

Recording Requested By
and When Recorded Mail To:

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

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

ENTRY NO. 00890519

01/20/2010 09:06:42 AM B: 2017 P: 1884

Declaration PAGE 1/116
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FEE 334.00 BY PARK CITY TITLE

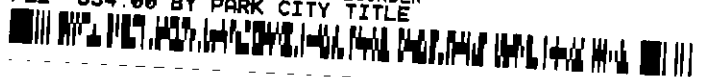


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LIST OF EXHIBITS

- Exhibit A – Legal Description of Development Land
- Exhibit B – Master Definitions
- Exhibit C-1 – Basic Services
- Exhibit C-2 – Allocations
- Exhibit D – Aggregate Square Footage

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

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

RECITALS

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

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

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

D. By this Master Declaration, it is the intention of Hotel Owner to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration and improvement of the Development Land (including without limitation any repair, maintenance, monitoring and/or other work required by the PLA), all residential, commercial and other improvements constructed thereon and the interests therein conveyed or reserved, and for the payment of taxes, assessments, insurance premiums and other expenses pertaining thereto. Hotel Owner intends that the owners, lessees, mortgagees, occupants and all other persons hereafter

acquiring any interest in the Development Land, any part thereof or any improvement thereon, shall at all times enjoy the benefits of, and shall hold, sell, lease and convey their interests subject to the rights, easements, covenants, conditions, restrictions and obligations hereinafter set forth, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect thereof and are established for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. In addition, in order to accomplish the object of creating a unique mixed-use luxury resort on the Development Land and a condominium regime in a portion thereof, and to protect and preserve the long term viability and value of the Resort, it is necessary that Hotel Owner maintain a certain level of control over the portion of the Resort that is submitted to the Act that may be atypical to that found in a traditional condominium project. Accordingly, each Unit Owner, by acceptance of a deed to such Unit Owner's Unit, acknowledges and agrees that certain provisions contained in this Master Declaration and the Residential Declaration may vary somewhat from a traditional application of the requirements of the Act and each Unit Owner hereby agrees to accept such variations and agrees not to challenge the enforceability of the Governing Instruments or the validity of the condominium regime established by the Residential Declaration as a result of such variations.

NOW THEREFORE, in furtherance of such intent, Hotel Owner hereby declares that the Development Land and all improvements thereon shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions set forth in this Master Declaration (as this Master Declaration may be amended from time to time in accordance with the terms hereof), all of which are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Development Land and all improvements thereon. All of the covenants, conditions and restrictions set forth in this Master Declaration shall constitute covenants running with the land and equitable servitudes and liens and shall be binding upon and for the benefit of Hotel Owner and all parties having or acquiring an interest therefrom including, but not limited to, the heirs, successors, executors, administrators and assigns of any such parties and all subsequent owners or lessees of such interest. As used in this Master Declaration, all terms not defined herein shall have the meanings set forth in the Master Definitions.

Article 1.
GENERAL

1.1 General, Budget and Management.

1.1.1 General. Excluding any Units as to which fee simple title has been conveyed to third party purchasers, the entire Resort is and, so long as the Talisker Lease remains in effect, will be leased or owned by Hotel Owner (and its successors and assigns). Notwithstanding that the Resort (other than the Units conveyed to third party purchasers) is and will be leased or owned by Hotel Owner, during the term of this Master Declaration the Resort will be comprised of a commercial operation, including, but not limited to, the operation of such hotel, spa, restaurants, retail shops and other hotel operations as may from time-to-time be part of the Hotel (as determined by the Hotel Owner). The various Use Areas shall be leased or owned by Hotel Owner and operated by Hotel Owner or by the Hotel Manager, and the Units will be

sold to and used by third party purchasers. In connection with a sale of a Unit to a third party purchaser, Hotel Owner and/or Lessor will convey a fee simple interest in that Unit, together with an undivided interest in the non-exclusive easement rights created herein over the Access Areas, Parking Areas and such Balcony/Patio Areas as may be appurtenant to such Unit Owner's Unit, as designated on the Condominium Plat. The Units shall be dependent upon the Hotel for Structural and Mechanical Support, and may receive certain services that are or may be provided by the Hotel as discussed herein.

1.1.2 Control Over Use Areas. Subject to the terms and conditions of Articles 3 and 4 of this Master Declaration, Hotel Owner shall own and have absolute control over the Use Areas. Notwithstanding anything to the contrary in this Master Declaration or the Residential Declaration, the Master Association Board, the Residential Association Board and all Unit Owners expressly acknowledge and agree that:

(a) neither the Master Association Board, the Residential Association Board nor any Unit Owner shall take any action to prevent or otherwise interfere with or impede Hotel Owner's control over the Access Areas, Restricted Areas, Storage Areas and Parking Areas and, except as otherwise permitted herein, the Balcony/Patio Areas;

(b) except in the event of an emergency or the failure of Hotel Owner to comply with its obligations hereunder (and then only to the extent permitted under Section 3.1.2 hereof), neither the Master Association Board, the Residential Association Board nor any Unit Owner shall have the right to erect additional buildings or other structures within the Resort or to add to or otherwise construct, renovate, improve, alter, modify, redesign, change, rearrange, reconstruct, modify, expand, reduce, or supplement or otherwise demolish or remove structures or other improvements (other than, subject to the applicable terms and conditions of this Master Declaration and the Residential Declaration, within the Units) now or hereafter existing within the Resort including, without limitation, within the Access Areas, Restricted Areas, Storage Areas and Parking Areas;

(c) the Balcony/Patio Areas consist of the balconies, patios and/or decks that are contiguous and related to each Unit; all of which are owned by Hotel Owner with no Unit Owner having any ownership interest therein; however, the Balcony/Patio Area that is appurtenant to a Unit (as identified on the Condominium Plat) may be used by the Unit Owner to which it is appurtenant pursuant to the easement grant in Section 3.1.3 below and subject to the obligations, restrictions and rules applicable thereto set forth herein and in the other Governing Instruments.

1.1.3 Services. As currently contemplated, two (2) types of Residential Services are or may be provided or made available by the Hotel Owner to the Residential Association and/or the Unit Owners, as follows:

(a) Basic Services. Subject to the terms and conditions of this Master Declaration, the Basic Services will be provided by Hotel Owner (or, at its direction pursuant to a contract therewith, by the Hotel Manager, the Master Association Manager or the Residential Association Manager, on behalf of Hotel Owner) to the Residential

Association generally and the Unit Owners specifically for the term of this Master Declaration regardless of the existence of a Hotel Management Agreement and regardless of the identity of the Hotel Manager. The amount charged by Hotel Owner for providing the Basic Services (which, unless prohibited by applicable law, shall include an overhead and administrative cost allowance to Hotel Owner) will be:

(i) budgeted and allocated by Hotel Owner and charged to the Master Association in accordance with Article 10 below;

(ii) credited to Hotel Owner by the Master Association as part of its share of the Shared Expenses through the assessment procedure described in Article 10 below; and

(iii) charged by the Master Association to the Residential Association as part of its share of the Shared Expenses through the assessment procedure described in Article 10 below.

Notwithstanding anything to the contrary set forth in this Master Declaration or otherwise, the Basic Services listed on Exhibit C-1 to this Master Declaration are, as of the date of this Master Declaration, anticipated to be provided by or on the behalf of Hotel Owner to the Residential Association; however, although such list is attached hereto as a list of services that will be provided as "Basic Services" as of the recordation of this Master Declaration, Hotel Owner shall have the right to add or subtract or otherwise alter the list of services and/or change the manner in which such services are provided so long as the resulting list of Basic Services is substantially equivalent (subject to changes that are dictated by obsolescence) to the list set forth on Exhibit C-1 (as such list may be amended from time to time in accordance with the foregoing provisions of this Section 1.1.3(a)).

(b) A la Carte Services. A la Carte Services may be provided to the Unit Owners by or on behalf of Hotel Owner (or, at its direction pursuant to a contract therewith, by the Hotel Manager on behalf of Hotel Owner). A la Carte Services are completely discretionary at the election of Hotel Owner (or the Hotel Manager acting on behalf of Hotel Owner) as exercised by it from time to time and each individual Unit Owner and shall be paid for by that Unit Owner on a per use, per diem or other periodic basis agreed to by and between the Unit Owner and Hotel Owner (or the Hotel Manager acting on behalf of Hotel Owner) pursuant to separate written agreements by and between Unit Owner and Hotel Owner (or the Hotel Manager acting on behalf of Hotel Owner).

(c) Areas of the Resort. The Structural and Mechanical Support of the Units as well as the Residential Services shall be provided from the areas that are designated as Access Areas, Restricted Areas and Hotel Areas on the Condominium Plat.

Notwithstanding the foregoing, all areas of the Resort are subject to all applicable terms and conditions of this Master Declaration and, moreover: (i) the Hotel Areas are to be exclusively accessed and used by Hotel Owner (except to the extent Hotel Owner grants permission for the use thereof), the Units are to be exclusively accessed

and used by Unit Owners (solely for the use and occupancy thereof in accordance with the terms and conditions of this Master Declaration and subject to the right of Unit Owners to rent their Units in accordance with the Governing Instruments) and the Balcony/Patio Areas are to be exclusively accessed and used by the Unit Owners of the Units to which any Balcony/Patio Areas are appurtenant, subject, however, to the rights of Hotel Owner to maintain, repair and replace such Balcony/Patio Areas and any Structural and Mechanical Support improvements located within a Unit (including without limitation replacing filters for the Building's heating, cooling and ventilation system and repairing and maintaining components of the Building's fire suppression system and alarm systems) and to provide pest control throughout the Building, all in accordance with this Master Declaration; and (ii) the costs and expenses of the operation and maintenance and the repair and replacement of such areas shall be allocated and paid for in accordance with Article 10 below. All costs and expenses incurred in the operation, maintenance and repair of the Non-Hotel Use and Support Areas shall be included within the Master Association Budget as discussed in Section 1.2.1 below.

The cost and expense of any services to be exclusively provided under this Master Declaration to Hotel Owner, on the one hand, or the Residential Association on the other hand, shall be separately incurred by and paid by the party to which such services are so provided. Except for (x) Shared Hotel Amenities and Services Expenses, and (y) personnel costs and expenses related to Hotel employees who perform work in both the Hotel Areas and one or more of the Access Areas, the Balcony/Patio Areas, the Parking Areas, the Storage Areas and/or the Restricted Areas (all of which shall be allocated between the Hotel Owner and the Residential Association as provided herein), Hotel Owner, and not the Residential Association, shall be required to pay all expenses incurred in connection with the operation and maintenance of the portions of the Hotel Areas that are not part of the Structural and Mechanical Support, as well as all expenses that Hotel Owner separately contracts for with the Hotel Manager and/or any third party service provider that do not benefit the Residential Association and/or the Units.

1.2 Budgets. The Master Association and the Residential Association shall each be subject to and prepare its own budget as follows:

1.2.1 Master Association Budget. The Master Association Budget will be prepared by the Master Association (or, at its direction, the Master Association Manager on behalf of the Master Association). The Master Association Budget will be funded by and allocated between the Hotel Owner and the Residential Association in a manner consistent with the terms and conditions of Article 10 below. The Master Association Budget will be subject to approval of the Master Association Board pursuant to this Master Declaration; provided, however, the amounts budgeted by and allocated to Hotel Owner and/or the Residential Association, as applicable, in a given Master Association Budget shall not be disapproved or otherwise subject to the approval of the Master Association Board so long as no manifest error exists and so long as the amounts thereof are consistent with the terms and conditions of this Article 1 and Article 10 below. As described in herein, the Hotel Owner will directly perform most of the overall maintenance and operation of the Non-Hotel Use and Support Areas resulting in Shared Expenses, and will otherwise directly pay most Shared Expenses. Accordingly, the Hotel Owner shall cooperate with the Master Association in order to provide the Master

Association with relevant information in the Hotel Owner's possession regarding, and/or the Hotel Owner's best-estimates of, Shared Expenses to be incurred in the upcoming Fiscal Year of the Master Association in order to aid the Master Association in the preparation of the Master Association Budget for that Fiscal Year. However, the Hotel Owner shall not be required to provide proprietary information or any information or financial data not necessary for the purpose of determining projected or actual Shared Expenses. The Master Association Budget shall include amounts which are allocated for reserves in such amounts as the Hotel Owner (in consultation with the Master Association) reasonably considers appropriate to meet the costs of maintaining, replacing and repairing the Non-Hotel Use and Support Areas.

