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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
THE HOTEL SUITES AT ZERMATT RESORT**

A Utah Condominium Project

In

Wasatch County

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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
THE HOTEL SUITES AT ZERMATT RESORT**

A Utah Condominium Project

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR THE HOTEL SUITES AT ZERMATT RESORT ("Declaration") is effective when recorded with the Wasatch County Recorder's Office by the Unit Owners of the Project, pursuant to the Utah Condominium Ownership Act.

RECITALS

A. The *Zermatt Resort Plat "B" Chalet Studio Suites* plat was recorded on January 4, 2006 in the office of the Wasatch County Recorder as Entry Number 294671.

B. The *Hotel Der Baer at Zermatt Resort Plat "F" (Amended)* plat was recorded on June 17, 2010 in the office of the Wasatch County Recorder as Entry Number 360151.

C. The *Declaration of Condominium for The Hotel Suites at Zermatt Resort* was recorded on July 15, 2004 in the office of the Wasatch County Recorder as Entry Number 273229, in Book 703, at Pages 406-445 ("Enabling Declaration").

D. The *First Amendment to Declaration of Condominium for The Hotel Suites at Zermatt Resort* was recorded on October 20, 2005 in the office of the Wasatch County Recorder as Entry Number 290749, in Book 797, at Pages 65-70.

E. This *Amended and Restated Declaration of Condominium for The Hotel Suites at Zermatt Resort* is adopted to: (1) clarify and define the rights of the Association and the Owners, in and to the Project, (2) conform to changes to the Utah Condominium Ownership Act and other Utah law, (3) provide for a general plan for managing the Project, and (4) in furtherance of the effort to protect and enhance the value of the Project.

F. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Project and shall completely replace and supersede in all respects the Enabling Declaration and all prior declarations, rules, bylaws, and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.

G. This Declaration affects the real property situated in Wasatch County, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference (the "Project") and shall be binding on all parties having or acquiring any right, title, or interest to the Project or any part thereof.

H. The Bylaws of the Association attached hereto as Exhibit C supersede and replace any previous bylaws of the Association and any amendments thereto.

I. Pursuant to the amendment requirements contained in the Enabling Declaration and Utah Code § 57-8-39, the undersigned hereby certifies that this Declaration and accompanying Bylaws were approved by Owners holding at least sixty-seven percent

(67%) of the Allocated Interests and upon approval of at least sixty-seven percent (67%) of first mortgages pursuant to the mortgagee approval requirements of the Act.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, the Owners hereby amend and replace the Enabling Declaration for the Project and state and declare as follows:

ARTICLE I DEFINITIONS

As used herein, unless the context otherwise requires, the following terms and phrases shall have the meaning stated:

1.1 **“Act”** shall mean the Utah Condominium Ownership Act, beginning at Utah Code § 57-8-1 *et seq.*, as the same may be amended from time to time.

1.2 **“Allocated Interest”** shall mean and refer to the undivided ownership interest of each Unit (which may be expressed as a percentage or fraction in this Declaration) in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Unit as set forth on Exhibit “B” attached hereto.

1.3 **“Articles”** shall mean the Articles of Incorporation for the Association, as may be amended and restated from time to time.

1.4 **“Assessments”** shall mean any charge imposed or levied by the Association against Units including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.

1.5 **“Association”** shall refer to The Suites at Zermatt Owners Association, the membership of which shall include each Owner of a Unit in the Project, as required by the Act. The Association shall be incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors and may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, “Association” as used in this Declaration shall refer to that entity.

1.6 **“Board Member”** shall mean a duly qualified and elected or appointed member of the Board of Directors of the Association. All Management Committee members elected and serving at the time of recording of this Declaration shall continue to serve as Board Members as authorized and defined herein until their term expires.

1.7 **“Board of Directors”** or **“Board”** shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association. The term Board of Directors shall have the same meaning as “Management Committee” under the Act and Enabling Declaration.

1.8 **“Bylaws”** shall mean the Bylaws adopted by the Association pursuant to § 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The Bylaws of the Association are attached hereto as Exhibit “C”.

1.9 **“Common Area”** shall mean, refer to, and include:

- (a) the land included within the Project;
- (b) all foundations, roofs, columns, girders, beams, supports, exterior walls and surfaces (including windows and window frames and doors and door frames), gutters, downspouts, soffit, and fascia of all buildings or structures in the Project;
- (c) all halls, corridors, stairs, and stairways, entrances and exits which are not located within the boundaries of a Unit, or are designed for the use of more than one Unit;
- (d) outdoor grounds and landscape, outdoor lighting, fences, sidewalks, parking spaces, streets, playgrounds, swimming pool, walking trails, spa, gym, and other installations or facilities existing for common use;
- (e) all installations of central services such as power, light, gas, water, and sewer including all pipes, wires, conduits or other utility lines running through each building and utilized by more than one Unit;
- (f) any mechanical, plumbing, ventilation system, sprinkler system, exhaust, or other equipment, apparatus, and installations existing for common use;
- (g) any parcels of real property and the improvements and fixtures located thereon that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and that are used or possessed by the Association for the benefit of all Owners; and
- (h) everything included within the Project, excluding the individual Units, as identified on the Plat; and all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- (i) The following areas and amenities are specifically excluded from the Project's Common Areas: (i) all of the Resort land, facilities and amenities including the tennis courts, conference center, roads, retail shops, outdoor amphitheater, parking areas, etc.; and (ii) all common area of adjacent plats and owners associations including The Villas at Zermatt Resort and the Villages of Zermatt.

1.10 **"Common Expenses"** shall mean: (a) all sums lawfully assessed against Units; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as Common Expenses by the Association; (e) expenses declared Common Expenses by the Declaration; (f) assessments levied upon the Project or against the Association by the owner or operator of the Resort property; and (g) other miscellaneous charges incurred by the Association or the Board of Directors pursuant to the Act, this Declaration, or other Governing Documents.

1.11 **"Declaration"** as mean and refer to this Amended and Restated Declaration of Condominium for The Hotel Suites at Zermatt Resort and shall include any and all amendments and supplements thereto.

1.12 **"Governing Documents"** shall mean collectively, the Declaration, Articles of Inc., Bylaws, Plat, and Rules adopted by the Board.

1.13 **“HOA Manager”** shall mean a Person, if any, selected by the Board of Directors to manage the affairs of the Association. The HOA Manager and the Hotel Manager may be the same Person.

1.14 **“Hotel Manager”** shall mean Midway Properties Group, LLC, a Utah limited liability company and any of its successors or assigns. The Hotel Manager is designated by this Declaration to operate and manage the Project as a hotel. There shall only be one Hotel Manager at any time. The Hotel Manager can assign or delegate its duties to another entity to manage the Project and the Resort.

1.15 **“Improvement”** shall mean all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, roads, driveways, parking areas, recreational amenities, fences, screening walls, retaining walls, stairs, decks, landscaping, and related fixtures and equipment.

1.16 **“Insurance Trustee”** shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the Association’s policies of insurance in accordance with such agreement.

1.17 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.

1.18 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use and enjoyment of the Limited Common Area appurtenant to the Unit. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of a Unit without the Unit Owner’s written consent. The Limited Common Area shall include (if applicable) the appurtenant balcony, patio, porch, stoop, doorstep, and deck to each Unit, assigned storage spaces, exterior doors, and windows. Limited Common areas may vary between Units and Unit types. The use and occupancy of the Limited Common Areas shall be reserved to their associated Units; and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Area. If an Owner’s Limited Common Area is not depicted on the Plat, or there is a dispute over its boundaries, the Board shall have the authority and discretion to determine Limited Common Area boundaries and the Board’s decision shall be binding.

1.19 **“Occupant”** shall mean any Person, including an Owner, living, dwelling, visiting, residing, or staying in a Unit. This includes, but is not limited to an Owner’s lessees, tenants, family members, guests, agents, lessees, customers, invitees, and representatives.

1.20 **“Owner” or “Unit Owner”** shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the Wasatch County Recorder; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement.

1.21 **“Person”** shall mean a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

1.22 **“Plat”** shall mean collectively the *Zermatt Resort Plat “B” Chalet Studio Suites* and the *Hotel Der Baer at Zermatt Resort Plat “F” (Amended)* condominium Plat(s) recorded for the Project with the Wasatch County Recorder. The term “Plat” shall also refer to any additional, amended, or supplemental plat(s) that may be recorded in the future. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.23 **“Project”** shall include the real property described in Exhibit “A”, together with the buildings, Improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the Zermatt Hotel condominium development.

1.24 **“Resort”** shall mean the land and all amenities, buildings, structures, and all other Improvements located on the Zermatt Resort Plat “A” map, recorded in the office of the Wasatch County Recorder on August 5, 2005 as Entry Number 286793. The Resort includes, but is not limited to the conference center, tennis courts, parking lots, outdoor amphitheater, and retail shops. The Resort and its amenities are not part of the Project and Unit Owners do not have any ownership interest in the Resort. The Unit Owners’ use of the Resort and its facilities is conditioned upon agreements separate and distinct from this Declaration. At the time of recording of this Declaration, Midway Properties Group, LLC holds a long-term lease agreement with the Resort property owner that provides Midway Properties Group, LLC with complete and total authority to manage and govern the Resort and all of its facilities and amenities.

