxy at a meeting of the Residential Association where a quorum is present may, from time to time, change the number and terms of the members of the Residential Association Board, provided that in any such event the terms of not less than one-third (1/3) of the Residential Association Board shall expire annually. The members of the Residential Association Board shall serve until their respective successors are elected, or until death, resignation, or removal.

2.8. Resignation. Any member of the Residential Association Board may resign at any time by giving written notice to the President of the Residential Association or to the remaining Residential Association Board members. Excepting those members named in the Residential Articles or selected by Hotel Owner, any member of the Residential Association Board who: (a) fails to attend three (3) consecutive Residential Association Board meetings (whether special or regular) or fails to attend at least twenty-five percent (25%) of the Residential Association Board meetings held during any Fiscal Year; or (b) fails to meet his or her assessment obligations under the Residential Declaration shall be deemed to have tendered his or her resignation, and his or her position shall be vacant following confirmation of the failure to attend meetings or meet assessment obligations by the affirmative vote of the remaining members of the Residential Association Board, notwithstanding such remaining members may be less than a quorum.

2.9. Removal. The Unit Owners, representing at least two-thirds (2/3) of the total voting power present in person or by proxy at any meeting of the Unit Owners may remove any member of the Residential Association Board elected by the Unit Owners with or without cause. A member of the Residential Association Board may only be removed by the Unit Owners at a meeting called for the purpose of removing such member and if the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of such member of the Residential Association Board.

2.10. Vacancies. If vacancies occur in the Residential Association Board by reason of the death or resignation of a Residential Association Board member, the Residential Association Board members

vacancies shall be filled by a vote of the Residential Association Board members then in office, though less than a quorum. Any vacancy in the Residential Association Board occurring by reason of removal of a Residential Association Board member by the Residential Association may be filled by election at the meeting at which such Residential Association Board member is removed or any subsequent regular or special meeting of the Residential Association. A vacancy resulting from a removal shall only be filled by the vote of Unit Owners holding a majority of the total voting power present in person or by proxy at a meeting of the Residential Association where a quorum is present.

2.11. Compensation. The members of the Residential Association Board shall receive no compensation for their services unless expressly approved by the vote or written assent of a majority of the total voting power of the Residential Association; provided, however, that members of the Residential Association Board shall be reimbursed by the Residential Association for reasonable expenses actually incurred for attendance at regular and special meetings of the Residential Association Board and any other expenses incurred on behalf of the Residential Association upon approval of a majority of the other Residential Association Board members. Any member of the Residential Association Board may be employed by the Residential Association in another capacity and receive compensation for such employment; provided however, that such employment shall be approved by vote or in writing by all members of the Residential Association Board not including the member to be employed.

2.12. Powers. The Residential Association Board, for the benefit of the Units and the Residential Association, shall manage the business, property and affairs of the Units and the Residential Association and enforce the provisions of the Residential Declaration, Residential Articles, these Bylaws and any rules and regulations established by the Residential Association Board pursuant to this Section (collectively, "Residential Association Governing Instruments"). The Residential Association Board is authorized to adopt rules and regulations governing the use and operation of the Units, which shall become effective ten (10) days after adoption by the Residential Association Board. The Residential Association Board shall have the powers, duties and responsibilities with respect to the Units as contained in the Residential Association Governing Instruments.

2.13. Residential Association Board Meetings. The regular meetings of the Residential Association Board shall be held at least annually at such times and places within the Resort, or some other reasonable and suitable location in Summit County, unless a meeting at another location would significantly reduce the cost to the Residential Association and/or the inconvenience to Residential Association Board members, as the Residential Association Board shall determine. A majority of the Residential Association Board shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Residential Association Board. Members of the Residential Association Board may participate in meetings by means of telephonic conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and by any other means permitted under Utah law. Such participation shall constitute presence in person at the meeting.