1.2.2 Residential Association Budget. The Residential Association Budget will be prepared by the Residential Association (or, at its direction, the Residential Association Manager on behalf of the Residential Association). The Residential Association Budget will be funded by Residential Assessments payable by Unit Owners pursuant to the terms and conditions of the Residential Declaration. The Residential Association Budget will be subject to the approval of the Residential Association Board pursuant to the Residential Declaration; provided, however, the amounts included in the Residential Association Budget to pay for the Residential Association's share of the Shared Expenses and the Master Association Expenses shall not be disapproved or otherwise subject to the approval of the Residential Association Board so long as no manifest error exists and so long as the amounts thereof allocated to the Residential Association are consistent with the terms and conditions of this Article 1 and Article 10 below.

1.3 Management.

1.3.1 Management of Use Areas. Hotel Owner may contract with (and delegate any Hotel Owner management obligations hereunder) to one or more third party management companies selected by Hotel Owner in its sole and absolute discretion for the operation and maintenance of the Non-Hotel Use and Support Areas as well as any or all of the Residential Services, the terms and conditions of which shall be set forth in the Hotel Management Agreement (which shall be subject to the sole and absolute discretion of Hotel Owner). To the extent any duties and responsibilities of Hotel Owner to repair and maintain the Non-Hotel Use and Support Areas and/or to provide the Residential Services as provided in this Master Declaration are delegated to the Hotel Manager under the Hotel Management Agreement, Hotel Owner shall be relieved of any obligation or liability to the Residential Association and/or any Unit Owner and/or any of their respective Permitted Users or Permittees for the non-performance of any such delegated duties and responsibilities unless Hotel Owner intentionally interferes therewith and/or prevents the performance thereof.

1.3.2 Master Association Management. The Master Association may contract with the Master Association Manager for the operation of the Master Association and matters related thereto including, but not limited to, the repair, replacement and maintenance of any personal and/or intangible property, if any, owned by the Master Association as well as any other services to be provided by the Master Association as set forth in Article 9 hereof and as more fully set forth in the Master Association Management Agreement.

1.3.3 Residential Association Management. The Residential Association may contract with the Residential Association Manager for the operation of the Residential

Association and matters related thereto including, but not limited to, the repair, replacement and maintenance of the Residential Furnishings and any other personal and/or intangible property owned by the Residential Association, the terms and conditions of which shall be set forth in the Residential Declaration and the Residential Association Management Agreement.

1.4 Maintenance.

1.4.1 Generally. Unless the context otherwise requires, as used in this Section 1.4, "maintenance", "maintain" or "maintaining" means the operation, inspection, maintenance, repair, restoration and replacement (including without limitation any repair, maintenance, monitoring and/or other work required by the PLA) of the Use Areas designated for maintenance in this Section 1.4 by the Hotel Owner, or in any other provision of this Master Declaration for maintenance by the Master Association, as applicable.

1.4.2 Hotel Owner Maintenance Obligations. Because of the integrated nature of the Hotel and residential components of the Resort and the resulting need for and advantages of unified, coordinated, harmonious and consistent overall maintenance and operation of the Resort, the Hotel Owner shall maintain all of the Use Areas in accordance with the Resort Quality Standard (including without limitation any repair, maintenance, monitoring and/or other work required by the PLA). As part of the maintenance of the Hotel Area, the Hotel Owner shall be responsible for the periodic cleaning of the exterior windows of the Units in conjunction with the periodic cleaning of the of the exterior windows of the Hotel guest rooms and Hotel Owner shall maintain the exterior façade of the Hotel and the roof in accordance with the Resort Quality Standard. In addition, the Hotel Owner shall be responsible for replacing filters for the Building's heating, cooling and ventilation system, repairing and maintaining all components of the Building's fire suppression system and alarm systems and providing pest control throughout the Building.

1.4.3 Unit Owners' Maintenance Obligations. Each Unit Owner shall be responsible for, at his or her own expense, all costs and expenses associated with all of the following items, to be installed and maintained as provided below:

(a) All of the maintenance, repairs and replacements within a Unit Owner's Unit, all interior doors appurtenant thereto, and all internal installations of such Unit such as lighting fixtures and other electrical fixtures and plumbing and any portion of any other utility service facilities located within the Unit.

(b) All of the decorating within a Unit Owner's Unit (initially and thereafter from time to time), including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the common walls and the interior surfaces of the vertical perimeter walls, floors and ceiling of such Unit Owner's Unit, and such Unit Owner shall maintain such portions in good condition at his or her sole expense as may be required from time to time. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed by and at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies,

shades, or other items visible from the exterior of the Hotel, shall be subject to the requirements of Hotel Owner and the Hotel Manager as may be imposed or amended from time to time.

1.5 Hotel Owner's Environmental Obligations.

1.5.1 Historical Mining Property. The Resort is being constructed on land within Empire Canyon, an area of historic ore mining and processing, primarily for silver, lead, and zinc. There is no current mining in the area, and the former mine operator, United Park City Mines ("UPK") has been conducting environmental investigation and remediation of the Empire Canyon area pursuant to an administrative order on consent, dated November 6, 2003, with the U.S. Environmental Protection Agency ("EPA"). EPA required UPK to ensure that residual surface levels of lead and arsenic in soils do not exceed the concentrations deemed safe and protective for public health and the environment by the EPA, 500 parts per million for lead and 100 parts per million for arsenic, respectively.

1.5.2 EPA Review and Approval of Hotel Owner's Environmental Work. Because the historic mining activities had impacted the Development Land, Hotel Owner's development of the Resort was subject to EPA oversight. EPA determined that development of the Resort was consistent with protection of public health and the environment and identified the Resort as an environmentally response redevelopment and reuse project. EPA reviewed and approved Hotel Owner's construction work plan, which called for excavation and/or capping of soils containing metals above the EPA-approved cleanup standards and controlling or treating stormwater flow across the Development Land.

1.5.3 Hotel Owner's Legal Agreement With EPA. Hotel Owner's environmental obligations regarding the Development Land and Resort were detailed in the PLA. In addition to requiring Hotel Owner to safely manage soil and groundwater during development of the Resort, the PLA requires Hotel Owner to maintain records of the environmental abatement work, to provide EPA with access to common areas of the Resort, and to exercise due care to prevent future environmental impacts.

1.5.4 No Obligations for Unit Owners Under PLA. As expressly provided in the PLA, Unit Owners shall not bear any responsibility or cost for Hotel Owner's obligations under the PLA. Hotel Owner shall be solely responsible, at its sole cost and expense, for performance of the obligations set forth in the PLA.

Article 2.

DIVISION OF THE RESORT INTO USE
AREAS

2.1 Use Areas. The Resort is hereby divided into Units and the following Use Areas: Access Areas, Restricted Areas, Balcony/Patio Areas, Hotel Areas, Parking Areas and Storage Areas. The purpose of these Use Area designations is to set forth the use, benefit, control, maintenance and expense rights and obligations for each area of the Resort subject to the easements and licenses granted herein, and the cost and expense thereof shall be allocated

between Hotel Owner and the Residential Association as provided in Article 10 below. The principal attributes of the six (6) Use Areas are as follows:

2.1.1 Access Areas. Subject to all other applicable terms and conditions of this Master Declaration:

(a) Use. The Access Areas shall be for the mutual use, access and enjoyment of Hotel Owner and the Unit Owners.

(b) Benefit. The Access Areas shall be for the mutual benefit of Hotel Owner and the Unit Owners.

(c) Control. The Access Areas shall be under the sole and exclusive control of Hotel Owner.

(d) Maintenance. The Access Areas shall be operated, maintained, repaired and replaced solely and exclusively by Hotel Owner.

(e) Expenses. All expenses of the Access Areas shall be allocated between Hotel Owner and the Residential Association as provided in Article 10 below.

2.1.2 Restricted Areas. Subject to all other applicable terms and conditions of this Master Declaration:

(a) Use. The Restricted Areas shall be for the sole and exclusive access and use of Hotel Owner.

(b) Benefit. The Restricted Areas shall be for the mutual benefit of Hotel Owner and the Unit Owners.

(c) Control. The Restricted Areas shall be under the sole and exclusive control of Hotel Owner.

(d) Maintenance. The Restricted Areas shall be operated, maintained, repaired and replaced solely and exclusively by Hotel Owner.

(e) Expenses. All expenses of the Restricted Areas shall be allocated between Hotel Owner and the Residential Association as provided in Article 10 below.

2.1.3 Balcony/Patio Areas. Subject to all other applicable terms and conditions of this Master Declaration:

(a) Use. Subject to the rights of the Hotel Owner to maintain, repair and replace the Balcony/Patio Areas, they shall be for the sole and exclusive use, access and enjoyment of the Unit Owner who owns the Unit to which such Balcony/Patio Areas are appurtenant, all in accordance with this Master Declaration.

(b) Benefit. The Balcony/Patio Areas shall be for the sole and exclusive benefit of the Unit Owner who owns the Unit to which such Balcony/Patio Areas are appurtenant.

(c) Control. The Balcony/Patio Areas shall be owned and shall be under the sole and exclusive control of Hotel Owner, subject to the easement and use rights of the Unit Owner who owns the Unit to which a given Balcony/Patio Area is appurtenant.

(d) Maintenance. The Balcony/Patio Areas shall be maintained, repaired and replaced solely and exclusively by Hotel Owner.

(e) Expenses. All expenses of the Balcony/Patio Areas shall be the sole and exclusive responsibility of the Residential Association.

2.1.4 Hotel Areas. Subject to all other applicable terms and conditions of this Master Declaration, and without in any way superseding any other term or condition of this Master Declaration that is more specific or comprehensive than the following:

(a) Use. The Hotel Areas shall be for the sole and exclusive use, access and enjoyment of Hotel Owner and its Occupants and Permittees.

(b) Benefit. The Hotel Areas shall be for the sole and exclusive benefit of Hotel Owner.

(c) Control. The Hotel Areas shall be under the sole and exclusive control of Hotel Owner.

(d) Maintenance. The Hotel Areas shall be operated, maintained, repaired and replaced solely and exclusively by Hotel Owner.

(e) Expenses. All expenses of the Hotel Areas that are not for or related to Structural and Mechanical Support shall be the sole and exclusive responsibility of Hotel Owner, and all expenses of the Hotel Areas that are for or related to Structural and Mechanical Support shall be allocated between the Hotel Owner and the Residential Association as provided in Article 10 below.

2.1.5 Parking Areas. Subject to all other applicable terms and conditions of this Master Declaration:

(a) Use. Except as provided herein, the Parking Areas shall be for the mutual use, access and enjoyment of Hotel Owner and the Unit Owners.

(b) Benefit. Except as provided herein, the Parking Areas shall be for the mutual benefit of Hotel Owner and the Unit Owners.

(c) Control. The Parking Areas shall be under the sole and exclusive control of Hotel Owner.

(d) Maintenance. The Parking Areas shall be operated, maintained, repaired and replaced solely and exclusively by Hotel Owner.

(e) Expenses. All expenses of the Parking Areas shall be allocated between Hotel Owner and the Residential Association as provided in Article 4 and Article 10 hereof.

2.1.6 Storage Areas. Subject to all other applicable terms and conditions of this Master Declaration:

(a) Use. Except as provided herein, the Storage Areas shall be for the mutual use, access and enjoyment of Hotel Owner and the Unit Owners.

(b) Benefit. Except as provided herein, the Storage Areas shall be for the mutual benefit of Hotel Owner and the Unit Owners.

(c) Control. The Storage Areas shall be under the sole and exclusive control of Hotel Owner.

(d) Maintenance. The Storage Areas shall be operated, maintained, repaired and replaced solely and exclusively by Hotel Owner.

(e) Expenses. All expenses of the Storage Areas shall be allocated between Hotel Owner and the Residential Association as provided in Article 4 and Article 10 below.

2.1.7 Units. In addition to the Use Areas described above, the Resort includes the Units. Subject to all other applicable terms and conditions of this Master Declaration:

(a) Use. Subject to the rights of Hotel Owner to access the Units and maintain, repair and replace the Balcony/Patio Areas appurtenant to, and any Structural and Mechanical Support located within or accessed from the airspace of, the Units, the Units shall be for the sole and exclusive use, access and enjoyment of the respective Unit Owners, all in accordance with this Master Declaration and the Residential Declaration.

(b) Benefit. The Units shall be for the sole and exclusive benefit of the respective Unit Owners in accordance with this Master Declaration and the Residential Declaration.

(c) Control. The Units shall be under the sole and exclusive control of the respective Unit Owners in accordance with, and subject to the provisions of, this Master Declaration and the Residential Declaration.