1.25 **“Restrictions”** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.26 **“Rules”** shall mean and refer to the rules, resolutions, and/or regulations adopted by the Board of Directors.

1.27 **“Unit”** shall mean and refer to a separate physical part of the Project intended for independent use and ownership, consisting of interior rooms or air spaces located inside the condominium buildings. Units are shown on the Plat. The boundaries of each Unit shall be the Unit side surface of the exterior walls and interior partition walls. Mechanical equipment, ducts, pipes, wires, appliances, electrical receptacles, fixtures, conduits, air conditioning apparatus, or other utility lines or installations located within a Unit (or located outside such Unit boundaries, but designated and designed to serve only the Unit) shall be considered part of the Unit. Units shall include all decorated interiors, wallboard and drywall, surfaces of interior structural walls, finished flooring material, interior doors, trim, wallpaper, paint, carpeting, and tile. Any interior walls or other nonstructural members or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the condominium building shall be considered part of the Unit. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated

Interest in the Common Area appurtenant to such Unit. Exterior windows and window frames, and exterior doors and door frames shall be Limited Common Areas appurtenant to each Unit, but are not part of a Unit.

ARTICLE II THE CONDOMINIUM PROJECT

2.1 **Submission.** The real property described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference is hereby submitted to the Utah Condominium Ownership Act pursuant to the provisions of Chapter 8 of Title 57 of the Utah Code. The Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

2.2 **Name and Location.** The Project is known as the Zermatt Hotel. The Project is located in Wasatch County. The legal description of the real property included in the Project is set forth in Exhibit "A".

2.3 **Interpretation of Declaration and Applicability of the Act.** The Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act.

2.4 **Registered Agent.** The Registered Agent, as listed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, shall be the person to receive service of process for the Association pursuant to § 57-8-10(2)(d)(iii) of the Act, unless such time as the Board of Directors duly appoints a new agent. The Board may change the Registered Agent at any time and without the need for Owner consent.

ARTICLE III DESCRIPTION OF IMPROVEMENTS, ALLOCATED INTEREST

3.1 **Description of Improvements.** The Project includes two primary condominium buildings with two hundred and twenty-six (226) Units. Other major improvements include a swimming pool, health spa, exercise facility, enclosed parking area, asphalt roadways, fences, concrete patios and sidewalks, and outdoor lighting and landscaping. The buildings have a concrete foundations with wood and steel framed structural members, with wood and stucco exterior siding, and asphalt shingle roofs. The Plat(s) shall supplement the information and descriptions in this Section.

3.2 **Description and Legal Status of Units.** The Plat(s) show each Unit's designation, location, and dimensions from which its area may be determined, those Limited Common Areas which are reserved for its use, and the Common Areas to which it has access. All Units shall be capable of being independently owned, encumbered, and conveyed and consist of a Unit and an appurtenant undivided interest in and to the Common Area.

3.3 **Allocated Interests in the Common Area.**

(a) The Allocated Interests shall be apportioned among the Units as set forth in this Section. Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change the Allocated Interests.

(b) The Allocated Interest appurtenant to each of the Units shall be a 1/226 fractional amount. Such fractional interest is equivalent to .004248 or 0.44248%.

(c) If any Units are legally added to or withdrawn from the Project, the Allocated Interest of each Unit shall be recalculated by dividing the number one by the total number of Units in the Project. Any change in Allocated Interests shall be recorded via Supplemental Declaration by the Association. Otherwise, the Allocated Interest shall have a permanent character and shall not be altered without the express consent of all Owners expressed in an amendment to this Declaration.

3.4 Resort. The Resort, and all land, buildings, equipment and Improvements contained on the Resort property are not part of the Project and Owners have no ownership interest in the Resort property. The Association may enter into agreements with the Resort owner or its lessee that permits the use of the Resort property by the Owners and Occupants of the Project on terms and conditions determined by the Board. Each Owner understands that the right to use and access the Resort property and amenities is not governed by this Declaration, nor does this Declaration create any such property right or easement. Owner's right to access or use Resort amenities may expire or may otherwise be terminated by the Resort owner based on agreements or easements outside of the scope of this Declaration. In addition to the Association's right to contract with the Resort owner, each Owner shall also have the individual right to contract with the Resort owner for use and access to the Resort amenities.

3.5 Resort Use Easement Agreement. A Resort Use Easement Agreement ("RUEA") was recorded on September 17, 2000 in the office of the Wasatch County Recorder as Entry Number 236914 which permits Owners to use the Resort amenities subject to the rules and limitations imposed by the Resort owner and payments made to the Resort owner for the operation and maintenance of the Resort amenities. If Owners violate the Resort owner rules, or fail to pay the required fee for the use of the Resort amenities, then the Owner's rights under the RUEA may be restricted.

ARTICLE IV MAINTENANCE AND UTILITIES

4.1 Maintenance of Units. Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, and for any items and areas generally visible from outside of the Unit, to maintain them in a clean, well-maintained, uniform, undamaged, and tidy condition, all of the following:

(a) all interior doors, paneling, tiles, wallpaper, paint, carpet, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;

(b) all electrical wires, sewer and drainage pipes, water, power, and other utility lines that are part of the Owner's Unit;

(c) any of the following located inside of the Unit: fans, plumbing fixtures, stoves, dishwashers, refrigerators, light bulbs, lighting fixtures, intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install; and

(d) any of the following located outside of the Unit, which serve an Owner's Unit exclusively: plumbing fixtures, hot water heaters, air conditioning units (including compressors, condensers, and forced air units), and such other appliances or fixtures as may be installed. The Association has the authority to require that all maintenance, repair, and replacement of Unit facilities located outside of Unit boundaries be completed by the Association, or by an approved contractor under the supervision of the Association, and all costs incurred for such work shall be the responsibility of the Unit Owner.

(e) Upon the sale or transfer of any Unit, the Owner shall return all keys or electronic access cards that may have been provided for Common Area access to the Association. The Association may charge a \$250 fee for all keys or cards not returned, which fee shall be an Individual Assessment and a lien on the Unit to be paid prior to transfer.

4.2 Modifications to Units.

(a) An Owner may make minor nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the Units without Board approval. Minor alterations shall include changes to paint colors, appliances, light fixtures, furniture, plumbing faucets, and other cosmetic alterations not prohibited as major nonstructural alterations in subsection (b) below.

(b) Owners shall not be permitted to make any major nonstructural alterations, structural alterations, or alterations to any part of the exterior of a building (such as windows, light fixtures, and exterior doors), including all Common Areas and Limited Common Areas without the prior written approval of the Board. If Unit alterations can be seen from the exterior of the Unit, then the Board may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that they comply with particular color schemes, material requirements, or other standards. Major nonstructural alterations include, but shall not be limited to changes in finished flooring materials, cabinets, countertops, nonstructural walls, and sheetrock.

(c) Remodeling and Extensive Maintenance. An Owner shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, or any Common Area or Limited Common Area. Without prior written permission of the Board, none of the following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts on the use and enjoyment of any one or more of the other Units; (3) any blocking of the Common Area by vehicles,

materials, or persons; or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

(d) The Board may adopt additional Rules for maintenance and remodeling activities including, but not limited to, specific times that construction activities may take place, restrictions on use of elevators, restrictions on use of any Common Area facility or area, insurance requirements, contractor registration, and any other restriction that the Board believes is in the best interest of the Association.

(e) No labor performed or materials furnished and incorporated into a Unit shall be the basis either for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same, or against the Common Areas. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or supplies incorporated in the Owner's Unit at the Owner's request.

4.3 Maintenance of Common Area and Limited Common Area

(a) **Maintenance of Common Area.** Except as otherwise provided specifically herein, the Association shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration. The Board may contract with the Hotel Manager to perform all of the Association's maintenance duties.

(b) **Maintenance of Limited Common Area.** The Association shall repair, maintain, and replace the Limited Common Area. Owners shall be responsible to ensure that the Limited Common Area within their exclusive control is kept in a clean, sanitary, and uncluttered condition and may be subject to fines for unsightly or unclean conditions.

(c) **Standard of Maintenance.** The Board shall determine, in its sole discretion, the appropriate standards to be used for the maintenance of the Common Area and Limited Common Area, so long as these areas are maintained in the best interests of the Owners.

(d) **Assessment for Maintenance Expenses to Specific Owner.** If the need for maintenance or repair of Common Areas is caused through the willful or negligent act of an Owner or an Occupant, the Board may cause the needed maintenance or repair to be made. In such a case, the Association shall assess the Owner the reasonable cost of such maintenance or repair.

4.4 Default in Maintenance. If an Owner or Occupant fails to maintain a Unit or Limited Common Area for which the Owner is responsible, as provided by this Article, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project,

following written notice from the Association, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to take the corrective action that the Board deems necessary. Expenses incurred by the Association in taking the corrective action shall be levied against the Unit and treated as an Individual Assessment, as outlined in Article 6. The Individual Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in this Declaration.

4.5 **Utilities.** The charges for utilities that are metered separately to each Unit shall be the responsibility of the respective Owners. Utility costs and charges that are metered collectively to the Association shall be a Common Expense.

ARTICLE V MEMBERSHIP, VOTING, MANAGEMENT

5.1 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.

5.2 **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

5.3 **General Powers.** The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

- (a) The powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- (c) The powers, duties, and obligations of a condominium association pursuant to the Act;
- (d) The powers, duties, and obligations not reserved specifically to the Owners; and
- (e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Governing Documents.