2.14. Special Meetings of the Residential Association Board. Special meetings of the Residential Association Board may be called by the Board or by the Unit Owners



(2) members of the Residential Association Board. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Resort or some other reasonable location in Summit County, unless a meeting at another location would significantly reduce the cost to the Residential Association and/or inconvenience to the members of the Residential Association Board. To the extent permitted by Utah law, special meetings of the Residential Association Board may be held by telephonic conference or other means as described in Section 2.13 above.

2.15. Notices. Notices of all regular Residential Association Board meetings shall be given in writing to each member of the Residential Association Board not less than thirty (30) days prior to the meeting, provided that this requirement shall not apply to any member of the Residential Association Board who has signed a waiver of notice or a written consent to the holding of a meeting. Special meetings of the Residential Association Board must be preceded by two (2) days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by Utah law. The giving of notice of any meeting shall be governed by the rules set forth in Section 16-6a-103 of the Nonprofit Act.

2.16. Waiver of Notice. A member of the Residential Association Board may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. A member's attendance at or participation in a meeting waives any required notice to that member of the meeting unless such member, at the beginning of the meeting or promptly upon the member's arrival at the meeting, objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and the objecting member does not vote for or assent to action taken at the meeting.

2.17. Actions and Open Meetings. The Residential Association Board members shall act only as a Residential Association Board, and individual Residential Association Board members shall have no powers as such. Regular and special meetings of the Residential Association Board shall be open to all members of the Residential Association; provided, however, that the Residential Association members who are not on the Residential Association Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Residential Association Board. The Residential Association Board may, with the approval of a majority of a quorum of its members, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Residential Association is or may become involved, and similar orders of business. The nature of any and all business to be considered in executive session shall first be announced in open session.

2.18. Action Without a Meeting. Any action that is required or permitted to be taken at a meeting of the Residential Association Board may be taken without a meeting if one or more consents in writing, setting forth the action so taken, are signed by all of the Residential Association Board members and such signed consents are filed with the records of the Residential Association. The consents of the Residential Association Board members may be sent by electronically transmitted facsimile or other form of wire

or wireless communication providing a complete copy of the document, including a copy of the signature of the Residential Association Board member.

2.19. Fiscal Year. The Fiscal Year shall be set by resolution of the Residential Association Board. In the absence of a Residential Association Board resolution, the Fiscal Year shall be as provided in the Master Definitions.

2.20. Liability of Residential Association Board Members. When a member of the Residential Association Board is sued for liability for actions undertaken in his or her role as a member of the Residential Association Board, the Residential Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof the Residential Association shall no longer be liable for the cost of defense, and may recover costs already expended from the member of the Residential Association Board who so acted. Members of the Residential Association Board are not personally liable to the victims of crimes occurring at the Resort. Punitive damages may not be recovered against the Residential Association or the Residential Association Board members, but may be recovered from persons whose activity gave rise to the damages.

2.21. Eligibility for Membership of Residential Association Board. An officer, employee, agent or director of a corporate Unit Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, a member of a limited liability company that owns a Unit, and a fiduciary of an estate that owns a Unit may be considered a Unit Owner for the purpose of determining eligibility for membership of the Residential Association Board. In all events where the person serving or offering to serve as an officer or member of the Residential Association Board is not the record Unit Owner, such person shall file proof of authority in the records of the Residential Association.

2.22. Residential Association Manager. The Residential Association Board or the officers appointed thereby may delegate to the Residential Association Manager, or such other persons as it or they so determine(s), all of the duties and obligations of the Residential Association Board set forth herein and in the Residential Declaration to the extent such duties and obligations are properly delegable.

2.23. Special Committees. The Residential Association Board may designate by resolution such committees and subcommittees as the Residential Association Board deems appropriate, from time to time. Each committee shall exercise those powers granted to it by an enabling resolution of the Residential Association Board; provided, however that no committee shall exercise any power which is excluded from the delegation of the power of the Residential Association Board by the laws of the State of Utah, or the Residential Association Governing Instruments.

2.24. Selection of Master Association Board Member. By a majority vote, the Residential Association Board shall select the Master Association Board member who shall be appointed by the Residential Association in accordance with Section 2 of the Master Bylaws.