(d) Maintenance. The Units shall be maintained, repaired and replaced solely and exclusively by the respective Unit Owners in accordance with this Master Declaration and the Residential Declaration.

(e) Expenses. All expenses of the Units shall be the sole and exclusive responsibility of the respective Unit Owners as further provided herein and in accordance with the Residential Declaration.

2.2 Delineation of Use Areas. The initial boundaries of each Use Area are delineated and designated on the Condominium Plat. The Use Areas may be redesignated from time to time by Hotel Owner subject to the terms and conditions of Section 3.2.4 hereof. The Use Areas shown on the Condominium Plat do not delineate ownership interests in the Resort.

2.3 Use of Hotel Amenities and Services. The Unit Owners and their Permitted Users (other than the Unit Owners of the AHU Units and their Permittees and the Hotel Owner so long as it owns a given ADA Unit) shall: (i) subject to the terms and conditions of a separate amenities use and access agreement by and between the Unit Owner and Hotel Owner (or the Hotel Manager acting on behalf of Hotel Owner); and (ii) subject to such rules and regulations pertaining thereto as the Hotel Owner may from time to time establish, have access to and use of the facilities and amenities in the Hotel Areas (initially including the pool, spa and restaurants), and the services (such as valet, concierge, bell, security and repair and maintenance services) provided by the Hotel Owner (or the Hotel Manager on the Hotel Owner's behalf) from the Hotel Areas, that are from time-to-time made available by the Hotel Owner to all guests of the Hotel, in a manner substantially equivalent to the access and use provided generally to all guests of the Hotel and any other person to whom the Hotel Owner, in its sole discretion, may make such facilities and services available (although certain services may be the subject of a separate charge to the Unit Owners and their Permitted Users, as the Hotel guests may be receiving the same as part of their room charge). The Hotel Owner may from time-to-time in its sole discretion temporarily close any of such facilities and amenities (e.g. the pool area) for private functions, even if such facilities and amenities are then otherwise (but for such closures) being generally made available to Hotel guests. The Hotel Owner may from time-to-time in its sole discretion determine what facilities, amenities or services will be provided in or from the Hotel and shall have no obligation to provide any particular facilities, amenities or services. In addition, the Hotel Owner may from time-to-time, in its sole discretion, designate certain Hotel facilities, amenities and/or services are being available solely to limited categories of Hotel guests (such as frequent guests of the Hotel and/or other lodging facilities operated by the Hotel Owner), in which case such Hotel facilities, amenities and/or services (which will not be offered to all Hotel guests) may, in the sole discretion of the Hotel Owner, not be made available to the Unit Owners and their Permitted Users. However, (i) all facilities and amenities in the Hotel Areas, and all services provided by the Hotel Owner (or the Hotel Manager on the Hotel Owner's behalf), in each case made available by the Hotel Owner to all Hotel guests (and therefore to the Unit Owners and their Permitted Users), shall be provided and maintained in accordance with the Resort Quality Standard, and (ii) if the Hotel Owner ceases providing any such facility, amenity or service to the Unit Owners and their Permitted Users, the Shared Expenses shall cease to include any personnel and staffing costs that relate to such facility, amenity or service.

Article 3. EASEMENTS

3.1 Grant of Easements. Subject to the other provisions of this Master Declaration:

3.1.1 Ingress and Egress Easements. Hotel Owner hereby grants to each Unit Owner, the Master Association and the Residential Association (in common with Hotel Owner) the following non-exclusive easements, which shall be appurtenant to each Unit:

(a) The right of pedestrian ingress and egress to and from, over, through and across the Parking Areas and the Access Areas (as such Parking Areas and Access Areas may be revised and designated by Hotel Owner from time to time for such purposes in accordance with Section 3.2.4); and

(b) The right of vehicular ingress and egress from publicly dedicated streets, or from privately owned streets within the Empire Pass Project which Unit Owners have an easement or other right to use that lead to publicly dedicated streets, to the Parking Areas by crossing over and through roads, driveways and other similar areas at the Resort and shown within Access Areas on the Condominium Plat (as such Access Areas may be revised and designated by Hotel Owner from time to time for such purposes in accordance with Section 3.2.4) and, subject to and in accordance with Section 4.1 below, the right of vehicular ingress and egress to and from and over and through the Parking Areas for parking, and passage over ramps, driveways, and thoroughfares within the Parking Areas.

3.1.2 Support, Utility and Use Easements. Hotel Owner hereby grants to each Unit Owner and the Residential Association (in common with Hotel Owner) the following non-exclusive easements, which shall be appurtenant to each Unit:

(a) Structural and Mechanical Support provided by all structural members, columns, footings and foundations which are a part of the Hotel and which are necessary for the support of any Unit; and

(b) Wherever sanitary sewer lines or connections and/or water lines or connections or cable television, electricity, gas or telephone lines are installed within the Resort, which connections or lines serve any Unit, for the full use and enjoyment of such portions of sewer, water, cable television, electricity, gas or telephone lines or connections or other utilities or communications within the Resort as may be needed to serve each Unit;

provided, however, if Hotel Owner fails to provide such support and the rights as contemplated under paragraphs (a) and (b) above, the Residential Association, subject to Article 12 below, shall have the exclusive right, on behalf of and to the exclusion of the individual Unit Owners, to exercise the right to: (i) install, construct, maintain, use, repair and replace all structural members, columns, footings and foundations which are a part of the Hotel and which are necessary for the Structural and Mechanical Support of the Units; and (ii) use, maintain, repair and operate the Restricted Areas and the Access Areas to the extent necessary for the Unit Owners to use and occupy the Units for their intended purpose; provided, further, such right may be exercised by the Residential Association only after: (x) written notice to Hotel Owner of its failure to provide such support and/or such rights and its failure to cure such failures within a commercially reasonable period of time after receipt of such notice; and (y) other than in the event of emergency (which is addressed in clause (z) below), issuance of a final judgment in

favor of the Residential Association's right to do so after submission of the issue to arbitration pursuant to Section 15.16 below; or (z) in the event of an emergency (which, for purposes of this Section 3.1.2, means anything that would prevent a Unit Owner from immediately using or occupying his or her Unit for its intended purpose (i.e., unavailability of access or utilities)), in which case the Residential Association may, after providing such notice, if any, to Hotel Owner as may be reasonable under the circumstances, take any reasonable action necessary to remedy such emergency. Hotel Owner reserves the right to relocate, at its own cost and expense, any of the sanitary sewer lines or connections and/or water lines or connections and/or cable television, electricity, gas and/or telephone lines as are at any given time installed within the Resort, provided that Hotel Owner shall take all reasonable measures to minimize any damage, disruption or inconvenience to the Residential Association and the Unit Owners caused by such relocation.

3.1.3 Balcony/Patio Easements. Hotel Owner hereby grants to each Unit Owner an easement and equitable right of use over the Balcony/Patio Areas contiguous and related to such Unit Owner's Unit (which are identified on the Condominium Plat), which easement shall be appurtenant to each Unit and shall be exclusive to the applicable Unit Owner.

3.1.4 Residential Lounge Easement. Subject to Section 3.2.1(j) below, Hotel Owner grants to the Residential Association, for the benefit of the Residential Association, the Unit Owners and their Permitted Users, an easement for the use and enjoyment of the Residential Lounge shown within the Access Area on the Condominium Plat. Hotel Owner acknowledges and agrees that Hotel guests shall not have access to the Residential Lounge.

3.1.5 Encroachments Easements. The Resort and all portions thereof are subject to easements hereby created for encroachments among the various Use Areas and/or Units as follows:

(a) In favor of each Unit Owner so that the Unit Owner shall have no legal liability when any part of such Unit Owner's Unit encroaches upon the Use Areas;

(b) In favor of Hotel Owner so that it shall have no legal liability when any part of the Use Areas encroach upon a Unit; and

(c) In favor of Hotel Owner, each Unit Owner and each Association benefited by such an encroachment for the maintenance and repair of such encroachments.

3.1.6 Actual Location of Easements. The precise location of all easements granted under this Section 3.1 (other than those easements granted pursuant to Section 3.1.5), whether or not depicted on the Condominium Plat, a survey or any other document, shall ultimately be located as the areas over which each such easement is granted are actually constructed. In furtherance thereof, such easement locations generally and the encroachments referred to in Section 3.1.5 specifically include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Hotel or any Unit constructed within the Resort, by error in the Condominium Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Hotel or any Unit

caused by reconstruction of the Hotel or any Unit (provided such reconstruction is done in substantial conformity with the location of the Hotel or any Unit prior to such reconstruction); provided, however, such encroachments shall not be considered to be encumbrances upon any part of the Resort.

3.1.7 Easement through Units. Subject to Section 3.2.1(j) below, Hotel Owner, for itself and its successors, assigns, agents, employees, contractors, subcontractors and other authorized personnel, reserves a non-exclusive easement in, over and through the Units at any reasonably necessary time, whether or not in the presence of the Unit Owner thereof, to enter upon any Unit for the purpose of: (1) making emergency repairs therein or to the Hotel; (2) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Unit; (3) protecting property rights and welfare of any Unit Owner or Permitted User; or (4) for any other purpose reasonably related to the exercise of the rights and obligations of Hotel Owner under this Master Declaration (including without limitation replacing filters for the Building's heating, cooling and ventilation system, repairing and maintaining components of the Building's fire suppression system and alarm systems and providing pest control throughout the Building). Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and enjoyment of the rightful occupant of such Unit and shall be preceded by reasonable notice to such occupant in the event of entry into a Unit, whenever the circumstances permit.

3.2 Limitations on Grants. Notwithstanding anything to the contrary set forth in this Master Declaration:

3.2.1 Retention of Rights. Notwithstanding the foregoing and anything to the contrary set forth in this Master Declaration or the Residential Declaration, all Unit Owners acknowledge and agree that Hotel Owner will lease or own the Resort (other than the Units) and will operate all aspects of the Resort (other than the Units) and reserves and retains, subject to the terms and conditions of Section 3.2.4 of this Master Declaration, without any interference or approval whatsoever from any Unit Owner or the Residential Association, and upon any terms and conditions that Hotel Owner sees fit, the rights to:

(a) operate the Resort (excluding Units) including, but not limited to, the right to operate (or to hire independent managers to operate) the Hotel and the Use Areas;

(b) sell, finance or otherwise deal with its ownership interest in the Hotel or any portion thereof;

(c) either operate the Hotel itself and/or engage any third party selected by Hotel Owner as the Hotel Manager to operate the Hotel (notwithstanding the fact that the Master Association or the Residential Association enters into one or more association management agreements with parties unrelated to the Hotel Manager);

(d) alter, reconstruct, expand, contract, or otherwise change the Hotel and/or any easement granted under and subject to this Master Declaration;

(e) open, close and/or in any other way operate or not operate within the Hotel any private health club/spa, meeting space, skier services facilities, retail shops, restaurants, ski concierge and any other amenities;

(f) increase or decrease the number of Units that may be located within the Resort from time to time in accordance with the Residential Declaration;

(g) construct dwelling units in addition to the Units;

(h) subject to the prior written consent of Lessor, create additional condominium regimes on the Resort and subject the Resort, or portions thereof, to additional residential declarations and/or covenants, conditions and restrictions;

(i) grant any easements, licenses or other rights to, or enter into any leases or other agreements with, any third parties with respect to the Hotel;

(j) erect additional buildings or other structures within the Resort or to add to or otherwise renovate, improve, alter, modify, redesign, change, rearrange, alter, reconstruct, modify, expand, reduce, supplement, demolish or remove structures or other improvements (excluding the Units) now or hereafter existing within the Resort including, without limitation, the Hotel and any of the Use Areas, subject to the easement and license rights granted hereunder to the Master Association, the Residential Association and the Unit Owners and, in connection therewith, to erect temporary scaffolds and other aids of construction within the Resort, limit or eliminate access to portions of the Resort, or perform work within the Resort; and

(k) close the Hotel, any of the Use Areas or any portion thereof (including, without limitation, all roadways, driveways, access-ways, sidewalks, corridors, elevators and other similar facilities now or hereafter within the Resort) at such times and in such manner as is necessary or appropriate to do and perform all such activities in, to and with respect to such areas (all of which may create dust, dirt, construction noise, visual obstruction and other reasonable interferences resulting from any or all of such activities).