5.4 Specific Powers and Duties. The powers and duties of the Association shall include, without limitation, the following:

(a) The Association may provide maintenance and services for the Project as provided in this Declaration. The Association may make capital improvements, repairs and replacements to Common Areas.

(b) The Association may obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

(c) The Association may adopt budgets and impose and collect Assessments as provided in this Declaration.

(d) The Association shall have the right to provide for the payment of Common Expenses and any other obligations incurred by the Association.

(e) The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association. The Association may assess fines to Owners, Occupants, or their guests for violations of the Governing Documents in accordance with the provisions of the Governing Documents and the Act.

(f) The Association may hire the services of any Person or corporation as managers or hire employees to conduct and perform the business, obligations, and duties of the Association such as, but not limited to, an HOA Manager, landscapers, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient or necessary for the management, maintenance, and operation of the Project.

(g) The Board may instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted.

(h) The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Units or groups of Units. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

(i) The Association may borrow monies and grant security interests in the Common Areas and in the Assets of the Association as collateral therefor.

(j) The Association may acquire, sell, lease and grant easements over, under, across and through the Common Areas which are reasonably necessary to the ongoing development and operation of the Project.

(k) The Association or the Hotel Manager may permit Persons other than Unit Owners or their guests and tenants to use of the Project's Common Area

amenities including, but not limited to, the pool, spa and gym, and may charge fees to Persons for such use. The funds received by the Association for the use of Project amenities by non-Unit Owners shall be deposited into the Association's operating account. It is intended that such funds will be used to pay Common Expenses and assist in reducing Unit Owner Assessments.

(l) The Association may charge fees to Owners or their Occupants, in addition to the assessments set forth in this Declaration, for the use of the Project's Common Area amenities, including the pool, spa, gym, or other amenities constructed within the Common Areas of the Project.

(m) The Association may lease portions of the Common Area to other Persons or entities including, without limitation, the restaurant, spa, pool, and lobby.

(n) The Association may charge fees directly to homeowners located within adjacent developments for the use of the Project's Common Area amenities, including but not limited to the pool, spa, and gym.

(o) The Association may enter into joint use agreements with neighboring homeowners associations and the Resort owner for the shared use of the Project facilities and the neighboring property owner's facilities and amenities. The terms of any such contracts shall be entered into at the discretion of the Board or Hotel Manager.

5.5 Membership. Every Owner shall be a member of the Association so long as such Owner owns a Unit. Association membership shall automatically terminate when an Owner ceases to own a Unit. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

5.6 Voting. Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Owner at any meeting of the Owners, but only one (1) vote shall be cast per Unit. In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than establishing a quorum.

5.7 Board of Directors. The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth qualifications and requirements for serving on the Board.

5.8 Right of Association to Enter Units. The Association acting through the Board, or its duly authorized agent, shall have the right at all times upon reasonable notice of at least 48 hours, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess, and appraise, to abate any infractions, to make repairs or correct any violation of any of the Governing Documents, and in connection therewith shall have the

further right to assess all costs incurred against the Owner, such assessment to be secured by a lien provided in Article 7. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Project, including the sound or sight of running water in a Unit, the smell or sight of smoke or gas in a Unit, abnormal or excessive noises; and foul smell. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry.

5.9 Rules. The Board may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the Project. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive. Pursuant to Utah Code section 57-8-8.1(7), the requirements of Utah Code §§ 57-8-8.1(1) through (5), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.

5.10 Remedies Available to the Board. In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board may adopt any one or more of the following: (1) impose and levy fines for violation of the Governing Documents; (2) terminate an Owner's right to receive utility services paid as a Common Expense; (3) terminate an Owner's right to access and use Common Area facilities; (4) terminate an Owner's voting rights as further provided herein; and (5) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

5.11 Reserve Fund. The Association shall maintain an adequate reserve fund for the maintenance, repair and replacement of the Common Area and Limited Common Area, as determined by the Board. Reserve funds may be collected as part of the Annual Assessments. To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.

5.12 Availability of Governing Documents. The Association shall maintain current copies of the Governing Documents and the Association's books, records, and financial statements (as required by law) available for inspection, upon written request by any Owner or Lender. The term "available" as used in this Section shall mean available for inspection within a reasonable time after delivery of a written request to a Board Member and at a location convenient to the Board within the Project or at such other location as may be agreed by the Board and the party requesting.

5.13 Managing Agent. The Board may contract with a professional HOA Manager to assist the Board in the management and operation of the Project and may delegate such of its powers and duties to the HOA Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any HOA Manager may be revoked by the Board at any time, with or without cause.

5.14 Hotel Manager. The Hotel Manager shall have the authority to manage and regulate the Project as a hotel. The rights and duties of the Hotel Manager shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights:

- (a) To contract with Owners for the leasing of their Units to third parties.
- (b) To use and regulate the Common Areas of the Project, in its sole discretion, and in doing so may enforce Rules for the governance of the Common Areas on behalf of the Association.
- (c) To maintain offices, signs, advertising, and construct temporary or permanent facilities on the Common Areas that the Hotel Manager deems necessary for the efficient and profitable operation of the Project as a hotel.
- (d) To use all Association easements throughout the Common Areas set forth in this Declaration.
- (e) One Board Member may always be appointed by the Hotel Manager.
- (f) The Hotel Manager may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part.
- (g) The Board may delegate any of the Board's or Association's rights or duties to the Hotel Manager including, but not limited to, the right to enforce fines, perform maintenance responsibilities, and manage the accounts of the Association.
- (h) The Hotel Manager shall have the authority to collect fees from third parties outside the Project for use of the Project's facilities including the pool, spa, and gym areas.
- (i) Neither the Association nor any Owner may take any action or adopt any Rule that interferes with or diminishes any Hotel Manager right contained in this Declaration without the Hotel Manager's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.
- (j) The Board does not have the authority to change or remove the Hotel Manager by its act alone. The Hotel Manager may only be changed or removed by a majority vote of the Board combined with the vote of at least sixty-seven percent (67%) of the total Allocated Interests of the Association.

5.15 Hearings. The Board shall have the authority to create a reasonable hearing process applicable in case the Board or Association takes adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.

5.16 Board Indemnification. Each past and present Board Member shall be indemnified to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. No Board Member shall be liable to the Owners or third parties for any mistake in judgment, negligence, or other grounds, except for such Board Member's own individual and willful misconduct or bad faith. The right of any Person to be indemnified shall be subject always to

the right of the Association by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

5.17 **Board Liability.** To the fullest extent permitted by law, each past and present Board Member shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, payment, error, or negligence.

ARTICLE VI BUDGET AND ASSESSMENTS

6.1 **Covenant for Assessments & Lien.** Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association (the "Assessment Lien"). Each such Assessment, together with such interest, late fees, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.

(a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorneys' fees against the latter for his share of any Assessments authorized by this Declaration up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee..

(b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

6.2 **Association Budget.** The Board shall prepare and adopt an annual budget for the Association. The Budget shall be presented to the Owners at the Annual Meeting, or other reasonable time, at the discretion of the Board. Unless modified by the Board through a resolution, the Association's budget and financial records shall be maintained on a calendar year basis. The Association Budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include any monies received from third parties for the use and access of the Association's amenities. The budget shall also

include a line item that identifies the amount to be placed into a reserve fund for funding long-term asset repair and replacement. The budget may include contingencies and estimates as the Board deems appropriate. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt a budget, the last adopted budget shall continue in effect until the new Association budget is adopted.

6.3 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of the following: promoting the safety and welfare of the Owners; effecting the management, maintenance, care, preservation and protection of the Project; enhancing the quality of life in the Project; and maintaining and enhancing the value of the Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.

6.4 Annual Assessments. Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments, on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount. The Annual Assessments shall be calculated by allocating the total Common Expense budget to each Unit based on the Units Allocated Interest.

6.5 Special Assessments. The Board may levy Special Assessments, payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.

6.6 Individual Assessments. In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorney fees (regardless of whether or not a lawsuit is filed), court or collection costs, fines, and other charges relating thereto as provided in this Declaration.

6.7 Allocation of Assessments. Annual and Special Assessments shall be imposed upon Units according their Allocated Interest. Individual Assessments shall be allocated separately to each Unit based on the costs incurred by the Association. Notwithstanding the foregoing, the Annual and Special Assessments for platted Units that are

not fully constructed, or that have not received a certificate of occupancy from the applicable governmental authority, shall be assessed at a reduced rate that is the greater of either: (1) five percent (5%) of the amount paid by fully constructed Units, or (2) an amount that covers the costs incurred by the Association for the maintenance, repair, and upkeep of the facilities and Common Areas appurtenant to the uncompleted Units, as determined in the Board's discretion.

6.8 Collection of Resort Owner and Hotel Manager Fees or Charges. The Association may collect all fees and charges assessed by the Resort owner against individual Owners or their Units for use of the Resort facilities and amenities. The Association shall also collect all fees and charges assessed by the Hotel Manager against individual Owners or their Units for services provided to Unit Owners. In performing such collection activities, the Association shall in a timely manner remit all payments collected to the Resort owner or Hotel Manager as applicable. All the rights and remedies of the Association relating to the collection of Assessments due under this Declaration shall also be available to the Association to collect Resort fees and Hotel Manager fees from each Owner as provided herein. Notwithstanding the foregoing, nothing contained herein shall be construed so as to deprive the Resort owner or Hotel Manager of any remedies for nonpayment of Resort fees, charges, or assessments due to the Resort Owner or service fees due to the Hotel Manager.