3. Membership, Voting and Meetings of the Residential Association.

3.1. Annual Residential Association Meetings. The first meeting of the Residential Association shall be held within one (1) year after the closing of the sale of the first Unit. Thereafter, there shall be an annual meeting of the Residential Association at the date and time fixed in accordance with a resolution of the Residential Association Board at a reasonable place in the Resort or some other location that is readily accessible at reasonable cost to the largest possible number of Unit Owners as determined by resolution of the Residential Association Board. In the event no date is set, the annual meeting shall be held on the first Thursday in October.

3.2. Special Meetings of the Residential Association. Special meetings of the Residential Association may be called by Hotel Owner, the President of the Residential Association, a majority of the Residential Association Board members, or if the Residential Association receives one (1) or more written demands for a special meeting that: (a) state the purpose for which the special meeting is to be held; and (b) are signed and dated by Unit Owners representing at least twenty-five percent (25%) or more of the total votes of the Residential Association. Special meetings of the Residential Association may be held at a reasonable place at the Resort or some other location that is readily accessible at reasonable cost to the largest possible number of Unit Owners as determined by resolution of the Residential Association Board. At any special meeting of the Residential Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Unit Owners.

3.3. Notice of Meetings of the Residential Association. Notice of the annual meeting of the Residential Association and of any special meetings of the Residential Association shall be hand delivered or sent by first-class or certified mail, no fewer than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting to each Unit Owner entitled to vote at such meeting at such Unit Owner's address as shown in the records of the Residential Association or to any other mailing address designated in writing by the Unit Owner. Such notice shall specify the place, date and hour of the meeting and a description of any matters that must be approved by the Unit Owners for which the Unit Owners' approval is sought at such meeting. The notice of a special meeting shall also include a description of the purposes for which the meeting is called. If any annual or special meeting of the Unit Owners is adjourned to a different date, time or place, notice need not be given of the new date, time and place if the new date, time and place are announced at the meeting before adjournment. Notwithstanding the foregoing sentence, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for the adjourned meeting is or must be fixed pursuant to Section 3.5 of these Bylaws or applicable law, notice of the adjourned meeting must be given pursuant to the requirements of this Section 3.3 to Unit Owners entitled to vote at the meeting.

3.4. Meetings by Telecommunication. Any or all of the Unit Owners may participate in an annual, regular, or special meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.

3.5. Quorum. The presence in person or by proxy of Unit Owners holding twenty-five percent (25%) or more of the total voting power of the Residential Association at any meeting of the Residential Association held in response to notice to all Unit Owners of record properly given shall constitute a quorum. In the absence of a quorum at a Residential Association meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall also be twenty-five percent (25%) of the total voting power of the Residential Association. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings of the Residential Association. Unless otherwise expressly provided in the Nonprofit Act, the Residential Declaration and these Bylaws, any action may be taken at any meeting of the Unit Owners upon a majority vote of the Unit Owners who are present in person or by proxy.

3.6. Robert's Rules. Robert's Rules of Order Newly Revised (latest edition) shall govern the conduct of the Residential Association's meetings when not in conflict with the Residential Association Governing Instruments, the Nonprofit Act, or any special rules of order the Residential Association may adopt.

3.7. Action by Written Ballot. Any action that may be taken at any annual or special meeting of the Unit Owners may be taken without a meeting if the Residential Association delivers a written ballot to every Unit Owner entitled to vote on the matter. The written ballot shall set forth each proposed action; and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of members of the Residential Association Board; (c) specify the time by which a ballot must be received by the Residential Association in order to be counted; (d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter. Approval by written ballot pursuant to this Section 3.7 shall be valid only when:

3.7.1. The time by which all ballots must be received by the Residential Association has passed so that a quorum can be determined; and

3.7.2. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

3.8. Action by Written Consent. Other than the election of members of the Residential Association Board, any action that may be taken at any annual or special meeting of the Residential Association may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Unit Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting of the Unit Owners entitled to vote on the

action were present and voted. Such consents shall be signed, dated and delivered to the Residential Association within a sixty (60) day period. Notice must be given to those Unit Owners who have not consented at least ten (10) days before the action takes effect.