Hotel Owner shall have no responsibility or for any reason be liable to any Unit Owner for any direct or indirect interference with such Unit Owner's use of his or her Unit arising from any activities conducted by Hotel Owner in its good faith efforts to comply with this Master Declaration, nor shall any Unit Owner be entitled to any compensation or damages from Hotel Owner for any inconvenience or annoyance occasioned thereby. It is specifically understood and agreed that, except for repairs and replacements of the Use Areas funded by the amounts deposited into a Reserve Account under this Master Declaration, Hotel Owner has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Resort or any portion thereof and that no representations respecting the condition of the Resort have been made by Hotel Owner to the Unit Owners, except as specifically set forth in any written purchase agreement entered into by and between Hotel Owner and any particular Unit Owner.

3.2.2 Access Restrictions, Barriers. In addition to the rights of Hotel Owner set forth in Section 3.2.1, Hotel Owner shall have the right to:

(a) install reasonable pedestrian control signs, barriers and other devices and directional signals and take any other action as may be necessary or appropriate within the Parking Areas to guide and control the orderly flow of pedestrian and vehicular traffic and parking;

(b) demolish, locate, construct, repair, replace and modify roadways, alleyways, parking facilities, sidewalks, walkways, landscaping, signs, traffic control devices and other improvements reasonably necessary or appropriate in the judgment of Hotel Owner for the safe and efficient movement of vehicular and pedestrian traffic in any of the Use Areas and conducive to the attractive appearance of the Resort, subject to the rights of Unit Owners under this Master Declaration;

(c) alter and control access to any of the Use Areas in a reasonable manner, but subject to the rights of the Master Association, the Residential Association and the Unit Owners under this Master Declaration;

(d) erect temporary barriers and prohibit vehicular and pedestrian ingress and egress over portions of any of the Use Areas, as reasonably necessary to: (i) carry on construction, maintenance, repair and restoration of the Hotel Areas and Non-Hotel Use and Support Areas; (ii) to conduct special events and functions on the Hotel Areas, Access Areas, Restricted Areas and/or Parking Areas; and (iii) to prevent the accrual of prescriptive rights in the general public; and

(e) enter upon any of the Use Areas for the purposes of removing, excluding and restraining any person violating the Hotel Rules and Regulations, or creating a nuisance, disturbing the peace or making unauthorized use of any of the Use Areas.

3.2.3 No Rights in Hotel Areas. Except as otherwise set forth in this Master Declaration, no rights are granted to any Unit Owner in or to the Hotel Areas.

3.2.4 No Right to Change without Board Approval. Notwithstanding anything to the contrary in this Master Declaration, without the unanimous approval of the Master Association Board, nothing herein shall permit Hotel Owner to make physical changes to, or changes to the designation of, any of the Non-Hotel Use and Support Areas, that would:

(a) unreasonably prevent the Unit Owners from gaining access to their Units or any portion of the Non-Hotel Use and Support Areas (excluding Restricted Areas) which Unit Owners have a right to use under the terms and conditions of this Master Declaration; or

(b) in any case, result in an increase in the portion of the Master Association Assessment to be paid by the Residential Association for a given Fiscal Year of the Master Association (without consideration of the impact of any unrelated increases in such Master Association Assessment) of greater than twenty-five percent (25%) of the Master

Association Assessment charged to the Residential Association for the Fiscal Year of the Master Association immediately preceding the Fiscal Year of the Master Association during which such increase occurs.

3.3 Lessor Access Rights. Lessor, and persons authorized by Lessor, shall have, in addition to any privileges that Lessor and any such persons may enjoy as invitees of Hotel Owner, the right, upon five (5) or more days prior written notice (or in the event of imminent threat to person or property, such shorter time as shall be reasonable under the circumstances), subject to the rights of Hotel guests, Hotel Owner, and subtenants and licensees of Hotel Owner, to enter upon and/or pass through the Development Land during reasonable business hours as designated by Hotel Owner (except in case of an emergency where the Hotel Owner does not timely designate an appropriate access time) and only while accompanied by an authorized representative of Hotel Owner, who is designated by Hotel Owner (except in case of an emergency where the Hotel Owner does not timely make a representative available), for the following purposes only: (a) for the purpose of inspection of the Development Land, but not more frequently than once per year, and (b) for the purpose of exercising any other rights or remedies that Lessor has been expressly granted under the Talisker Lease, which rights and remedies are incorporated herein. In addition, pursuant to the terms and conditions of the Talisker Lease, each of the residents of the "Landlord Retained Land", as such term is defined in the Talisker Lease, shall be entitled to access to the Hotel's spa, restaurant and other facilities (including, without limitation, the pool) as set forth in the Talisker Lease. Except as provided in the Talisker Lease, prior to the twenty-fifth (25th) anniversary of the opening of the Hotel, no: (i) real estate developer (other than Lessor); (ii) homeowners' association or consortium other than the Residential Association and the Master Association; or (iii) hotel chain not affiliated with Hotel Owner, shall be granted any of the special access rights and privileges to the Hotel (or the other amenities from time-to-time located on the Development Land) of the nature described above, without the approval of Lessor.

3.4 Termination and Abandonment of Rights. Notwithstanding any other applicable laws to the contrary, it is the intent of Hotel Owner that no easement granted or reserved hereunder be deemed abandoned or terminated merely by disuse or incompatible acts; rather, that except as otherwise provided herein, the easements granted hereunder shall continue in full force and effect unless terminated by a written instrument duly executed by Hotel Owner and the Master Association and duly recorded in the County.

3.5 No Merger. Notwithstanding the union of: (a) the fee simple title to the Resort or any portion thereof; and (b) any right, title or interest in the easements granted by or reserved to the Unit Owners or either or both of the Associations pursuant to this Master Declaration, it is the intention of Hotel Owner that the separation of such fee simple estate and such right, title or interest in such easements shall be maintained, and that merger shall not take place without the express prior written consent of Hotel Owner.

3.6 Prohibition Against Granting Easements. Except as provided for under this Master Declaration, no Unit Owner or Association shall grant an easement or easements in, to, over, under or across the Resort without the prior written consent of Hotel Owner and the Master Association, which consent may be withheld for any reason, and a written agreement is executed by all such parties evidencing such easement(s) and consent and is duly recorded in the County.

Article 4.
OPERATION OF PARKING AND
STORAGE AREAS

4.1 Parking and Storage Rights.

4.1.1 Unit Parking. Subject to all the rules and regulations set forth herein and established by Hotel Owner for all Parking Areas and payment of expenses in accordance with this Article 4, all Unit Owners, as well as their Permitted Users, shall have a non-exclusive irrevocable license to use one (1) parking space for each Unit in accordance with the Hotel Rules and Regulations, to be located within the Parking Areas as designated by Hotel Owner from time to time. No Unit Owner may sell or otherwise transfer the license for such a parking space except in connection with a transfer of such Unit Owner's Unit. Subject to Section 4.1.6 below, Hotel Owner shall provide to a Unit Owner such license for a specific parking space upon the closing of the acquisition of the Unit by such Unit Owner.

4.1.2 Storage Unit Rights. Subject to all the rules and regulations set forth herein and established by Hotel Owner for the Storage Areas and payment of expenses in accordance with Article 10 below, Hotel Owner may, but is not obligated to, upon the closing of the acquisition of a Unit by a Unit Owner grant to such Unit Owner, as well as its Permitted Users, a non-exclusive license to use one (1) storage unit for each Unit, to be located within the Storage Areas as designated by Hotel Owner from time to time. No Unit Owner may sell or otherwise transfer a license for such a storage unit except in connection with a transfer of such Unit Owner's Unit. Each such license shall be subject to Section 4.1.6 below.

4.1.3 Extra Parking Spaces. Upon written request by a Unit Owner to Hotel Owner, and subject to any governmental requirements and availability and parking rates as determined by Hotel Owner in its sole and absolute discretion, Hotel Owner may, in its sole discretion, grant to such Unit Owner a license to use additional parking spaces in excess of those allocated to such Unit Owner pursuant to Section 4.1.1 above.

4.1.4 Resort Parking and Storage. Subject to the Hotel Rules and Regulations for all Parking Areas and Storage Areas, Hotel Owner, as well as its Permittees, shall have the exclusive right to use the remainder of the parking spaces and storage units in the Parking Areas and/or Storage Areas that are not licensed to the Unit Owners pursuant to Sections 4.1.1, 4.1.2 and 4.1.3 above.

4.1.5 Availability. All parking spaces and storage units referred to in Sections 4.1.1 and 4.1.2 shall be made available to the applicable Unit Owners twenty-four (24) hours a day and seven (7) days a week. Such parking spaces and storage units shall be appropriately marked and such other means of controlling their use shall be maintained by Hotel Owner.

4.1.6 Relocation. Subject to the last sentence of Section 4.1.2 above, Hotel Owner in its sole discretion and at any time upon written notice to the affected Unit Owners shall have the right to relocate the location within the Parking Areas and Storage Areas of any parking

spaces and/or storage units, as appropriate, licensed to the Unit Owners pursuant to this Section 4.1.

4.1.7 Appurtenant to Units. The licenses set forth in Sections 4.1.1 and 4.1.2 above are appurtenant to each Unit to which such licenses are granted and shall not terminate upon the conveyance of such Unit but shall automatically be assigned upon the conveyance of a Unit to the purchaser of such Unit. No Unit Owner shall be entitled to sever his or her Unit, or any portion thereof, from his or her undivided interest in and to the licenses to use a parking space and storage unit as set forth in Sections 4.1.1 and 4.1.2, and no such licenses or any right to any parking space or storage unit shall be separately sold, conveyed, leased, rented, encumbered, hypothecated or otherwise dealt with, and any such attempt to do so is a violation of this provision and shall be void and of no effect.

4.1.8 Deer Valley Resort Company Parking. Pursuant to the terms of the Talisker Lease, Hotel Owner shall provide to Deer Valley Resort Company parking, within that portion of the Parking Area not licensed to Unit Owners, sufficient to meet the “Deer Valley Parking Obligations” under the Talisker Lease.

4.1.9 Parking Restrictions. Notwithstanding anything herein to the contrary, no motorized vehicle exceeding original manufacturer specifications and/or ratings and/or exceeding one (1) ton shall be allowed in the Parking Areas. In addition, no mobile homes, recreational vehicles, trailers of any kind, campers or similar vehicles shall be allowed in the Parking Areas without the prior written consent of Hotel Owner, which consent may be withheld in Hotel Owner’s sole discretion.

4.2 Parking Area Charges.

4.2.1 Parking Fees. Hotel Owner has the right to charge parking fees (at levels determined by Hotel Owner in its sole discretion) to users of the Parking Areas, except that Hotel Owner may not charge the Unit Owners for the spaces licensed to them under Section 4.1.1 above.

4.2.2 Valet Parking and Charges. Hotel Owner shall have the right to maintain a valet parking system in one or more of the Parking Areas, to charge users thereof a fee for the use of valet services and retain any and all parking revenue collected in connection therewith. Notwithstanding the foregoing, Hotel Owner shall not charge a fee for the use of valet services to Unit Owners to the extent the cost of the same is paid by the Residential Association. Unit Owners shall have the option to self-park in their licensed space.

4.2.3 Validation. Hotel Owner may, in its sole discretion, maintain in effect a parking validation system whereby users of the Parking Areas may purchase, at the prevailing published rates for day-to-day parking, parking validation booklets for use by such parties to pay for parking fees in connection with the use of parking spaces in the Parking Areas; provided, however, Unit Owners (and their Permitted Users) shall not be required to purchase such validation booklets for the use of parking spaces for which they have a license pursuant to Section 4.1.1 above.

4.2.4 Entry Control. Hotel Owner may, in all Parking Areas, maintain in effect (and from time-to-time change) an entry and exit control system utilizing entry and exit control cards or other comparable devices for use by Unit Owners and their Permitted Users and Hotel Owner and its Permittees.

4.3 Operation of Parking Areas.

4.3.1 Hiring of a Parking Area Operator. Hotel Owner shall operate, maintain and repair and otherwise conduct the day-to-day operations of the Parking Areas. Hotel Owner shall have the right to hire, engage or enter into a lease of and/or management agreement with the Parking Area Operator for the day-to-day operation of the Parking Areas and, in the event a valet parking program is desired by Hotel Owner, provide valet parking services for the Hotel and the Units in a manner consistent with the provisions of this Master Declaration.

4.3.2 Operations. The Parking Areas will be continuously used and operated as an automobile parking and access facility in accordance with the provisions of this Master Declaration and all laws, ordinances, rules and regulations now or hereafter applicable to the Parking Areas and at a level no less than the Resort Quality Standard. Hotel Owner will secure, maintain or cause to be secured and maintained any and all licenses, permissions, authorizations and permits necessary for the use of the Parking Areas and access thereto. Neither Hotel Owner nor any Unit Owner, as applicable, shall take or permit any action in the Parking Areas which would constitute a nuisance or interference with Hotel Owner's control, operation and/or use of the Parking Areas or with any Unit Owner's use of the Parking Areas in the manner permitted by this Master Declaration.