6.9 Billing and Collection Procedures. The Board shall have the right and responsibility to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration.

6.10 Certificate of Payment. In conformance with Utah Code § 57-8-54, the Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a written statement signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of twenty-five dollars (\$25) (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

6.11 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment at the discretion of the Board.

6.12 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In

addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

6.13 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

6.14 **Reinvestment Fee.** The Board shall have the right (but shall not be required) to establish a Reinvestment Fee assessment in accordance with this Section and Utah Code § 57-1-46. If established, the following terms and conditions shall govern Reinvestment Fees:

(a) Upon the occurrence of any sale, transfer, or conveyance of any Unit as reflected in the office of the County recorder, regardless of whether it is pursuant to the a sale of the Unit or not (as applicable, a "Transfer"), the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board in the Rules, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law.

(b) The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code § 57-1-46.

(c) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

ARTICLE VII NONPAYMENT OF ASSESSMENTS AND REMEDIES

7.1 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established by the Board. Payments are delinquent if received more than ten (10) days from the date they become due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more, or all, of the sanctions granted in this Article.

7.2 **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25) late fee each month until the Owner's account (including all collection charges, costs, and attorneys' fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and/or late fees shall constitute part of the Assessment Lien provided above until paid, including all accompanying charges, costs, and attorney fees. Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

7.3 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment Lien on the Unit of the Owner. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs

will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner and Owners, or to advance lien foreclosures against the Unit of such Owner or Owners, for the collection of delinquent Assessments.

7.4 Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial or non-judicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. Pursuant to Utah Code §§ 57-1-20 & 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including reasonable attorney fees incurred by the Association. The Association may, through its duly authorized agents including the Board, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage and convey such Unit.

7.5 Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Unit and its Limited Common Areas. By taking a security interest in any Unit governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Unit if the Association takes title to a Unit related to a failure to pay Assessments.

7.6 Trust Deed Provisions. Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, under the Governing Documents. All notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit or the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.

7.7 Suspension of Votes. The Board may suspend the obligated Owner's right to vote on any matter at regular and special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

7.8 Termination of Services. If an Owner fails or refuses to pay any Assessment when due, the Board may terminate the Owner's right to receive utility services paid as a Common Expense and access to and use of the Common Areas. Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Areas, the Association shall notify the Owner and give such Owner at least five (5) business days to pay the past due balance.

7.9 Recovery of Rent from Tenant. If a delinquent Owner is leasing his Unit or any portion thereof, then pursuant to Utah Code § 57-8-53, the Board may, at its option, so long as an Assessment is more than sixty (60) days late, demand and receive from any tenant the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

7.10 Unpaid Assessments and Future Lease Proceeds. If an Owner who is leasing a Unit fails to pay any Assessment for more than sixty (60) days after the Assessment is due, the Board may demand that the tenant pay to the Association all future lease proceeds due to the Owner beginning with the next monthly payment until the amount due is paid to the Association.

7.11 Account Payoff Information. The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit as provided for in Utah Code § 57-8-6.3. The Board may set forth the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed pursuant to Utah law. If not otherwise set forth in the Rules, the Account Payoff Fee shall be fifty dollars (\$50).

7.12 Homestead Exemption. To the fullest extent permitted by law, by acceptance of a deed or other instrument of conveyance of a Unit, each Owner irrevocably waives the homestead exemption provided by the Utah Exemptions Act as amended, as the same may apply to the Assessment Lien.

ARTICLE VIII PROPERTY RIGHTS AND EASEMENTS

8.1 General Easements to Common Area and Units.

(a) Subject to this Declaration and the Rules, the Association and each Owner shall have a right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), subject to Association Rules. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any Occupant. Nothing in this Section shall be construed to limit the Associations ability to impose charges for access, egress, and ingress across the Common Area as otherwise specifically provided for in other sections of the Declaration or the Rules.

(b) The Association reserves nonexclusive easements with the right of access to each Unit, without trespass, to make inspections, to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit, and for any other purpose of the Association as set forth in the Governing Documents. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association,

acting through the Board or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with proper notification, unless emergency situations demand immediate access.

8.2 Public Utilities. The Project is subject to blanket easements and rights-of-way over, across, above, and under the Common Areas and any other necessary portion of the Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sewer lines, drainage facilities, and such other public utilities needed to serve the Project. Such easements and rights-of-way are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey to any municipality, special service district, or Person, in the name of all of the Owners as their attorney-in-fact, easements and rights-of-way in, on, over or under the Common Area or any other necessary area of the Project for the purpose of constructing, erecting, operating or maintaining pipelines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association.

8.3 Easements for Encroachments. If any portion of the Common Area or Limited Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the building stands.

8.4 Structural Easements. To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the building and the Common Areas and each Unit and the Common Areas shall be subject to an easement for structural support in favor of every other Unit in the building and the Common Areas.

8.5 Hotel Manager Easements. The Association and Hotel Manager shall have the right and a perpetual easement, without charge, to install, operate, maintain, repair and replace all common machinery, equipment, utility lines, wires, circuits, furniture, fixtures, cables and conduits serving the Project across and through any and all Common Areas, Limited Common Areas and through the Units within the Project. The Hotel Manager shall have all easements necessary across the Common Areas and Units for the effective and efficient operation of the Project as a hotel.

8.6 Swimming Pool, Spa, and Exercise Facilities. Each Owner, by purchasing a Unit in the Project, hereby expressly assumes the risk of noise, personal injury or property damage caused by the maintenance and operation of any amenity or facility in or around the Project including without limitation: (1) noise from Owners, Occupants, guests, or invitees using the Common Areas and facilities, (2) the use of the pool, spa, and exercise equipment, and (3) a reduction in privacy or a reduction in an Owner's ability to use amenities caused by increased traffic from events or activities in or around the Project. Each Owner agrees that neither the Association, the Hotel Manager, the HOA Manager, or other Unit Owners shall be liable to Owners or other Persons claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of the Owner's Unit to the Project equipment or Project amenities, including, without limitation, any claim arising in whole or in part from the negligence of the Association, the Hotel Manager and the HOA Manager. Each Owner hereby agrees to indemnify and hold harmless the Association, the Hotel Manager, and the HOA Manager against any and all claims by Owner or his family members, guests or invitees.

8.7 Limitation on Easement - Suspension of Owner's Rights. An Owner's right and easement of use and enjoyment concerning the Common Area is subject to the following:

(a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

(b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area.

(c) Each Unit Owner will have the right to enjoy the Project amenities whether or not they are participating in an agreement with the Hotel Manager or other property manager for the rental of their Unit, subject to the following:

(i) In order to prevent the overcapacity of Project amenities and to ensure the satisfaction of hotel guests, the Association may designate certain "blackout dates" during periods of high hotel occupancy where Owners who have renters occupying their Unit are prohibited from using the Common Areas and Project amenities. During such blackout dates, only those Owners, and their guests, who are staying or residing in the Unit, or those Owners who have no renters occupying their Unit may utilize the Common Areas and Project amenities.

(d) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services; and

(e) Any easement agreements entered into with third parties, or any Rules adopted by the Association governing the use of the Common Areas as hotel amenities.

8.8 **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or rights appurtenant to the Unit or the Project relative to any other Unit or structure within the Project.

ARTICLE IX USE RESTRICTIONS

9.1 **Rules and Regulations.** The Association has authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration and other Governing Documents. Neither the Association nor the Board of Directors shall have authority to enact or enforce any Rules which in the opinion of the Hotel Manager would unreasonably affect its commercial endeavors.

9.2 **Use.** Units shall be restricted to hotel and residential use. Common Areas may be operated for business, retail, or other commercial purpose provided that such use is reasonably compatible with the nature of the Project as a condominium and hotel operation.

9.3 **Signs.** In order to remain within City and County licensing requirements, Unit Owners are prohibited from placing signs on or in any Unit or any Common Area without the prior written permission of the Board. The Association may further regulate and restrict signs in the Project to the fullest extent permitted by law in the Rules. Nothing herein shall limit or restrict the Association from erecting or maintaining signs in the Project, in the Board's sole discretion.

9.4 **Nuisance.** No noxious, illegal, or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to other Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. This provision is intended to prohibit Owners, Occupants, and their representatives from engaging in a course of conduct which amounts to harassment of another Owner or Occupant, or the employees or agents of the Association, HOA Manager, or Hotel Manager. The Board may adopt Rules that further describe the activities that are deemed to be nuisances within the Project. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance.

9.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless the same and its proposed use are approved by the Board. Notwithstanding the foregoing, the Hotel Manager may erect temporary facilities to accommodate events or other activities in the operation of the Project as a hotel.