3.9. Proxies. At each meeting of the Unit Owners, each Unit Owner entitled to vote shall be entitled to vote in person or by proxy. The right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Unit Owner or by its attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall be delivered, at the beginning of the meeting, to the President of the Residential Association, or such other officer or person who may be acting as the secretary at the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting. A Unit Owner may revoke a proxy given pursuant to this Section only by actual notice of revocation to the Residential Association. A proxy is void if it is not dated or purports to be revocable without notice.

3.10. Exercise of Voting. In the event that a Unit is owned by more than one (1) Unit Owner, the vote relating to such Unit shall be exercised by a majority of such Unit Owners as may be determined among themselves. A vote cast at any meeting by any of such Unit Owners shall be conclusively presumed to be the vote attributable to all Unit Owners of the Unit concerned, whether or not all Unit Owners of the Unit are present, unless an objection is immediately made by another Unit Owner of the same Unit or such vote is in conflict with a written proxy given by another Unit Owner of the Unit. In the event of such conflict or objection, the vote involved shall not be counted for any purpose whatsoever until the matter is resolved to the reasonable satisfaction of the Residential Association Board. In such case, the Residential Association Board may, but shall not be required to, apportion such Unit's vote among the Unit Owners thereof.

#### 4. Officers.

4.1. Designation. So long as there are three (3) members of the Residential Association Board, the officers shall be a President-Treasurer, Vice President and Secretary. The Residential Association Board may appoint additional Vice Presidents and/or such other assistant officers as the Residential Association Board may deem necessary. No officer shall be required to be a Unit Owner. No officer shall receive compensation for serving as such. All officers and employees of the Residential Association shall serve at the will of the Residential Association Board. Officers shall be annually elected by the Residential Association Board and may be removed and replaced by the Residential Association Board.

4.2. Fidelity Bond. The Residential Association Board shall require that officers (and other employees of the Residential Association) be subject to fidelity bond coverage.

4.3. President-Treasurer. The President-Treasurer (sometimes referred to as simply the "President") shall be the chief executive of the Residential Association Board and shall preside at all meetings of the Residential Association and of the Residential Association Board and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. He or she shall sign and

either the Vice President or Secretary shall witness, on behalf of the Residential Association, all conveyances, mortgages and contracts of material importance to its business. Additionally, he or she shall be responsible for the fiscal affairs of the Residential Association, but may delegate the daily handling of funds and the keeping of records to the Residential Association Manager. He or she shall do and perform all acts which the Residential Association Board may require.

4.4. Vice President. The Vice President(s) shall perform the functions of the President in his or her absence or inability to serve.

4.5. Secretary. The Secretary shall keep minutes of all proceedings of the Residential Association Board and of the meetings of the Residential Association and shall keep such books and records as may be necessary and appropriate for the records of the Unit Owners and the Residential Association Board.

4.6. Execution of Amendments. Any officer of the Residential Association may prepare, execute, certify and record amendments to the Residential Declaration on behalf of the Residential Association.

5. Residential Basic Expenses; Residential Assessments.

5.1. Residential Assessments. All Residential Basic Expenses shall be assessed in accordance with the Residential Declaration.

5.2. Residential Basic Expenses. The Residential Association Board shall approve or disapprove the estimated Residential Basic Expenses and capital contributions for the coming Fiscal Year. Residential Assessments shall be assessed on an annual basis, unless the Residential Association Board determines otherwise, to the Unit Owners.

5.3. No Exemption. No Unit Owner shall be exempt from liability for Residential Basic Expenses or any Residential Assessment by waiver of the use or enjoyment of any portion of the Resort or by abandonment of his or her Unit.