4.3.3 Costs and Revenues.

(a) The cost of the day-to-day operation, maintenance and repair of the Parking Areas (excluding the costs of any valet service) shall be funded by Hotel Owner as Master Operating Expenses. Pursuant to Article 10 below, the Residential Association shall pay its proportionate share of such costs as determined by dividing the number of parking stalls allocated to Unit Owners against the total number of parking stalls in the Parking Area; provided, however, any cost or expense that would be subject to coverage under any insurance policy in effect at such time with respect to the Parking Areas or any cost or expense that arises out of a Force Majeure Event shall not be the obligation of Hotel Owner but instead shall be paid out of insurance proceeds to the extent received, and/or from amounts advanced, by Hotel Owner and the Residential Association pursuant to this Section 4.3.3.

(b) Hotel Owner shall be entitled to retain any and all revenues generated by the day-to-day operation of the Parking Areas related to Hotel use; provided, however, Hotel Owner shall not be entitled to retain any excess insurance proceeds to the extent received by Hotel Owner, but rather shall allocate and distribute such excess proceeds to itself and to the Residential Association in the same proportion as Master Operating Expenses related to the Parking Area are then allocated to each pursuant to this Master Declaration.

Article 5.
EMPIRE PASS DECLARATION AND
EMPIRE PASS PAYMENTS

5.1 Empire Pass Project; Payments. Pursuant to the terms of Talisker Lease, the Resort is not being annexed to, and therefore will not be subject to the Empire Pass Declaration. Unit Owners will, however, receive benefits from certain activities performed by the Empire Pass Association (which activities are funded by assessments made by the Empire Pass Association pursuant to the Empire Pass Declaration). Accordingly, and as required and contemplated by the Talisker Lease, each Unit Owner (excluding Hotel Owner and/or Lessor) shall have the obligation to pay the Empire Pass Payments to the Empire Pass Association as provided herein. The obligation to pay the Empire Pass Payments shall commence upon the transfer of a Unit by Hotel Owner to a Unit Owner and such payment obligations shall be pro-rated for the year during which such payments first become due. The Empire Pass Payments shall be payable by the applicable Unit Owner directly to the Empire Pass Association upon the Unit Owner's receipt of an invoice therefor from the Empire Pass Association, accompanied by a written statement of the manner by which the amount of the Empire Pass Payments described in the invoice were calculated. Each Unit Owner shall have the right to request in writing and to receive from the Empire Pass Association, written support for the amount of the Empire Pass Payments. The Empire Pass Payments shall be made in the same manner and at the same times as the corresponding payments against residential condominium units that are subject to the Empire Pass Declaration are to be made. All such Empire Pass Payments not paid by a Unit Owner when due shall bear interest from the date due to the date paid at the rate set forth in the Empire Pass Declaration for Annual Assessment, Special Assessments or assessments for maintenance of Community Areas pursuant to the Maintenance Agreement, as applicable (as such terms are defined in the Empire Pass Declaration). Notwithstanding the above, the AHU Units shall in no event be subject to the requirement for payment of the Empire Pass Payments, and the ADA Units shall not be subject to the requirement for payment of the Empire Pass Payments for so long as the Hotel Owner is the owner of such ADA Units.

5.2 Transfer Assessments. Pursuant to the terms of the Open Space/Transit Management Declaration, Hotel Owner and each Unit Owner shall be subject to the payment of the Open Space/Transit Management Fee upon the sale, conveyance or other transfer by Hotel Owner or any Unit Owner of its interest in any portion of the Resort. Hotel Owner and each Unit Owner shall pay the Open Space/Transit Management Fee to the Empire Pass Association in accordance with the terms and conditions of the Open Space/Transit Management Declaration.

5.3 Enforcement. Each Unit shall be subject to a lien in favor of the Empire Pass Association to secure the payment of the Empire Pass Payments to be made by the Unit Owners of such Unit to the Empire Pass Association. The lien for unpaid payments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Empire Pass Association. No notice of lien shall be recorded until there is a delinquency in the payment of the Empire Pass Payments required hereunder. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. Each Unit Owner, by acceptance of a deed to such Unit Owner's Unit, acknowledges and agrees that the Empire Pass Association shall be a third party beneficiary to

the provisions of this Article 5. Accordingly, notwithstanding anything in this Master Declaration to the contrary, Article 5 shall not be amended without the prior written and recorded consent of the Empire Pass Association. If any Unit Owner fails to pay the Empire Pass Payments or installments thereof when due, the Empire Pass Association may enforce the payment of the Empire Pass Payments by taking one or more of the following actions, concurrently or separately (and by exercising any of the remedies hereinafter set forth the Empire Pass Association does not prejudice or waive its right to exercise any other remedy):

(a) Bring an action at law and recover judgment against the Unit Owner personally obligated to pay the Empire Pass Payments that have not been paid;

(b) Foreclose the lien against the Unit for which the Empire Pass Payments have not been paid in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1, Title 38, Utah Code Annotated, as amended from time to time, or any other means permitted by law, and the Unit may be redeemed after foreclosure sale, if provided by law. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, Coalition Title Agency, Inc., a Utah corporation having an office in Park City, Utah is hereby designated as trustee ("Trustee"), and Hotel Owner hereby grants and conveys each Unit, IN TRUST, to Trustee, as trustee with full power of sale, to foreclose any such liens as directed by the Empire Pass Association. The Empire Pass Association may, at any time, designate one or more successor trustees, in the place of Trustee, in accordance with the provisions of Utah law for the substitution of trustees under the deeds of trust. Such Trustee, and any successors, shall not have any other right, title or interest in the Units beyond those rights and interests necessary and appropriate to foreclose any liens in favor of the Empire Pass Association against Units and arising pursuant to this Article 5. In any such foreclosure, the Unit Owner of the Unit being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Empire Pass Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

(c) Notwithstanding the subordination of Unit Owner lien as described in Section 5.6 below, the delinquent Unit Owner shall remain personally liable for the Empire Pass Payments and related costs after his or her ownership of the Unit is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

5.4 Priority of Lien. The lien provided for in this Article 5 shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided and except as provided in Section 5.6 below, the lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Unit. The sale or transfer of any Unit shall not affect the lien, except as provided in Section 5.6 below.

5.5 Attorneys' Fees and Costs. In any action taken pursuant to Section 5.3 above, the Unit Owner shall be personally liable for, and the lien shall be deemed to secure the amount of, the Empire Pass Payments, together with the Empire Pass Association's collection costs and attorneys' fees and interest.

5.6 Subordination of Lien. The lien or claim against a Unit for unpaid Empire Pass Payments levied by the Empire Pass Association pursuant to this Master Declaration shall be subordinate to the First Mortgage affecting such Unit, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid Empire Pass Payments but only to the extent of Empire Pass Payments which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed of assignment in lieu of foreclosure. No Empire Pass Payments, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Empire Pass Association from or against a First Mortgagee, a successor in title to a First Mortgagee, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, of the Unit affected or previously affected by the First Mortgage concerned.

Article 6.

INSURANCE

6.1 Casualty Insurance. Except as provided in Section 6.2 below, Hotel Owner shall continuously keep the Building insured against loss or damage by fire, vandalism, malicious mischief and other perils as are covered by the standard form fire and extended coverage all risk policy of insurance and, in addition, as otherwise required by a Mortgagee holding a first priority Mortgage against the Hotel; provided, however, that unless required by such a Mortgagee, Hotel Owner shall not be required to obtain or maintain earthquake insurance coverage if the same is not available upon commercially reasonable terms (as determined by Hotel Owner in its sole discretion). All insurance required to be maintained under this Section 6.1 shall: (a) be in an amount of at least one hundred percent (100%) of the actual replacement cost of the buildings and other improvements insured; (b) provide for customary waivers of subrogation to the extent granted by the insurers; (c) include, if applicable, boiler and machinery insurance; (d) insure loss due to the interruption of business for such period as Hotel Owner in its sole discretion deems appropriate, and provide for a concurrent period of restoration and indemnity; (e) provide for increased cost of demolition in an amount appropriate for the type construction and the location and accessibility of the buildings and other improvements insured; (f) provide ordinance and law coverage in an amount sufficient to ensure incorporation of required code upgrades on rebuilding; (g) provide for sprinkler leakage with a deductible not greater than two percent (2%) of total insured values (or as low a deductible as prevailing market conditions allow); and (h) provide for payment of proceeds to Hotel Owner. To the extent that there are insured goods and/or materials in transit covered by such insurance which are the property of Hotel Owner, the limits of the transit coverage portion of the casualty insurance policy shall be increased to insure at least one hundred twenty-five percent (125%) of the value of all such goods which may be in transit at any time. In conjunction therewith, wherever off-site storage of such goods in transit is required prior to their installation, Hotel Owner shall ensure that the off-site storage locations are added as additionally insured locations on the related casualty insurance policy.

To the extent that Hotel Owner elects, pursuant to Article 12 below, to restore the Building following a casualty thereto and the related restoration costs are not covered by the casualty insurance for the Building (either because of inadequate coverage or because the insurer disputes or does not pay the full amount of the claim), Hotel Owner and the Residential Association (as Members of the Master Association) shall pay such costs to the extent not covered by such insurance in the same proportion as they share the premiums for the casualty insurance for the Building required above, as provided in Article 10 below. In the event that Hotel Owner, in its sole discretion, determines that earthquake insurance for the Building is not available on commercially reasonable terms (unless such insurance is required by a Mortgagee holding a first priority mortgage against the Hotel), Hotel Owner shall promptly and, in any event, not later than sixty (60) days prior to the expiration of Hotel Owner's existing earthquake insurance policy or policies (if any), notify the Residential Association of such determination in which case the Residential Association may obtain the same, at its sole cost and expense.

6.2 Liability Insurance. The Master Association, at its sole expense, shall cause to be obtained and continually maintained commercial liability insurance against claims for personal injury, bodily injury, death and property damage occasioned by accidents or other events occurring within all portions of the Resort other than the Hotel Areas and the Units. The Residential Association, at its sole expense, shall cause to be obtained and continually maintained commercial liability insurance against claims for personal injury, bodily injury, death and property damage occasioned by accidents or other events occurring on or about the Units. Hotel Owner, at its sole expense, shall cause to be obtained and continually maintained commercial liability insurance against claims for personal injury, bodily injury, death and property damage occasioned by accidents occurring on or about the Hotel Areas. Notwithstanding the foregoing, at the option of Hotel Owner, the liability policies to be obtained by Hotel Owner, the Master Association and the Residential Association under the foregoing provisions, to the extent that these three entities do not have divergent or conflicting interests, such that a cross-liability exclusion would deprive one, both or all of coverage against liability claims likely to arise in the normal course of their respective businesses or activities, may be under a single policy insuring Hotel Owner, the Master Association and the Residential Association, in which event premiums, fees, and other similar amounts shall be allocated among Hotel Owner, the Master Association and the Residential Association in the same ratios, and deductibles, uninsured liabilities and other similar amounts shall be attributed to and paid by Hotel Owner, the Master Association and the Residential Association, as if separate policies had been obtained (e.g., if a person is injured in any portion of the Resort other than the Hotel Areas and Units, any deductible arising therefrom would be paid by the Master Association rather than Hotel Owner).

The commercial liability policies described in the preceding paragraph shall each be written with a combined single limit for death or injury to persons or property. Such policies shall, in the aggregate, provide insurance of not less than Fifty Million Dollars (\$50,000,000), per occurrence and in annual aggregate, as Indexed (through any combination of underlying and umbrella coverage). The Master Association Board shall have the right to require reasonable increases in this aggregate limit requirement from time to time, notwithstanding such Indexing, if reasonably required in light of increases in judgment awards generally. To the extent there is a liability policy that covers Hotel Owner, the Master Association and the Residential Association, and there are liability losses which are not covered by such policy or which are in excess of the

coverage provided under such policy (either because of inadequate coverage or because the insurer disputes or does not pay the full amount of the claim), and Hotel Owner, the Master Association and the Residential Association are jointly liable for such losses, Hotel Owner, Master Association and the Residential Association shall each pay a share of the uninsured or underinsured portion of such liability losses in the same proportion as they share the premiums for the liability insurance required above, as provided in Article 10 below (or otherwise provided in this Section 6.2).