9.6 **Parking.** The Project does not contain parking spaces for Unit Owners. All parking facilities are located on the Resort property outside of the boundaries of the Project. Owners may only use the Resort parking spaces during the period of time the Owner is staying or residing in their Unit. No long-term parking is permitted by a Unit Owner in the Resort parking areas. With approval of the Resort owner, the Association may adopt rules to regulate the Project's Owners, Occupants, guests and invitees use of the Resort parking areas, including, without limitation: the size and dimensions of permitted vehicles; the right to remove or cause to be removed any vehicles that are improperly parked; and the assessment of fines or charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

9.7 **External Fixtures.** No external items such as, but not limited to: television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those provided in connection with the original construction of the Project, and any replacements thereof, shall be constructed, erected or maintained by any Unit Owner. The Association shall have the sole and exclusive authority to construct or maintain external fixtures. The Board may adopt Rules or design guidelines regulating the location, type, color, and design of these external fixtures. Any damage caused by the installation of any external fixture to the Common Areas (including roofs and exterior surfaces) shall be repaired by the Association, but the Association may assess such repair costs as an Individual Assessment against the Owner who is responsible for installing the external fixture.

9.8 **Window Covers.** No window shall be covered by paint, grease, blankets, rugs, foil, sheets, towels, newspaper, or similar items. The Board may adopt Rules regulating the type, color, and design of the external surface of window covers. Approved window coverings shall be maintained and installed at all times, regardless of whether a Unit is occupied.

9.9 **Repairs.** No repairs of any motor vehicles, machinery, equipment, or fixtures, shall be made upon the Project.

9.10 **Storage.** No Owner may obstruct the Common Areas in any way. No Owner may store anything in or on the Common Areas without the prior written consent of the Board.

9.11 **Unsightly Items.** All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Units and Limited Common Areas and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited in any Unit and Limited Common Area unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board of Directors. No outdoor storage of any kind shall be permitted on exterior patios, balconies, etc., except for patio furniture in good condition. Outdoor furniture and storage items (including authorized colors and materials) may be further regulated by the Board in the Rules.

9.12 **Animals.** No animals of any kind, except as otherwise required by law, shall be kept or harbored in the Project. The Board may adopt Association Rules that vary or expand upon the restrictions set forth in this Section. However, the Board may revoke any

Rule or prior consent given to a Unit Owner to keep an animal in the Project at any time, as allowed by law. If animals are required by law to be permitted in the Project, then all such animals are required to abide by the Rules adopted by the Board for such animals which may include, but shall not be limited to requirements for leashes, constant supervision, clean up of animal waste, and liability for any damages caused by the animals.

9.13 Unit Occupancy, Marketing, Rental and Leasing. Notwithstanding anything to the contrary in the Declaration or other Governing Documents, any occupancy, marketing, leasing or rental of a Unit shall be governed by this Section and any Rules and procedures adopted as allowed in this Section. The restrictions and procedures required in this Section are necessary for the Project to be maintained and operated as a first-class resort hotel.

Whereas: (i) the Project was established to be the premier resort hotel in Wasatch County; (ii) the units and facilities of the Project are designed and intended to be operated as a cohesive hotel; (iii) it is industry standard for condominium hotels to require marketing, leasing, and operational functions to be performed in a consistent manner with singular points of contact; (iv) the Project is not constructed or designed to accommodate long-term residential occupancy; (v) the preservation of the "Zermatt" brand and reputation is paramount to the success of the Project and maintaining Unit values; (vi) the coordination of hotel guests around repairs and improvements throughout the Project is necessary for a successful hotel operation; and (vii) a uniform high-quality standard of service is expected for the Project by all Unit Owners.

In consideration of the foregoing, and in order to preserve the integrity and reputation of the Project as a first-class hotel, all Units are subject to the following conditions and restrictions:

(a) Regular Occupancy. Owners and their family, friends, and guests may occupy their own Units in accordance with the terms of this Declaration. Under such circumstances, the Owner shall be charged for any costs incurred by the Association or Hotel Manager for accommodating or serving such Occupants that are not covered through regular Assessments. Owners shall be liable for all acts and damages caused by Occupants who are not contracted for occupancy of their Unit by the Hotel Manager. Owners and their family, friends, and guests are required to comply with the mandatory reservation requirements set forth in subsection (b) and the mandatory check-in and check-out requirements set forth in subsection (c) prior to any occupancy of a Unit.

(b) Reservation and Booking of Units. To ensure the continuing operation of the Project as a resort destination operating pursuant to a first-class standard, and to ensure the proper and coordinated operation of the Project's amenities and common areas, the reservation, scheduling, and booking for the rental and occupancy of all Units must be done through the Hotel Manager. Such reservations and bookings shall be processed in the manner required by the policies and procedures established by the Hotel Manager. This requirement applies to all occupancy types, including occupancy pursuant to rental agreements, management agreements, and any occupancy by the Owner or its guests without pay. The Board may adopt additional Rules to ensure the consistent administration and compliance with this provision. The Owner of any Unit occupied in violation of this provision shall be subject to a daily fine as set forth in the Rules.

(c) Mandatory Check-In and Check-Out. All Persons entering the Project, staying in the Project, or utilizing the amenities within the Project (including third-party renters, all Occupants, and Owners and their friends, family, and guests) are required to check-in and check-out with the front desk in accordance with the policies and procedures established by the Hotel Manager, regardless of whether the occupancy of the Unit or use of the Project amenities is pursuant to a paid room rental, or whether such occupancy or use of the Unit and Project amenities is pursuant to the Owner and/or Owner's guests' right of use and occupancy as provided herein. The Hotel Manager may charge a fee to Owners for this service. Owners acknowledge that this requirement is necessary for the proper and consistent operation of the Project as a first-class hotel. The Board may adopt Rules to designate amounts charged for this service and to provide requirements to ensure the consistent administration and compliance with this provision. Unit Owners shall be subject to a fine each violation of this provision by the Owner or their guests, Occupants, or tenants.

(d) Unit Rental Requirements. The following requirements must all be met prior to any short-term rental of Units:

(i) All Units are required to be rented through the Hotel Manager, or through a property manager approved by the Association pursuant to the requirements set forth in subsection (e).

(ii) If a Unit is rented through a property manager other than the Hotel Manager, then prior to being rented, and at all times while being rented or while being offered for rental, the Unit must be approved and licensed as a transient lodging unit with Midway City with an approved and licensed transient lodging manager. The Owner is required to submit all such records to the Association.

(iii) Units may not be rented for a period less than 48 hours unless the Owner provides evidence to the Board that a conditional use permit has been issued from Midway City for the approval of the commercial leasing of the Unit for less than 48 hours as required by Midway City Code.

(iv) In accordance with Midway City Code Section 7.06.090, signs advertising a Unit for transient lodging are prohibited.

(e) Property Manager Requirements. If a Unit Owner desires to enter into a contract with an independent property manager for the scheduling of the Unit as a rental, then such property manager must meet all of the qualification requirements set forth by the Board in the Rules and each property manager must be approved in writing by the Board. Qualification Requirements may include, but shall not be limited to insurance, reporting, marketing, staffing, and occupancy limitations. Unit Owners are prohibited from renting their Units directly as Owners, or through an unapproved property manager and shall be subject to daily fines for such conduct. In addition to further requirements that may be set forth by the Board in the Rules, the following shall be the minimum property manager qualification requirements:

(i) Maintain a commercial general liability insurance policy that provides coverage for short-term rental services operation in amount of at least

\$1,000,000 per occurrence. Proof of such insurance must be filed with the Association. The Association may request a certificate of insurance from the property manager's insurance provider at any time to determine compliance with this provision.

(ii) Maintain a minimum of one person on call located onsite at all times (24 hours per day) for emergency repairs and maintenance to Units. An emergency phone number must be staffed and available 24 hours per day every day of the year, and the property manager must be able to respond to telephone inquiries immediately. Emergency phone number and other contact information for maintenance and repair must be provided to all renters and Occupants.

(iii) Have demonstrated procedures in place to ensure compliance with subsection (b) above.

(iv) Maintain a minimum of one person onsite to physically provide guests with keys upon check in and check out and ensure compliance with requirements of subsection (c) above. All Owners and property managers must have a person present at the time of check in and may not leave Unit keys in a lock box or otherwise.

(v) Be approved and qualified by Midway City as a transient lodging manager and maintain a valid business license with Midway City as a transient lodging unit manager. A copy of all licenses and approvals must be filed with the Association.

(vi) Provide proof of the maintenance of an appropriate Utah State tax collection account number, the address of which matches the Midway City street address of the check-in and check-out location of the property manager that will assure that Midway City and Wasatch County receive all appropriate tax revenue. Documentation evidencing compliance with this provision must be filed with the Association.

(vii) Demonstrate compliance with all Midway City, Wasatch County, and Utah state laws governing property management companies where applicable. The receipt of documentation evidencing compliance with any law may be requested by the Association at any time.

If a property manager fails to comply with any of these requirements or any other additional requirements set forth by the Board in the Rules, then the property manager shall immediately cease to be an approved property manager and the Unit Owner shall be subject to daily fines for non-compliance with this provision.

(f) Marketing. Unit Owners and their property managers are prohibited from using the Hotel Manager's name, the name of its affiliates, or the name of any entity that the Hotel Manager or Association has a licensing agreement with when advertising their Unit for rent. A violation of this Section shall subject such Owner to a daily fine amount set forth in the Rules for all days such advertising is maintained.