5.4. Residential Assessment Records. The President-Treasurer shall keep detailed records of all receipts and expenditures relating to the Project and the Residential Association, including expenditures affecting the Units, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred or to be paid by the Residential Association. Such records shall be available for examination by the Unit Owners during regular business hours. In accordance with the actions of the Residential Association Board in assessing Residential Assessments against the Units, the President-Treasurer shall keep an accurate record of such Residential Assessments and of the payments thereof by each Unit Owner.

5.5. Transfer. In the event of any transfer of a fee interest in a Unit, either the transferor or the transferee shall furnish evidence establishing that the transfer has occurred. A Unit Owner who fails to furnish such information shall continue to be liable for Residential Assessments and Residential Basic Expenses, even after transferring ownership of his or her Unit, until the Residential Association is advised of the transfer.

5.6. Personal Obligation. Each Residential Assessment shall be a separate, distinct and personal liability of the applicable Unit Owners at the time such Residential Assessment is made. The Residential Association Board shall have the rights and remedies contained in the Act and in the Residential Declaration to enforce the collection of Residential Assessments.

5.7. Statements for Purchasers. Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Residential Association Board, shall be entitled to obtain a written statement from the President-Treasurer setting forth the amount of the monthly, quarterly, annual or other periodic Residential Assessments and the amount of unpaid Residential Assessments charged against such Unit and its Unit Owner(s), and if such statement does not reveal the full amount of the unpaid Residential Assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Residential Assessments shown thereon, provided that the former Unit Owner shall remain so liable. Any such excess which cannot be promptly collected from the former Unit Owner-grantor shall be reassessed by the Residential Association Board as a Residential Basic Expense to be collected from all Unit Owners, including without limitation the purchaser of such Unit, and his or her successors and assigns. The new Unit Owner shall, and the former Unit Owner shall not be liable for any Residential Assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the Residential Association Board for which the Residential Assessment is made relate in whole or in part to any period prior to that transfer date. The Residential Association Board is authorized to require a reasonable fee not to exceed Ten Dollars (\$10.00), unless otherwise authorized by the Act, for furnishing such statements.

5.8. Statements for Unit Owners and Mortgagees. In addition to the statements issuable to purchasers pursuant to Section 5.7 above, the Residential Association Board shall, upon ten (10) days' prior written request therefor, provide to any Unit Owner and to any Mortgagee, on request and at reasonable intervals, a current statement of unpaid Residential Assessments with respect to a Unit. The Residential Association Board is authorized to require a reasonable fee not to exceed Ten Dollars (\$10.00), unless otherwise authorized by the Act, for furnishing such statements.

5.9. Collection. In all cases where all or part of any Residential Assessments cannot be promptly collected from the persons or entities liable therefor under the Residential Declaration or these Bylaws, the Residential Association Board shall reassess the same as a Residential Basic Expense without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such Residential Assessments.

## 6. Litigation.

6.1. Expenses. If any action is brought by a member of the Residential Association Board on behalf of the Residential Association, the expenses of suit, including reasonable attorneys' fees, shall be a Residential Basic Expense. Except as otherwise provided by the Residential Declaration or applicable Utah law, if any action is brought against the Unit Owners or against the Residential Association Board, the

officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Unit Owners, the expenses of suit, including attorneys' fees, shall be a Residential Basic Expense. If any action is brought against one or more, but less than all Unit Owners, with the result that the ultimate liability would, if proved, be borne solely by such Unit Owners, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Unit Owners, as a Residential Basic Expense or otherwise.

6.2. Defense. Except as otherwise provided by applicable Utah law, any action brought against the Residential Association, the Residential Association Board or the officers, employees or agents thereof, in their respective capacities as such, shall be directed to the Residential Association Board, and shall be defended by the Residential Association Board; and the Unit Owners and Mortgagees shall have no right to participate in such defense other than through the Residential Association Board. Actions against one or more, but less than all Unit Owners, shall be directed to such Unit Owners, who shall promptly give written notice thereof to the Residential Association Board, and shall be defended by such Unit Owners.