Hotel Owner, the Residential Association and all Unit Owners agree that any claim that any person may have for any injury occurring within: (i) any portion of the Resort other than the Hotel Areas shall be made against and/or allocated to the Master Association (and expressly not against Hotel Owner or the Residential Association) and made under and/or allocated to the policies obtained by the Master Association (or, in the event that a single policy is obtained by Hotel Owner as aforesaid, made under the policy obtained by the Hotel Owner); provided, however, any increases in premiums, deductibles, uninsured liabilities and other similar amounts arising from any such claim or claims shall be allocated to and paid by the Master Association); (ii) the Hotel Areas shall be made against and/or allocated to Hotel Owner (and expressly not against the Master Association or the Residential Association) and made under and/or allocated to the policies obtained by the Hotel Owner (or, in the event that a single policy is obtained by Hotel Owner as aforesaid, made under and/or allocated to the policy obtained by the Hotel Owner; provided, however, any increases in premiums, deductibles, uninsured liabilities and other similar amounts arising from any such claim or claims shall be allocated to and paid by Hotel Owner); and (iii) a Unit shall be made against and/or allocated to the Unit Owner thereof, and expressly not against Hotel Owner (unless Hotel Owner is the owner of such Unit), the Master Association or the Residential Association, and shall be made under and/or allocated to the policies obtained by such Unit Owner. In furtherance of the foregoing, the Master Association, the Residential Association and each Unit Owner hereby unconditionally and irrevocably release Hotel Owner and Hotel Owner's subsidiaries and related entities, and all of their agents, employees, officers, directors, shareholders and their respective successors and assigns from liability for any claims, injuries, losses, damages, costs, expenses, and any other liability whatsoever (including attorney's fees), known or unknown, relating to any and all: (1) claims for personal injury, bodily injury or death to persons or loss or damage to property of others or under clauses (i) or (iii) above; and (2) design and construction and all other patent and latent defect claims with regard to the Use Areas and, to the extent of all structural and other related elements thereof that are designed and/or intended to, or otherwise in fact, support the Use Areas, whereupon the Master Association's, the Residential Association's and each Unit Owner's sole and exclusive remedy for such claims of design and construction and other patent and latent defects shall be against the contractor(s), engineers, architects, and consultants engaged to complete the Hotel and/or the Units and/or under its own insurance policies (and expressly not against Hotel Owner or under any policy carried by Hotel Owner). If a claim is paid by an insured's liability policy obtained pursuant to this Section 6.2 and if primary liability is allocated to another party pursuant to this Section 6.2, then the insured may seek reimbursement from such other party.

6.3 Workers' Compensation Insurance. To the extent required by governmental requirements, Hotel Owner as to all persons employed by the Hotel, the Master Association as to its employees (if any) and the Residential Association as to its employees (if any), shall keep and

maintain, or cause to be kept and maintained, continuously in force for themselves and for all contractors or subcontractors of any tier and their employees during any period of construction, alteration or repair, or in performing general operations, workers' compensation insurance at statutory limits, and employer's liability coverage having minimum limits of \$1,000,000 per occurrence, per disease or illness, as Indexed, for each employee so affected, covering all persons employed in connection with such work and/or operations and with respect to whom death or bodily injury claims could be asserted against the Additional Insureds (as defined in Section 6.6 below). The Residential Association shall require Unit Owners to ensure that any person employed in connection with any service, construction, alteration or repair of a Unit shall be covered by workers' compensation insurance if required by state law.

6.4 Obligation to Maintain Insurance Before Completion. Prior to undertaking any work of improvement to any part of the Resort, the Master Association Member carrying out such work shall obtain and maintain with respect to the work being performed, at such Master Association Member's sole cost: (i) course of construction and all-risk/builders' risk, fire and extended coverage insurance in the amount of the full replacement cost of any improvements being constructed and the value of any existing improvements placed at risk by the proposed operations; (ii) the commercial general liability insurance required by Section 6.2 above; and (iii) any other insurance required by a Mortgagee holding the first priority Mortgage against the Hotel. Each Master Association Member shall cause its general contractor and its subcontractors performing any such work to obtain and maintain commercial general liability insurance meeting requirements set forth by the Master Association Board. At the request of a Master Association Member, the Master Association Manager may approve lower limits of liability for certain general contractors and subcontractors performing relatively small or low-risk work. Such insurance shall remain in full force and effect until completion of such work. As to any work of improvement to the interior of any Unit, the Unit Owner or Owners that own such Unit shall obtain and maintain (or cause to be maintained and obtained) the insurance described above in this Section 6.4.

6.5 Master Association – Directors and Officers Insurance. The Master Association shall obtain and continually maintain directors and officers insurance insuring the Master Association Board and the Master Association's officers, with limits as determined by the Master Association Board from time to time, but not less than the amount of the Master Association Budget. The Master Association Board shall have the right, upon at least sixty (60) days' prior written notice to the Master Association Members, to require reasonable increases in such limits from time to time, if reasonably required in light of increases in judgment awards generally.

6.6 Form of Policies. All insurance required by this Master Declaration shall be maintained under valid and enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State where the insured operations or property is located, holding a "General Policyholder Rating" of at least A-/VIII as set forth in then current issue of "Best Insurance Guide," using the rating system in effect as of the date of this Master Declaration or with financial capacity which is reasonably equivalent as described under a reasonably similar rating system. Any insurance required to be maintained under this Declaration may be under a blanket policy or policies covering other property in addition to the property in the Resort provided that separate limits are established for the property in the Resort covered by such blanket policy. Copies of the initial policies of casualty or liability insurance

required by this Master Declaration, or renewal policies, as the case may be, together with a certificate of insurance as to each policy, shall be delivered to the Master Association Members and the Master Association Manager at least fifteen (15) days before the date the insurance is required to be in effect. Any policy required by this Master Declaration shall provide that the coverage shall not be reduced or cancelled without at least thirty (30) days' advance written notice to the Master Association Members (ten (10) days for non-payment of premium), the Master Association Manager and Hotel Owner (if the Hotel Owner is not the Master Association Manager) and shall name as additional insureds: (i) Hotel Owner and/or any successor or assign, (ii) the Master Association and the Residential Association, (iii) the Master Association Board and the Residential Association Board, (iv) the Master Association Manager and the Residential Association Manager (and any constituent officer, director, shareholder, member or partner of any of the foregoing); and (v) any Mortgagee holding a first priority Mortgage against the Hotel (with all of the persons and entities referred to in clauses (i) through (iv) referred to as the "Additional Insureds"). Each such policy of insurance shall: (i) be prime insurance over any other insurance carried by any Additional Insured; (ii) contain such endorsements as are customary for such policies and, as to the Use Areas, are reasonably requested by the Master Association and the Master Association Manager; and (iii) provide at least thirty (30) days' advance written notice (ten (10) days for non-payment of premium), to the Hotel Owner, the Master Association, the Master Association Manager, the Residential Association, the Residential Association Manager and the holders of Mortgages against the Hotel before any reduction in coverage or cancellation.

6.7 Insurance Premiums and Use of Policy Proceeds. The cost and expense of all insurance policies maintained by Hotel Owner and the Master Association with respect to the Hotel and Use Areas, as well as all deductibles thereunder, shall be allocated to and funded by Hotel Owner and/or the Residential Association as a Master Operating Expense as set forth in Article 10. In accordance with Article 12, subject to the rights of any first Mortgagee of the Hotel under this Master Declaration to such proceeds, the casualty insurance proceeds paid to Hotel Owner by reason of damage to or destruction of any portion of the Building shall be: (i) used solely for the repair or rebuilding of such damaged portion of the Building; or (ii) distributed to Hotel Owner (and/or its Mortgagees pursuant to the provisions of this Master Declaration) and the Residential Association, all in the manner provided in this Master Declaration. If Hotel Owner elects to use such proceeds to repair or rebuild a damaged portion of the Building, then such first Mortgagee shall have the right to control the disbursement by Hotel Owner of such insurance proceeds and the disbursement by Hotel Owner of the proceeds of any assessments received by Hotel Owner to be applied to payment of the costs of restoration of the Building not covered by casualty insurance on the Building.

6.8 Master Association Board's Right to Obtain Insurance. If any party fails for fifteen (15) days following notice from the Master Association Board to obtain any insurance required by this Master Declaration, the Master Association Board may obtain the required insurance and such party shall, immediately following the Master Association Board's demand, reimburse the Master Association for the cost thereof, together with a charge of fifteen percent (15%) of the initial yearly premium to compensate the Master Association Manager for the administrative burden incurred. If such party fails to obtain insurance required in accordance with Section 6.4, the Master Association Board shall have the right to restrain the commencement or continuance of any construction on the Resort by any such party until the

insurance is obtained. The amount due to the Master Association Board for obtaining insurance and the administrative charge to compensate the Master Association Manager shall bear interest at the Agreed Rate until paid. The amount due may become a lien on such party's interest in the Resort under Article 10 below.

6.9 Waiver of Subrogation. Each Master Association Member releases and relieves the other Master Association Member, the Master Association, the Master Association Manager and any Mortgagee holding a first priority Mortgage against the Hotel, and waives such Master Association member's right of recovery against the other Master Association Member, the Master Association, the Master Association Manager and such Mortgagee, for loss or damage arising out of or incident to insured perils or perils for which insurance is maintained in or about the Resort, whether or not such loss or damage is due to the negligence or the misconduct of a Master Association Member or its agents, employers, contractors, Permittees, any Unit Owner or its Permitted Users, the Master Association, the Master Association Manager or any such Mortgagee.

6.10 Indemnity. To the extent not covered by insurance maintained or required to be maintained under this Master Declaration, each Master Association Member and the Residential Association, shall indemnify, defend and hold each other Master Association Member, the Master Association, the Master Association Manager and the Hotel Manager harmless from and against any and all claims, damages, liabilities and expenses (including costs and attorneys' fees incurred in the defense of any claim) arising from the use or occupancy of the part of the Resort used or occupied by the indemnifying Master Association Member, or from the conduct of its business or from any activity, work or things done, permitted or suffered by it in or about the Resort, or by its Permittees (in the case of the indemnifying Master Association Member) or by the Unit Owners and/or their Permitted Users (in the case of the Residential Association). This provision shall not permit any person to be indemnified for claims, damages, liabilities and expenses arising from the negligence or willful misconduct of that person.

6.11 Talisker Lease. Notwithstanding anything in this Article VI to the contrary, in addition to the above insurance provisions, Hotel Owner shall comply with the insurance and restoration provisions of Section 9.1, Section 9.5, Section 9.6 and Section 9.7 of the Talisker Lease, to the extent not provided for in this Article 6, and shall name Lessor as an additional insured on the insurance policies required in this Article 6 and in the Talisker Lease.

Article 7.

THE MASTER ASSOCIATION

7.1 Creation of Master Association. In accordance with the Master Bylaws, Hotel Owner shall, no later than the date of the closing of escrow of the first Unit, form or cause to be formed the Master Association. The procedures for operating the Master Association shall be established by the Master Bylaws, with the allocation of votes for purposes thereof being as set forth in Section 7.3 below. Upon such incorporation and activation of the Master Association, the Master Association shall have the right to monitor all of Hotel Owner's and the Residential Association's rights and obligations under this Master Declaration in connection with the procuring and maintaining in effect at all times casualty and general commercial liability insurance policies for the Use Areas and as well as the allocation of proceeds or contributions to

be made by the Master Association Members pursuant hereto. As of the time the Master Association is incorporated and activated, Hotel Owner shall appoint the initial members to the Master Association Board, and thereafter the members of the Master Association Board shall be appointed in accordance with Section 7.3 below and the Master Bylaws.

7.2 Duties and Powers. Except as otherwise provided herein, the Master Association shall have the sole duty and power to: (a) enforce the provisions of this Master Declaration; and (b) carry out and perform the obligations of Hotel Owner and the Residential Association under this Master Declaration in the event they do not do so after providing prior written notice to Hotel Owner or Residential Association, as applicable.