(g) Minimum Rental Standards. In order to preserve the reputation of the Project and to ensure the provision of first-class hotel rooms to third-parties, the

Association may adopt "Minimum Rental Standards" for Units that must be met in order for a Unit to be qualified to be rented to paying third-parties through the Hotel Manager's reservation and booking procedures identified in subsection (b) above. The Minimum Rental Standards may be set forth in Rules adopted by the Board. If the Board does not adopt such rules, then the Minimum Rental Standards shall be set by the Hotel Manager. Any Unit not meeting the Minimum Rental Standards shall not be permitted to be booked or occupied by paying third-parties by the Hotel Manager. The Minimum Rental Standards may include requirements for appliances, furnishings, repairs, safety features, liability insurance, property insurance, cleaning, and any other requirement that may be pertinent to providing consistent high quality hotel rooms to third-parties. The Minimum Rental Standards shall apply and be enforced in a manner that treats similarly situated Units similarly.

(h) Optional Hotel Manager Agreement. Unit owners may, but shall not be obligated to, enter into a management services contract with the Hotel Manager for the purposes of marketing their Unit for rent to third-parties and for administering rental agreements with such third-parties for the use and occupancy of their Units. Management agreements with the Hotel Manager shall treat similarly situated Unit Owners similarly based on factors such as square footage, floor level, views, and the types of equipment, facilities, or amenities located within the Units. Notwithstanding the preceding sentence, management agreements may vary according to the level and types of services that the Hotel Manager provides to Unit Owners.

(i) Reselling Room Nights Prohibited. Owners are prohibited from purchasing and reselling nightly room rental agreements obtained from the Hotel Manager to third parties, or from assigning such rental agreements to others.

(j) Long-Term Occupancy. Owners who intend to occupy their Unit for a period longer than thirty (30) consecutive days must notify the Association or the HOA Manager and provide the names, email addresses, and phone numbers of all adult Occupants. In the event of such long-term occupancy, the Unit Owner shall be required to check-in at the front desk and obtain new room keys after each thirty (30) day period of consecutive occupancy by the same Occupants.

(k) Assessment of Costs. The Association and/or the Hotel Manager may assess the Owner of such Unit for any costs caused by the Owner, its, guest, tenants, or Occupants for the use of the Hotel Manager's or Association's services, including use of all Common Areas, cleaning services, reservation and booking services, front desk and lobby, or any other costs incurred by the Association or the Hotel Manager that are not paid for through regular assessments. Such costs shall be assessed to the Owner as an Individual Assessment.

(l) No Implied Rights. Ownership of a Unit in the Project does not provide the Owner, its Occupants, or its guests any rights of use of an approved property manager's services or facilities under such property manager's control unless such rights are provided to the Unit Owner pursuant to a contract with the property manager. All Unit Owners acknowledge that the Units not participating in the Hotel Manager's rental program shall have no right to use the Hotel Manager's services or facilities, which may include, but are not limited to, all Hotel Manager employees and

contractors, the front desk (other than mandatory check in requirements in subsection (c) above), and the Common Areas and Limited Common Areas used in conjunction with the hotel's commercial operations. All Owners, guests, and Occupants of the Units shall be subject to Association Rules for the use of the Common Areas.

(m) **Fines for Violations.** Owners who rent or occupy their Unit in violation of any provision of this Section 9.13 shall be subject to a daily fine for each violation type.

(n) **Enforcement.** The Association shall have the right to enforce the provisions of this Section by proceedings at law or in equity, including the right to prevent the ongoing violation of any such restrictions, and the right to recover damages and other sums for such violation. The Association may recover any attorney fees and costs incurred in the enforcement of this Section from a violating Unit Owner regardless of whether a lawsuit is filed. Each Owner agrees that the Association shall be entitled to liquidated damages of one hundred dollars for each day a Unit Owner is found in violation of the terms of this Section.

(o) The restrictions provided in this Section 9.13 are not intended, nor shall they be construed, to be a restriction on the number or term of rentals as governed by Utah Code § 57-8-10.1(1)(a)(i).

9.14 Landscape Maintenance. The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area and Limited Common Areas. The Association shall have the unrestricted right of access to all Common Area and Limited Common Area of the Project as necessary for such landscape maintenance.

9.15 Floor Load. There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Board.

9.16 Smoking. Smoking is prohibited within all Units, Limited Common Areas, and Common Areas of the Project, whether indoors or outdoors. Without limiting the generality of the foregoing, this prohibition applies to private Units, walking paths, gardens, landscaped Common Areas, hallways, parking lot, pool, roofs, etc. Smoking is defined as including carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco or other like substance, including, but not limited to, cigarettes, cigars or pipes, hookahs and electronic vaping devices. The Board may adopt Rules that vary or expand upon the restrictions set forth in this Section including the imposition of fines for any infraction of smoking restrictions.

9.17 Commercial Activity Limits. No business use and trade may be conducted in or from any Unit unless:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
- (b) the business activity conforms to all zoning requirements for the Project;
- (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project;

(d) such business is legal within the meaning of all applicable statutes of the State of Utah and all ordinances of municipal authorities; and

(e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents, as may be determined in the sole discretion of the Board.

(f) Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section.

9.18 No Subdivision of Units. No Unit shall be split, subdivided, or separated into two (2) or more Units, and no Owner of a Unit shall sell part of a Unit. No Unit may be converted to a timeshare unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null and void. In no event shall the approval of the Board of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions, or restrictions except to the extent they defer to the Plat.

9.19 Architectural Control. No exterior changes to any part of the Project shall be commenced, erected, maintained, made, or done except by the Association, or without the prior written approval of the Board or any committee established by the Board for that purpose. The Board shall designate the design, color, style, model, and manufacturer of any exterior improvement or alteration. Such designations shall be for the purpose of achieving a first-class appearance and preservation of property values. No interior structural changes, or major nonstructural alterations to Units whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board, or any committee established by the Board. Any requested structural or major nonstructural change to a Unit may be denied by the Board, or the Board may require the Owner to provide an engineering report demonstrating, in the discretion of the Board, that the structural changes will be constructed in a way to prevent any impact on the building or other Units. Without the prior written consent of the Board, no Unit shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling or wall or the penetration of any wall, floor or ceiling that increases sound transmissions, resonances or reverberations to any other Unit. Owners of Units on the second-floor level and above shall not replace any carpeted area with hard surface floor coverings without the written consent of the Board.

9.20 Hazardous Substances. Owners shall comply with applicable environmental laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any hazardous substances (as defined below), on or within the Project that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any environmental law. The preceding two sentences shall not apply to the presence, use or storage on the Project

of small quantities of hazardous substances that are generally recognized to be appropriate to maintenance or operation of a Unit or the Project.

Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment; or any other injury or damage resulting from or relating to any hazardous substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the hazardous substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of hazardous substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

As used in this Section, "hazardous substances" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section "environmental law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

9.21 Smoke and Carbon Monoxide Detectors. Each Unit shall have operable smoke and carbon monoxide detectors, and other fire prevention equipment as required by current building codes for condominium and hotel facilities. The Board may, but is not required to, enter a Unit to ensure that the Unit is in compliance with this Section.

9.22 Solar Energy Systems. Solar energy systems and attendant equipment shall be prohibited from being constructed or installed by Owners in the Project. Notwithstanding the forgoing, the Association may construct and maintain solar energy systems in the Project in the Board's sole discretion. Any such installations and equipment shall be the property of the Association and shall be operated as the Board so determines, in the best interests of the Association and its Owners.

9.23 Resort Related Activities. Each Owner acknowledges that the Project is located adjacent to the Resort and that activities related to such uses, including, but not limited to, organized events, public performances, large conference groups, golf tournaments, winter recreational activities, and other resort-related activities may be held on and adjacent to the Project. Each Owner acknowledges that the location of the Project and its Unit within the Project may result in nuisances or hazards to persons and property as a result of the resort-related activities. Each Owner covenants for itself, its heirs, successors, successors-in-title, and assigns that it shall assume all risks associated with the Project's location, including, but not limited to, the risk of property damage or personal injury arising from crowds, organized events, or actions incidental to resort-related activities. Each Owner hereby waives any rights or remedies which each Owner might otherwise have against the Association, the other Owners, the Hotel Manager, the HOA Manager, or parties associated with the design or operation of the Project as a result of such resort-related activities and each Owner releases the Association, the other Owners, the Hotel Manager, the HOA

Manager, and the parties associated with the operation of the Project from any claims, losses or damages arising from such resort-related activities.

9.24 **Variances.** The Board of may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article if the Board determines in its discretion: (a) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, (b) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete, or (c) that the activity permitted under the variance will not have any substantial adverse effect on the Association, the Owners, or the Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board. The Board Members and the Board of Directors shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other Person may rely upon any oral permission to deviate from this Declaration by anyone including any Board Member.

9.25 **Hotel Manager Not Bound.** The Hotel Manager shall be exempt from enforcement of the provisions in this Article in the operation of the Project as a hotel and in performing any related commercial or rental activities.

ARTICLE X INSURANCE

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

10.1 **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums purchased by the Association shall be a Common Expense.

10.2 **Property Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

(a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.

(b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and

theft; and (2) all perils normally covered by "special form" property coverage.

(c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(e) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

(f) If a loss occurs that is covered by the property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, then the Association's policy provides primary insurance coverage, and: (i) the Owner is responsible for the Association's policy deductible; and (ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

(g) If an Owner suffers damage to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss"). The Owner is responsible for a deductible amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage for that Unit to the amount of the deductible under the Association's property insurance policy.

(h) If an Owner does not pay the amount required under Subsection (g) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

(i) If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible: (i) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (ii) an Owner who does not have a policy to cover the Association's

property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (iii) the Association need not tender the claim to the Association's insurer.