## 7. Enforcement.

7.1. Abatement and Enjoyment of Violations by Unit Owners. The violation of any rules or regulations adopted by the Residential Association Board, the breach of any provision contained herein or the breach of any provision of the Residential Declaration shall give the Residential Association Board the right, in addition to any other rights set forth in these Bylaws:

7.1.1. To enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner or Unit Owners, any structure, thing or condition in the applicable Unit that may exist therein contrary to the intent and meaning of the provisions hereof, and the Residential Association Board or the Residential Association shall not thereby be deemed guilty in any manner of trespass provided that items of construction may not be altered or demolished without proper judicial proceedings; and/or

7.1.2. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7.2. Monetary Fines. The Residential Association Board may assess a fine against a Unit Owner for violations of the Residential Association Governing Instruments provided that the Residential Association Board shall first give written notice to the Unit Owner of the violation and inform the Unit Owner that a fine will be imposed if the violation is not cured within the time designated by the Residential Association Board in such notice, which time shall be at least 48 hours after the date on which such notice is given. The Residential Association Board may levy fines in the amounts that it, in its sole discretion, shall determine to be reasonable for each violation of the Residential Association Governing Instruments provided that cumulative fines for a continuing violation may not exceed \$500 per month unless otherwise allowed by law. A Unit Owner who is assessed a fine may request an informal hearing before the Residential



Association Board to protest or dispute the fine within thirty (30) days after the date on which such Unit Owner receives written notice that such fine has been assessed.

7.3. Remedies Cumulative. These remedies are cumulative to other remedies provided in the Residential Declaration and these Bylaws, any rules or regulations adopted by the Residential Association Board, or in any other applicable laws.

8. Accounting.

8.1. Accounting and Recordkeeping. The books and accounts of the Residential Association shall be kept in accordance with generally accepted accounting procedures under the direction of the President-Treasurer. The Residential Association shall maintain financial records, records of Residential Assessments as required by Section 5.4 above and such other records as required by the Residential Declaration or by law. The cost of any audit of such books and records shall be a Residential Basic Expense, unless otherwise provided in the Residential Declaration.

8.2. Financial Statements. At the close of each Fiscal Year, the books and records of the Residential Association shall be prepared by an independent public accountant approved by the Residential Association Board, and financial statements for the Residential Association shall be prepared by said accountant and distributed to all Unit Owners.

8.3. Budget. A Residential Association budget for each Fiscal Year shall be adopted by the Residential Association Board and distributed to all members of the Residential Association prior to the beginning of the Fiscal Year to which the budget applies.

8.4. Maintenance and Inspection of Records. The Residential Association membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Residential Association, of the Residential Association Board and of committees of the Residential Association Board and all other records of the Residential Association, maintained by the Residential Association or Residential Association Manager, shall be made available for inspection and copying by any member of the Residential Association or his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Unit Owner, at the office where the records are maintained. Upon receipt of an authenticated written request from a Unit Owner, along with the fee prescribed by the Residential Association Board to defray the costs of reproduction, the custodian of records of the Residential Association shall prepare and transmit to the requesting Unit Owner a copy of any and all records requested. The Residential Association may, as a condition to permitting a Unit Owner to inspect the membership register or to its furnishing information from the register, require that the Unit Owner agree in writing not to use, or allow the use, of information from the membership register for commercial or other purposes not reasonably related to the regular business of the Residential Association and the Unit Owner's interest in the Residential Association. The Residential Association Board shall establish reasonable rules with respect to:

8.4.1. Notice to be given to the custodian of the Residential Association records by the Unit Owner desiring to make the inspection or obtain copies;

8.4.2. Hours and days of the week when such an inspection may be made; and

8.4.3. Payment of the cost of reproducing copies of documents requested by a Unit Owner.

Every member of the Residential Association Board shall have the absolute right at any time to inspect all books, records and documents of the Residential Association and to inspect all real and personal properties owned or controlled by the Residential Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Residential Association to require that the Residential Association Board member agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the business of the Residential Association and the Residential Association Board member's interest in such Residential Association.