7.3 Master Association Board – Voting Rights. The Master Association Board shall consist of three (3) members. Hotel Owner shall be entitled to appoint two (2) members of the Master Association Board and the Residential Association shall be entitled to appoint one (1) member of the Master Association Board for the terms set forth in the Master Bylaws. Each member of the Master Association Board shall be entitled to a single vote and each shall have the powers set forth in Section 8.1 below and Section 8.2 below. Each Unit Owner, by acceptance of a deed to such Unit Owner's Unit, acknowledges and agrees that: (i) the Residential Association is vested with the exclusive authority to represent and act on behalf of all of the Unit Owners as a member of the Master Association; and (ii) given the integrated nature of the hotel operations with the residential components of the Hotel, certain rights have been reserved and/or granted in this Master Declaration in favor of the Hotel Owner to accommodate the complex nature of the hotel operations within the Hotel, and each Unit Owner accepts such reservations and grants of rights in favor of the Hotel Owner for the benefit of the overall quality and operation of the Hotel. All membership rights and obligations relating to the Residential Association shall be undertaken by the Residential Association's representative on the Master Association Board, who shall be appointed by the Residential Association Board. Each Master Association Board member shall have the rights, duties, and obligations set forth in this Master Declaration, and the other Governing Instruments, as the same may from time to time be amended. Membership for the Hotel Owner shall be appurtenant to the Hotel and may not be separated therefrom. The Residential Association may not transfer its membership in the Master Association.

7.3.1 Matters Requiring Unanimous Vote. The following matters shall require the unanimous vote of the Master Association Board:

(a) Any amendment, modification or alteration of the Master Articles or the Master Bylaws;

(b) Any amendment to this Master Declaration which amends, modifies, changes or alters the voting rights of the members of the Master Association Board or the voting procedures of the Master Association Board;

(c) Any amendment to this Master Declaration or any exhibits hereto which amends, modifies, changes or alters the pro-rata proportions of the Master Association Expenses and the Shared Expenses that are to be allocated to and paid by Hotel Owner and/or the Residential Association under Article 10 below;

(d) Any amendment to this Master Declaration which amends or alters Section 3.2.4 hereof or any act that requires a vote under Section 3.2.4 of this Master Declaration;

(e) Any amendment to this Master Declaration which amends, modifies, changes or alters the rights or duties of the Master Association Board; and

(f) Any amendment to this Master Declaration which amends, modifies, changes or alters the easement rights granted to, and has a material adverse effect on, the Unit Owners.

7.3.2 Matters Not Requiring Unanimous Vote. Any matter that is subject to the approval of the Master Association Board that is not one that requires a unanimous vote of the Master Association Board under Section 7.3.1 above shall be deemed approved by the Master Association Board if approved by a majority of the Master Association Board.

7.3.3 Ownership Interests in the Master Association. All agreements and determinations lawfully made by the Master Association in accordance with the voting procedures established herein, or in the Master Bylaws, shall be deemed to be binding on all Master Association Members.

7.4 Use of Master Association Manager as Agent. The Master Association Board, on behalf of the Master Association, shall enter into the Master Association Management Agreement with the Master Association Manager providing the Master Association Manager's performance of the day-to-day operation of the Master Association and other activities on behalf of the Master Association as described more fully in Articles 8 and 9 below. The term of the Master Association Management Agreement shall be determined by the Master Association Board, but in any event shall not exceed the maximum term allowed under applicable law, and shall be terminable by the Master Association, acting through the Master Association Board, pursuant to the procedures set forth herein. The fees, costs and/or expenses charged to or otherwise incurred by the Master Association under the Master Association Management Agreement shall be reasonably apportioned by the Master Association Board as a Master Association Expense and assessed to the Master Association Members in accordance with Article 10 below.

7.5 Transfers.

7.5.1 Disclosures. Each Unit Owner shall, as soon as practicable after written request from the prospective purchaser but in all cases before transfer of title to a Unit or execution of a real property sales contract therefor, provide the following to the prospective purchaser:

(a) copies of this Master Declaration, the Master Articles, the Master Bylaws and the Hotel Rules and Regulations, the Residential Declaration, the Residential Articles and the Residential Bylaws; and

(b) copy of the most recent financial statement distributed to the Master Association Members as provided below.

7.5.2 File Maintenance. The Master Association shall maintain, and, within ten (10) business days of receipt of a written request therefor shall make available to a Unit Owner a copy of the items specified in Section 7.5.1 above. The Master Association may charge a fee for this service, which fee shall not exceed the Master Association's reasonable cost to collate and reproduce the requested items.

7.5.3 Transfer Fees. The Master Association shall have the right to collect a fee in connection with a transfer of title to, or of any other interest in any Unit to cover its reasonable costs incurred in connection therewith, including, without limitation: (a) a fee equal to the Master Association's actual cost to change its records to reflect such transfer, and (b) the fee authorized by Section 7.5.2 above. The Master Association Board may establish a schedule of fees based on its reasonable estimate of the Master Association's cost to perform such services and may impose such fees on the basis of such estimate. In the event such schedule is established, then the fees set forth therein shall conclusively be presumed to satisfy the requirements of Section 7.5.2 above and this Section 7.5.3.

7.5.4 Transfer Information. Concurrently with the consummation of any transfer of any Unit, or within forty-five (45) days thereafter, the transferee shall notify the Master Association in writing of such transfer. Such notification shall set forth: (a) the name of the transferee and its Mortgagees; (b) the legal description of the Unit being transferred; (c) the transferee's and the Mortgagees' mailing addresses; and (d) the date of the closing of the transfer. Before the receipt of such notification, any and all communications required or permitted to be given by the Master Association, the Master Association Board or the Master Association Manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor.

7.5.5 No Effect. Nothing in this Section 7.5 shall be construed as affecting the validity of title to any property transferred in violation of this Section 7.5 or the lien of any deed of trust encumbering such property.

7.6 Limitation on Liability of Officers and Directors.

7.6.1 Good Faith Actions. No director, officer, committee member, employee or agent of the Master Association shall be liable to the Residential Association, any Unit Owner, Hotel Owner, or their respective Permitted Users or Permittees or any other person (including, without limitation, the Master Association) for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of any agent of the Master Association (including the Master Association Manager) if such agent has acted in good faith and in a manner that such agent reasonably believed to be in the best interests of the Master Association. Notwithstanding the duty of Hotel Owner to maintain and repair Use Areas under this Master Declaration, Hotel Owner shall not be liable to Unit Owners, the Residential Association, the Master Association Members, or their respective Permitted Users or Permittees or any other person, for injury or damage caused by actions taken in good faith under this Master Declaration. All users of any portion of the Development Land do so at their own risk.

Article 8.
POWER AND DUTIES

8.1 Powers and Duties of the Master Association. The Master Association shall have all the powers of a Utah nonprofit corporation, subject only to such limitations on the exercise of its powers as are established by law or set forth in the Master Articles, the Master Bylaws or this Master Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Master Association under this Master Declaration, the Master Articles or the Master Bylaws, and to do and perform any act that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Master Association. The Master Association shall be governed by the Master Association Board as provided in Article 7 above. All other rules and regulations of the Master Association Board shall be governed by the Master Articles and Master Bylaws upon incorporation of the Master Association. Subject to the limitations set forth in this Master Declaration, the Master Articles, the Master Bylaws or the laws of the State of Utah as to actions which must be authorized or approved by the Master Association Members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Master Association shall be controlled by, the Master Association Board.

8.2 Powers and Duties of the Master Association Board. Without limiting the generality of Section 8.1 above, but subject to the same limitations, it is hereby expressly declared that, in addition to the other powers and duties of the Master Association Board provided in this Master Declaration and elsewhere in the Master Articles and Master Bylaws, the Master Association Board shall specifically have the following rights and powers:

8.2.1 Designate Officers. The power and the duty to select, appoint and remove the officers, agents and employees of the Master Association, prescribe such powers and duties for them as are not inconsistent with applicable law, the Master Articles, the Master Bylaws or this Master Declaration, and, subject to the provisions of the Master Bylaws, fix their compensation.

8.2.2 Management and Control. The power and the duty to conduct, manage and control the affairs and business of the Master Association, and to make such rules and regulations as they deem best and as are not inconsistent with applicable law, any applicable governmental requirements or this Master Declaration, the Master Articles and the Master Bylaws.

8.2.3 Principal Office. The power but not the duty to change the principal office for the transaction of the business of the Master Association from one location to another within the County and to designate a place therein for the holding of any membership meeting or meetings.

8.2.4 Incur Indebtedness. The power but not the duty to borrow money and incur indebtedness, on a short-term, unsecured basis, for the purposes of the Master Association, and to cause to be executed and delivered for and in the name of the Master Association, promissory notes, bonds, debentures, pledges, or other evidences of debt and security therefor;

provided, however, that no such borrowing of money or incurring of indebtedness shall result in any mortgage, deed of trust or other encumbrance on the Resort or any portion thereof.

8.2.5 Insurance.

(a) Obtain and Maintain Insurance. The power and the duty to obtain and maintain in force the insurance required to be obtained by the Master Association under Article 6 above and such other insurance as the Master Association Board shall deem necessary or expedient to carry out the functions of the Master Association as set forth in this Master Declaration, the Master Articles and the Master Bylaws. Every policy of insurance obtained by the Master Association, whether or not required to be obtained pursuant to the provisions of this Master Declaration, shall expressly waive any and all rights of subrogation against Hotel Owner, its representatives and employees, the Master Association Board, the Master Association Manager and all Unit Owners. The Master Association Board and Hotel Owner, jointly are granted full right and authority to compromise and settle any claim or endorse any claim by legal action or otherwise and to execute releases in favor of any insurer, as well as the right to disburse the insurance proceeds for the reconstruction, repair and restoration of the Use Areas in any manner permitted by this Master Declaration.

(b) Prepare and Distribute Insurance Information. The Master Association shall prepare and distribute to the Master Association Members a summary of the Master Association's property, liability, earthquake (if any), flood and fidelity insurance policies, which shall be distributed to its Members within sixty (60) days preceding the beginning of the Fiscal Year.

8.2.6 Utilities. The power and the duty to provide or cause Hotel Owner to provide water, sewer, electrical and gas and other necessary utility services to the Resort.

8.2.7 Cost-Sharing Arrangements. The power, but not the duty, to enter into cost-sharing arrangements with owners of land located outside of the Resort with respect to acts or functions to be performed by the Master Association under this Master Declaration; provided that the Master Association is benefited by such arrangements. In such case, the Master Association Board shall include the cost incurred as a result of such arrangement as a Master Association Expense as the Master Association Board may deem appropriate.

8.2.8 Expenses. The power and the duty to determine and notify the Master Association Members of the amount of the Master Association Expenses and Shared Expenses to be assessed against them as provided in Article 10 below and the power and duty to enforce the collection of Master Association Expenses and Shared Expenses by foreclosure of any lien created under this Master Declaration and/or by other appropriate legal action.

8.2.9 Enforcement. The power and the duty to enforce the provisions of this Master Declaration, the Master Articles, Master Bylaws, the Hotel Rules and Regulations and the provisions of any agreement to which the Master Association is a party; provided, however, that at no time shall the Master Association, with respect to amounts (including, without limitation, any assessments to the Master Association Members under Article 10 below)

owed to the Master Association, impose a rate of interest in excess of the rate of interest then permitted by law to be charged.

8.2.10 Power to Levy and Assess Fines. The power to levy and assess fines against any Unit Owner who violates, or whose Permitted Users violate, or against the Residential Association, if it or its Members violate, this Master Declaration. Upon notice to the Unit Owners and the Residential Association, the Master Association Board may establish a schedule of fines for individual offenses and/or continuing offenses, which schedule shall thereafter govern the amount of the fines to be levied, until such schedule is modified or repealed by the Master Association Board. Fines may be levied for each offense, and, once levied, each such fine shall become an assessment against such Unit Owner's interest in the Resort. Any Unit Owner against whom such a fine is levied or the Residential Association if such a fine is levied against it, shall pay such fine to the Master Association within ten (10) business days after such levy. The Master Association Board shall be entitled to take any legal action or employ any remedies set forth hereunder or permitted by law to enforce the payment of such fines.

8.2.11 Square Footage/Total Entitlement Monitoring. The power to monitor the square footage of the Hotel and the Units to ensure that they do not exceed the maximum required footage allowed under the relevant governmental requirements.

8.2.12 Contract and Make Payments. The power and the duty to contract and pay for Master Association Expenses. Withdrawal of funds from the Master Association's accounts may be made by any individual or individuals authorized by the Master Association Board to make such withdrawals.

8.2.13 Employment of Agents. The power, but not the duty (except as to the Master Association Manager, in which case the Master Association Board has both the power and the duty) to employ the services of any person or entity to manage and conduct the business of the Master Association, and upon such conditions as are deemed advisable by the Master Association Board, to delegate to such person or entity any of its powers.

8.2.14 Taxes. The power to pay any taxes and governmental assessments which are or could become a lien on the property of the Master Association.

8.2.15 Discipline. The power but not the duty to initiate and execute disciplinary proceedings against Hotel Owner, the Residential Association or Unit Owners and their Permitted Users for violations of the provisions of this Master Declaration, the Master Articles, Master Bylaws or the Hotel Rules and Regulations.