(j) The Association shall provide notice to each Owner of the Owner's obligation under Subsections (f) and (g) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

(k) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property for their Unit, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

10.3. Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a "Severability of Interest Endorsement" or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

10.4. Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy shall include coverage for: (1) failure to maintain adequate reserves, (2) failure to maintain books and records, (3) failure to enforce the Governing Documents, (4) breach of contract, (5) volunteers and employees, (6) monetary and non-monetary claims, (7) claims made under fair housing act or similar statutes or that are based on discrimination or civil rights claims, and (8) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

10.5. Theft and Embezzlement Insurance. The Association may obtain insurance covering the theft or embezzlement of funds by Board Members, officers, employees, Manager, and contractors of the Association in the discretion of the Board.

10.6. Worker's Compensation Insurance. The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

10.7. Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.

10.8. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies as required by law.

10.9. **Right to Negotiate Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or directly to the Association, and shall not be payable to any Owner or holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

10.10. **Insurance Trustee.** The HOA Manager shall act as the Insurance Trustee for the Association in the event proceeds are received from a claim on any of the Association's insurance policies. In the discretion of the Board, or upon written request executed by Owners holding at least 50% of the Allocated Interests, the Board may also hire and appoint an Insurance Trustee, with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this Article as the Owners or Board (as the case may be) shall require.

10.11. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

10.12. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

10.13. **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in § 57-8-43 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to condominium associations shall apply to this Association.

**ARTICLE XI
DESTRUCTION OF IMPROVEMENTS**

11.1 **Reconstruction.** In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Project, the Board of Directors shall promptly take the following actions:

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from reputable contractors, including the obligation to obtain performance and lien payment bonds.

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Project.

(c) Pursuant to § 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.

(d) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds, together with available reserves, and a special Assessment equal to twenty-five percent (25%) or less of the then aggregate Regular Assessments for all Units, will completely cover the estimated cost of reconstruction, then the Board shall commence reconstruction and shall levy a Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

(e) If the Board in good faith determines that none of the bids submitted under this Section reasonably reflect the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners pursuant to Section 11.2.

(f) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.

11.2 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board shall call a Special Meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than forty-five (45) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than sixty-seven percent (67%) of the Allocated Interests (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is

necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

11.3 Procedure for Reconstruction. If the Association elects to reconstruct, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

11.4 Determination not to Reconstruct without Termination. If Owners of sixty-seven percent (67%) or more of the Allocated Interests vote not to rebuild, and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

11.5 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

11.6 Repair of Units. Unless covered by the Association's insurance policy, the installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

11.7 Priority. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE XII EMINENT DOMAIN

12.1 Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, then that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area. If only part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically

and lawfully used as a Unit under this Declaration, that Unit's Allocated Interest in the Common Area shall remain unchanged.

12.2 Taking of Limited Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.

12.3 Taking of Common Area. If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, the Board shall cause the award to be utilized for the purpose of repairing or restoring the portion of the Project so taken, and the portion of the award not used for restoration shall be deposited into the Association's general fund.

12.4 Taking of Entire Project. In the event the entire Project is taken by eminent domain; or sold under threat thereof, the Project shall be terminated.

12.5 Power of Attorney. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE XIII RIGHTS OF LENDERS

13.1 First Mortgage. Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's Assessments or charges which accrue prior to the acquisition of title of such Unit by the Lender. However, such first mortgagee shall be responsible for all Assessments levied while it holds title to the Unit.

13.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure, trustee's sale, or otherwise.

13.3 Relationship with Assessment Liens. The lien provided for in this Declaration for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due. Any Lender of a first mortgage who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Project.

13.4 **Other Rights of Lenders.** Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled: (i) to inspect current copies of the Governing Documents and other books and records of the Association during normal business hours; and (ii) to receive the most recent annual financial statements.

ARTICLE XIV TERMINATION

14.1 **Required Vote.** Except as otherwise provided in Articles XI and XII, the Project may only be terminated by unanimous agreement of all Owners.

14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Wasatch County Recorder and is effective only on recordation.

14.3 **Sale of Project.** A termination agreement may provide that the entire Project shall be sold following termination. If any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the Allocated Interest of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

14.5 **Allocation upon Termination.** Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Project

shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

ARTICLE XV AMENDMENTS

15.1 Amendment Requirements. Unless otherwise restricted by the amendment terms contained in a specific Section, the provisions of this Declaration may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. The amendment(s) shall be effective upon recordation in the office of the Wasatch County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any signature used for voting shall be required.

ARTICLE XVI GENERAL PROVISIONS

16.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association and any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.

16.2 No Waiver. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

16.3 Cumulative Remedies. All rights, options and remedies of the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.

16.4 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration by judgment or court order shall in no way affect any other Restrictions or provisions contained herein, which shall remain in full force and effect.

16.5 Covenants to Run with the Land. The Restrictions and other provisions of this Declaration shall run with and bind the Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area,

such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

16.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.

16.7 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

16.8 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

16.9 Attorney Fees. In the event of any dispute under or with respect to this Declaration or any other Governing Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party. In addition, if the Association obtains legal counsel to enforce any of the provisions contained in this Declaration or other Governing Documents, the Association may assess all reasonable attorney fees, fines, and costs associated with such legal counsel to the Unit and Owner against whom enforcement is sought, regardless of whether a lawsuit is initiated.

16.10 Notices. Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or mailed via USPS to the Person who appears as an Owner in the records of the Association at the time notice is sent. Email shall be the primary means for delivering notice, and it is the responsibility of each Owner to provide an accurate email address to the Association for notice purposes. If no email, phone number, or mailing address has been provided, the physical address of the Unit owned by said Owner shall be used for notice purposes.

Unless a Unit Owner notifies the Association in writing that they desire to receive notices via USPS mail, each Owner shall provide to the Board, or the HOA Manager, an email address that the Association may use to effect notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all

such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the HOA Manager; or if there is no HOA Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

16.11 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws, or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.

16.12 Provision of Hotel Services. The Association shall always have the right, in the Board's sole discretion, to provide hotel functions, amenities and services (including check-in services, cleaning and leasing of the Units, concierge services, bell services, valet parking services, etc.) for the Project. The Association shall have the right to enter into contracts with the Hotel Manager for the provision of any such functions, amenities, and services, including the leasing and management of each Unit. The Hotel Manager shall have the right to occupy and manage the Common Areas of the Project and set forth rules for Occupants' use of the Common Areas. The Hotel Manager shall have all necessary rights and authority to operate the Project as a hotel, in the Hotel Manager's sole discretion.

16.13 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration.

16.14 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

16.15 Consent in Lieu of Vote. In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast votes for the required percentage of Allocated Interests. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act for voting or consent purposes without a meeting.

16.16 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests, or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.

16.17 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.

16.18 Fair Housing Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Person or Owner.

16.19 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

16.20 Security. The Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any

ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Unit, that the Association is not an insurer of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association as required by this Declaration. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

16.21 **Effective Date.** This Declaration, and any amendment or supplement hereto, shall take effect upon its being filed for record in the office of the Wasatch County Recorder.

[Signature Pages Follow]

The recording of this Declaration is consented to and approved by the undersigned person as the owner of Unit(s) Legacy Resorts LLC in the Hotel Der Baer at Zermatt Resort Plat "F" (Amended) condominium plat.

Dated this ___ day of _____, 2019

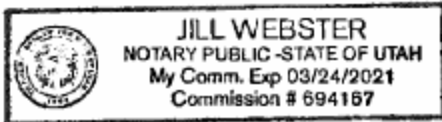
Signature: Steven K. Eddington

STATE OF UTAH)
) ss.
COUNTY OF Wasatch)

Name: Steven K. Eddington

On the 30 day of July, 2019, before me Jill Webster, personally appeared, Steven K. Eddington, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged to me that they executed the same in his/her capacity as the owner of the property described above.

Notary Public: Jill Webster



The recording of this Declaration is consented to and approved by the undersigned person as the owner of Unit(s) 208 in the Hotel Der Baer at Zermatt Resort Plat "F" (Amended) condominium plat.

Dated this 8 day of August, 2019

Signature: Tonya M. Hoopes

STATE OF UTAH)
) ss.
COUNTY OF Wasatch)

Name: Tonya M. Hoopes

On the 8th day of August, 2019, before me Brandon Fife, personally appeared, Tonya M. Hoopes, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged to me that they executed the same in his/her capacity as the owner of the property described above.

Notary Public: B. Fife



The recording of this Declaration is consented to and approved by the undersigned person as the owner of Unit(s) 1 - 68 in the Zermatt Resort Plat "B" Chalet Studio Suites condominium plat.

Dated this 22 day of October, 2019

Signature: *William K. Barton*

STATE OF UTAH)
) ss.
COUNTY OF _____)

Name: William K. Barton

On the 22 day of October, 2019, before me Jill Webster, personally appeared, William K. Barton, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged to me that they executed the same in his/her capacity as the owner of the property described above.

Notary Public *Jill Webster*



**EXHIBIT A
LEGAL DESCRIPTION**

All of **Zermatt Resort Plat "B" Chalet Studio Suites**, according to the official plat recorded in the office of the Wasatch County Recorder on January 4, 2006 as Entry Number 294671.