9. Rental or Lease of Units by Unit Owners.

9.1. Unit Owner Responsible. The provisions of the Residential Declaration and these Bylaws shall apply with equal force to all guests and tenants of the Unit Owners. Any Unit Owner who rents or leases or otherwise permits any other person to utilize his or her Unit shall be responsible for the conduct of his or her tenants or occupants, and upon written notice from the Residential Association Board, said Unit Owner shall be responsible for correcting violations of the Residential Declaration, these Bylaws or the rules and regulations committed by such tenants or occupants.

9.2. Violations. If a Unit Owner fails to correct violations by tenants within seventy-two (72) hours of such notice, the Residential Association Board shall be deemed to be the agent of the Unit Owner and empowered to take any enforcement action the Unit Owner would be entitled to take with respect to such violations, with the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Unit Owner and payable within thirty (30) days of assessment. Such costs shall be collected and enforced in the same manner as Residential Basic Expenses under the Residential Declaration.

9.3. Remedies. The power of the Residential Association Board hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Unit Owner by the act of renting, leasing or otherwise permitting any other person to utilize his or her Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Residential Association Board from and against any and all liability therefor. It is expressly understood that the remedies available to the Residential Association Board shall include but not be limited to the right to seek eviction of the tenant without any liability to the Unit Owner.

9.4. Collection and Application of Rents. If a Unit Owner shall at any time lease or sublet his or her Unit and shall default in the payment of Residential

Assessments, the Residential Association Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Unit Owner the rent due or becoming due, and the payment of such rent to the Residential Association Board shall be sufficient payment and discharge of such tenant and the Unit Owner for such Residential Assessments to the extent of the amount so paid. This Section 9.4 shall be incorporated by reference into every lease or other rental or occupancy agreement entered into by and between a Unit Owner and his or her tenant or occupant, whether or not this Section is expressly referenced therein.

10. Amendment of Bylaws.

Except as otherwise provided in the Residential Declaration, these Bylaws, or by applicable law, these Bylaws may be amended by the vote or written assent of Unit Owners holding a majority of the total voting power present in person or by proxy at a meeting duly called for such purpose. Provided, however, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Upon such an affirmative vote, the Residential Association Board shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the Unit Owners. Notwithstanding anything to the contrary contained or implied herein, during the Period of Hotel Owner Control Hotel Owner shall have the right to unilaterally amend these Bylaws without the vote or consent of the Residential Association Board or any Unit Owner pursuant to the unilateral amendment procedures reserved to Hotel Owner under the Residential Declaration. These Bylaws and any rules and regulations made pursuant hereto are subject to the terms and provisions of the Governing Instruments of the Master Association. No amendment to these Bylaws, or any rules and regulations made pursuant hereto, shall be adopted that are inconsistent with the terms and provisions of the Governing Instruments of the Master Association. In the event of any conflict between these Bylaws, or any rules and regulations made pursuant hereto, and the Governing Instruments of the Master Association, the latter shall control.

11. Miscellaneous.

11.1. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

11.2. Waiver. The failure of the Residential Association Board to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of these Bylaws shall be deemed to have been waived unless such waiver is in writing and signed by the Residential Association Board.

11.3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

11.4. Effective Date. These Bylaws shall take effect as of the date of the Residential Declaration, having been duly adopted by the Residential Association Board.

11.5. Counterparts. These Bylaws may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

EXECUTED this 15<sup>th</sup> day of JANUARY, 2010.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am a duly appointed President-Treasurer of Empire Canyon Resort Residences Association, Inc., a Utah nonprofit corporation;

That the foregoing Bylaws constitute the original Bylaws of said Residential Association, as duly adopted at a meeting of the Residential Association Board thereof held on the 15<sup>th</sup> day of JANUARY, 2010.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Residential Association (if any) this 14 day of JANUARY, 2010.

  
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BILL CLAYTON, President-Treasurer

Certified to be the Bylaws adopted by the Residential Association Board of Empire Canyon Resort Residences Association, Inc. dated JANUARY 15<sup>th</sup>, 2010.

  
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MARK LOVEJOY, Secretary