Including Parcel Numbers: 00-0020-4075 through 00-0020-4142

All of **Hotel Der Baer at Zermatt Resort Plat "F" (Amended)**, according to the official plat recorded in the office of the Wasatch County Recorder on June 17, 2010 as Entry Number 360151.

Including Parcel Numbers: 00-0020-9150 through 00-0020-9307

**EXHIBIT B
ALLOCATED INTEREST IN COMMON AREAS**

<u>UNITS</u>	<u>TYPE</u>	<u>ALLOCATED INTEREST</u>
1 - 158	Plat F – Hotel Der Baer	1/226 or 0.44248%
1 - 68	Plat B – Chalet Studio Suites	1/226 or 0.44248%

EXHIBIT C

**BYLAWS
OF
THE SUITES AT ZERMATT OWNERS ASSOCIATION**

These BYLAWS OF THE SUITES AT ZERMATT OWNERS ASSOCIATION are effective upon recording in the Wasatch County Recorder's Office pursuant to the Utah Condominium Ownership Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.

B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project (i.e. Zermatt Resort Plat "B" and Hotel Barren at Zermatt Resort Plat "F"), and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

**ARTICLE I
DEFINITIONS**

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Amended and Restated Declaration of Condominium for The Hotel Suites at Zermatt Resort.

**ARTICLE II
APPLICATION**

2.1 All present and future Owners, Lenders, Occupants, and their invitees and guests, and any other Person who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition, rental, occupancy, or use of any of the Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said Person.

**ARTICLE III
OWNERS**

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year in November on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as

soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting.

3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within forty-five (45) days of receipt of the Owner request. No business shall be transacted at a Special Meeting except as stated in the meeting notice.

3.3 **Place of Meetings.** The Board may designate any place in Wasatch County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting. If no designation is made, or if a Special Meeting is otherwise called, the place of the meeting shall be held at the office of the Association or the HOA Manager.

3.4 **Notice.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her Assessments (together with interest and late fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The Person appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 **Quorum.** At any Owner meeting called in compliance with these Bylaws, the number of Owners present, either in person or by proxy shall constitute a quorum for the transaction of business.

3.8 **Proxies.** At each Owner meeting, each Owner shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings, or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 **Votes.** With respect to each matter submitted to an Owner vote, each Owner shall have the right to cast, in person or by proxy, the number of votes appertaining to the Allocated Interest of the Owner's Unit, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Unit is jointly owned, any Owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of a Unit, no vote shall be counted for that Unit. In no event shall fractional or cumulative votes be exercised with respect to any Unit. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Owners in attendance if no objection is made at the meeting. For those Owners who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code §16-6a-707, or § 16-6a-709, or any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available to all Owners within sixty (60) days of each meeting.

ARTICLE IV BOARD OF DIRECTORS

4.1 **Powers.** The Project and the business and affairs of the Association shall be governed and managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The Board of Directors shall be composed of three (3) Persons at least 18 years old. The Hotel Manager shall have the right to appoint one Board Member who does not need to be an Owner. Two Board Members shall be elected by Owners, who must be an Owner or the spouse of an Owner of a Unit in the Project. If a Unit Owner is a corporation, partnership, limited liability company, or trust, then an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member

4.3 **Election.** The election of Board Members shall be conducted at the Annual Meeting. At such election, the Owners or their proxies may cast as many votes as they are entitled to exercise according their Allocated Interest. The Association may accept written ballots for Board Member election voting purposes from those Owners unable to attend a meeting in which an election is held. The Persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 **Term of Office.** Board Members shall serve three (3) year terms. The terms shall be staggered so that an election or appointment of one Board Member position is held each year at the Annual Meeting. At the first Annual Meeting following recordation of the Declaration, the Board Member appointed by the Hotel Manager shall serve a three (3) year term, the Board Member receiving the highest number of Owner votes shall serve a two (2) year term, and the Board Member receiving the second highest number of Owner votes shall serve a one (1) year term. Board Members may serve consecutive terms if elected or appointed.

4.5 **Regular Meetings.** The Board shall hold meetings at least annually or more often at the discretion of the Board.

4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.

4.7 **Meeting Notice.** Notice of Board Meetings shall be given personally, by email, or by telephone, including text message at least two (2) business days' in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

4.8 **Quorum and Manner of Action.** A majority of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. Each Board Member shall be entitled to cast one vote. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.9 **Owner Attendance.** Owners may request notice of Board meetings from a Board Member by providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members

and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board, in its sole discretion, may select a specific period of time for Owner comments and may set a reasonable length of time that each Owner may speak.

4.10 **Open Meetings.** Except as provided below in (a) through (f), Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

4.11 **Board Meetings Generally.** The Board may designate any place in Wasatch County, or the office of the Manager, as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. If a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.12 **Board Action.** Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A Person challenging the validity of a Board action for failure to comply with this Article may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

4.13 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.14 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to another Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Board Member may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the Allocated Interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board

Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 **Vacancies**. If vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.16 **Action Without a Meeting**. Board Members have the right to take any action in the absence of a meeting which they could take at a meeting if a majority of the Board Members consent to the action in writing. The term "in writing" shall specifically include email and text messaging. Additionally, the Board Members may also take action without a meeting if the Board complies with any applicable sections of the Nonprofit or Community Association Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.17 **Waiver of Notice**. Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.18 **Interested Board Members**. No contract or other transaction between the Association and one or more of its Board Members, or any corporation, firm, or entity in which one or more of the Board Members are directors, officers, or are financially interested, shall be void or voidable because such Board Member(s) are present at any meeting of the Board which authorized or approved the contract or transaction, or because the interested Board Member's vote was counted, so long as the Board Member's financial interest is disclosed or known to the Board and the Board authorizes, approves, or ratifies the contract or transaction by sufficient vote. Any Board member holding a director or officer position, or having a financial interest in another entity may be counted in determining the presence of a quorum at a meeting of the Board which authorizes, approves, or ratifies a contract with an interested Board Member or the interested Board Member's business entity.

4.19 **Adjournment**. The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.20 **Meeting**. A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V OFFICERS

5.1 **Officers**. The officers of the Association shall be a President, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers must be Board Members.

5.2 **Election, Tenure, and Qualifications**. The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each Annual Meeting of

the Owners. Each officer shall hold such office until the next ensuing meeting of the Board following the Annual Meeting of the Owners and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs.

5.3 **Subordinate Officers**. The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

5.4 **Resignation and Removal**. Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

5.5 **Vacancies**. If a vacancy occurs in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

5.6 **President**. The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 **Secretary**. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the President in the event of the President's absence or inability or refusal to act. The duties of the Secretary may be delegated to the Manager by the Board.

5.8 **Treasurer**. The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager by the Board.

5.9 **Compensation**. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

6.1 **Designation of Committees**. The Board may designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No

member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.

6.2 **Proceeding of Committees**. Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

6.3 **Quorum and Manner of Acting**. At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.

6.4 **Resignation and Removal**. A committee member may resign at any time by delivering a written resignation to a Board Member, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member.

6.5 **Vacancies**. If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Committee vacancies may be filled at any meeting of the Board.

ARTICLE VII INDEMNIFICATION

7.1 **Indemnification**. No Board Member, officer, committee member, HOA Manager, or Hotel Manager shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, committee member, HOA Manager, or Hotel Manager performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, committee member, HOA Manager, or Hotel Manager, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having acted or omitted to act heretofore or hereafter on behalf of the Association and shall reimburse any such Person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such Person's willful or intentional misconduct. The rights accruing to any Person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to defend, indemnify, or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee

members, employees, HOA Manager, Hotel Manager, and agents thereof shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification.** The defense and indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be entitled under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, employee, HOA Manager, or Hotel Manager and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, HOA Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, HOA Manager, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article.

7.4 **Settlement by Association.** The right of any Person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VIII RULES AND REGULATIONS

8.1 **Rules.** The Board shall have the authority to adopt and establish by resolution such Association Rules as it deems necessary for the maintenance, operation, management, and control of the Project, subject to the rights and authority of the Hotel Manager as set forth in the Declaration. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and Occupants. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Rules shall be effective on the date Owners are notified of the Rules unless otherwise stipulated in such notice. The Association shall not enforce fines retroactively for violations of Rules that occurred prior to the effective date of such Rule. Neither the Association nor the Board of Directors shall have authority to enact or enforce any Rules which in the opinion of the Hotel Manager would unreasonably affect the commercial endeavors of the Project as a hotel.

ARTICLE IX AMENDMENTS

9.1 **Amendment.** The Bylaws may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Wasatch County Recorder. In such instrument a Board Member shall execute the amendment and certify that the vote required by this Section has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Hotel Manager rights without the express written consent of the Hotel Manager.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Association has executed and adopted these Bylaws.

DATED this 30 day of July, 2019.

THE SUITES AT ZERMATT OWNERS ASSOCIATION

a Utah nonprofit corporation

Signature: [Handwritten Signature]

Name: GLENN A. OVERTON

Its: Next Committee member

STATE OF UTAH)
COUNTY OF Wasatch) ss.

On the 30 day of July, 2019, personally appeared before me _____ who by me being duly sworn, did say that she/he is an authorized representative of The Suites at Zermatt Owners Association, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

 **JILL WEBSTER**
NOTARY PUBLIC - STATE OF UTAH
My Comm. Exp 03/24/2021
Commission # 694167

Notary Public: [Handwritten Signature]