8.2.16 Periodic Review of Financial Condition. The power and duty to do all of the following:

(a) Review a current reconciliation of the Master Association's General Account on at least a quarterly basis;

(b) Review a current reconciliation of the Hotel Owner's Reserve Account for Master Reserve Expenses on at least a quarterly basis;

(c) Review, on at least a quarterly basis, the current Fiscal Year's actual Master Association revenues and expenses compared to the current Fiscal Year's Master Association Budget;

(d) Review the latest account statements prepared by the financial institutions where the Master Association has its General Account; and

(e) Review an income and expense statement for the Master Association's General Account on at least a quarterly basis.

8.2.17 Master Association Budget and Financial Statements. The power and duty to cause to be regularly prepared financial statements for the Master Association and copies thereof to be distributed to the Master Association Members:

(a) Master Association Budget. A Master Association Budget shall be distributed to the Master Association Members not less than sixty (60) days before the beginning of each Fiscal Year, except the first Fiscal Year with respect to which the Master Association Budget shall be distributed as soon as reasonably possible. The Master Association Budget shall contain at least the following information:

(i) Estimated revenue and expenses on an accrual basis;

(ii) A summary of the total cash reserves currently available for replacement or major repair of the Non-Hotel Use and Support Areas and for contingencies, which summary shall be based on the most recent review or study by Hotel Owner conducted in accordance with Section 8.3 below and which shall include all of the following:

(1) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Non-Hotel Use and Support Areas;

(2) As of the end of the Fiscal Year for which the study is prepared:

(A) the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain such major components;

(B) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain such major components; and

(C) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Hotel Owner from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts

expended for the direct and indirect cost of repair of construction or design defects.

(3) The percentage that the amount determined for purposes of Section 8.2.17(a)(ii)(2)(B) equals the amount determined for purposes of Section 8.2.17(a)(ii)(2)(A).

(4) An itemized estimate of the remaining life of each major component of the Non-Hotel Use and Support Areas and the methods of funding to defray Master Reserve Expenses.

(5) A general statement setting forth the procedures used by the Hotel Owner in the calculation and establishment of Master Reserve Expenses.

(6) A statement as to whether the levy of one or more Master Special Assessments will be required to repair, replace, or restore any major component of the Non-Hotel Use and Support Areas or to provide adequate reserves therefor.

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

8.2.18 Litigation. The power and the duty to prosecute or defend, in the name of the Master Association, any action affecting or relating to the Master Association and any action in which the Master Association Members have an interest.

8.2.19 Delegation of Powers. Except as required under Section 7.4 above, the power but not the duty to delegate any of its powers hereunder to other persons, including, without limitation, committees, officers, employees, Hotel Owner and the Master Association Manager.

8.2.20 Other Services. The power but not the duty to institute any other services for the benefit of the Master Association Members deemed advisable by the Master Association.

8.2.21 Minutes, Agenda and Policies. The power and duty to provide each Master Association Member with: (i) a copy of the minutes of Master Association Board meetings within sixty (60) days following the date of such meeting; and (ii) a list of the orders of business to be considered at the annual meeting of Master Association Members not later than ten (10) days prior to the date for such meeting.

8.2.22 Professional Advisors. The power to obtain and pay the cost of professional counsel necessary or proper in carrying out its duties and obligations hereunder, including, without limitation, the enforcement of this Master Declaration, the Master Bylaws and the Hotel Rules and Regulations.

8.2.23 Bank Accounts. The power and duty to establish and maintain the Master Association's General Account(s) and to deposit therein all funds collected by the Master Association from the Master Association Members in connection with its rights and duties hereunder. All Master Association funds shall initially be deposited in the Master Association's General Account(s). Funds deposited in the Master Association's General Account(s) may be used by the Master Association only for the purposes for which such funds have been collected.

8.2.24 Levy and Collection of Assessments and Other Charges. The Master Association Board shall have the power and duty to determine, levy, collect and enforce assessments against the Master Association Members in the manner provided in Articles 8 and 10 hereof in order to pay the Master Association Expenses, as allocated pursuant to the Master Association Budget, and to do all things necessary to enforce each Master Association Member's obligations hereunder.

8.2.25 Hold Title and Make Conveyances. The Master Association Board shall have the power to acquire, hold title to and convey, with or without consideration, real and personal property of the Master Association and interests therein, including but not limited to, easements.

8.3 Reserves / Reserve Study / Capital Improvements. At least once every three (3) years, the Hotel Owner shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components of the Non-Hotel Use and Support Areas as part of a study of the Reserve Account requirements for the Non-Hotel Use and Support Areas if the current replacement value of the major components of the Non-Hotel Use and Support Areas is equal to or greater than one-half of the gross Master Association Budget (but excluding the Reserve Accounts for the Non-Hotel Use and Support Areas for that period). The Hotel Owner (in consultation with the Master Association) shall review such study and shall consider and implement necessary adjustments to the analysis of the Reserve Account requirements for the Non-Hotel Use and Support Areas as a result of such review. The study required by this Section 8.3 shall at a minimum include:

(i) Identification of the major components of the Non-Hotel Use and Support Areas which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(ii) Identification of the probable remaining useful life of the components identified in Section 8.3(i) above as of the date of the study;

(iii) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in Section 8.3(i) above during and at the end of their useful life; and

(iv) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in Section 8.3(i) above during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

Hotel Owner (in consultation with the Master Association) shall have the power and duty to establish and maintain the Reserve Account for the Non-Hotel Use and Support Areas and to deposit therein all funds collected by the Master Association from the Residential Association in connection with its rights and duties hereunder. All funds collected from the Residential Association shall initially be deposited in such Reserve Account. Funds deposited in such Reserve Account may be used by the Hotel Owner only for the purposes for which such funds have been collected. All amounts collected for Master Reserve Expenses shall be deposited in such Reserve Account. The Hotel Owner shall keep accurate books and records reflecting the amount in such Reserve Account. Funds deposited in such Reserve Account shall be held in trust and, except in an emergency, may be used by the Hotel Owner only for the specific purposes for which such funds have been collected (in consultation with the Master Association). Funds held in such Reserve Account and used in an emergency shall be replaced by deposit in such Reserve Account of amounts received by the Master Association Members for such purpose (including pursuant to assessment if necessary) as soon as practicable after the date upon which emergency arose, but in no event later than the end of the Fiscal Year immediately following the Fiscal Year in which such emergency occurred. Interest, if any, earned on funds in such Reserve Account shall be accumulated therein and shall be used only for payment of Master Reserve Expenses and any taxes incurred by the Hotel Owner as a result of the earning of such interest.

Hotel Owner (in consultation with the Master Association) shall have the power and the duty to make capital expenditures for and on behalf of the Master Association, provided, however, that the Hotel Owner shall not incur aggregate unbudgeted expenditures for capital improvements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Master Association for that Fiscal Year.

Because the allocations may differ with respect to costs incurred in connection with different major components of the Non-Hotel Use and Support Areas that are to be maintained, replaced or repaired using funds from such Reserve Account, the Hotel Owner (in consultation with the Master Association) may provide for specific segregated reserves for specific major components of the Non-Hotel Use and Support Areas (with all items or components to which a particular reserve relates being items or components having the same associated allocations). In such case: (i) each such reserve shall be separately identified on the Master Association Budget (along with the allocation relating thereto), and (ii) amounts in each reserve shall be available only for payment of costs incurred in connection with the major component(s) to which the applicable reserve relates. The Hotel Owner shall fund its allocation of the deposits required to be made into the Reserve Account for the Non-Hotel Use and Support Areas on a quarterly basis in advance (i.e. at the beginning of the first quarter of a Fiscal Year and at the beginning of each of the three following quarters, the Hotel Owner shall deposit into the such Reserve Account 25% of the annual reserve deposits required to be made by the Hotel Owner for such Fiscal Year).

8.4 Hotel Rules and Regulations. Hotel Owner shall have the power and duty to adopt, amend, supplement, enforce and repeal the Hotel Rules and Regulations (provided the same does not constitute an act that would require the vote of the Master Association Board under Section 3.2.4 above). A copy of the Hotel Rules and Regulations (and each amendment thereto) shall be given to the Master Association, each Unit Owner and the Residential Association not less than ten (10) business days before said Hotel Rules and Regulations (or, as applicable, an amendment thereto) may be deemed to be in full force and effect. In the event of any conflict between the Hotel Rules and Regulations and the provisions of this Master Declaration, however, the provisions of this Master Declaration shall govern.

8.5 Occupancy of Units by Occupants.

(a) A Unit Owner shall be entitled to enter into Occupancy Agreements for its Unit subject to any restrictions contained in the Governing Instruments and applicable laws for any period of time (including as short as one day); provided, however, any arrangement for the occupancy of any Unit other than an ADA Unit or an AHU Unit owned by the Hotel Owner shall be pursuant to an Occupancy Agreement that shall: (i) be in writing; (ii) provide that the Occupancy Agreement is subject to the Governing Instruments and applicable laws; (iii) provide that any failure to comply with any provisions of any of the Governing Instruments or applicable laws shall be a default under the terms of the Occupancy Agreement; and (iv) provide that it is an occupancy agreement providing the Occupant with only an occupancy right and is not a lease granting a leasehold or tenancy interest or other interest in real estate. Any Occupancy Agreement for a Unit shall, whether or not it complies with the requirements of the immediately preceding sentence, be subject to the Governing Instruments and applicable laws. Any breach of any of the foregoing by the Occupants shall, whether or not so stated in such Occupancy Agreement, constitute a breach by the Occupant under such Occupancy Agreement. Occupants under Occupancy Agreements shall be considered "guests" or "lodgers" rather than "renters", "lessees" or "tenants" as such terms are used under Utah law. A copy of each such Occupancy Agreement shall be provided to each of the Master Association and the Hotel Owner (with a copy to the Hotel Manager). Even if, despite the foregoing requirements of this paragraph, no written Occupancy Agreement is executed in any circumstance in which such a written Occupancy Agreement is required hereunder, all of the terms of this Master Declaration relating to Occupancy Agreements and Occupants thereunder shall nonetheless apply equally to the occupancy of such an Occupant to the same extent as if the required written Occupancy Agreement had been executed. However, an Occupancy Agreement shall not be required with respect to the occupancy of a Unit by the Unit Owner of such Unit (or by the family members and/or guests of such a Unit Owner who are not providing any consideration for occupancy).

(b) The breach or violation of any of the Governing Instruments or applicable laws by any Occupant under an Occupancy Agreement may disturb, annoy, disrupt, interfere with or otherwise adversely affect other Unit Owners, other Occupants and Hotel guests residing in or using the Resort (or any portions thereof). Accordingly, by entering into any Occupancy Agreement, the related Unit Owner(s) shall, without any further action required by such Unit Owner(s) be deemed to:

(i) acknowledge and agree that each of the Hotel Owner and the Master Association is and shall be a third-party beneficiary under such Occupancy Agreement and shall be entitled to, acting alone and in its own name, enforce (including by eviction of the Occupant, in the same manner as any other Hotel guest) the requirements therein (whether expressly stated therein or required by this Section 8.5) that the Occupant comply with the Governing Instruments and applicable laws;

(ii) assign and transfer to each of the Hotel Owner and the Master Association the right under such Occupancy Agreement to, acting alone and in its own name, enforce (including by eviction of the Occupant, in the same manner as any other Hotel guest) the requirements therein (whether expressly stated therein or required by this Section 8.5) that the Occupant comply with the Governing Instruments and applicable laws; and

(iii) grant to each of the Hotel Owner and the Master Association the irrevocable power of attorney (which power is coupled with an interest) to, acting alone and in the name of such Unit Owner(s), enforce (including by eviction of the Occupant, in the same manner as any other Hotel guest) the requirements therein (whether expressly stated therein or required by this Section 8.5) that the Occupant comply with the Governing Instruments and applicable laws.

(c) No Unit may be used or occupied for any purpose that, under applicable laws as are then in effect, is a "lodging", "hotel" or "transient occupancy" use (as defined and/or described in such applicable laws), except in compliance with all applicable laws. Each Unit Owner, by offering or otherwise making its Unit available, directly or indirectly through an agent or other person, for any such purpose agrees to fully comply, and to cause any such agent or other person to fully comply, with all requirements of applicable law relating to such use, including without limitation any "transient occupancy" ordinance or other law then in effect in the City. Such compliance shall include, without limitation: qualification; registration; display of qualification, registration or other certificates and/or notices; itemization of taxes on rental or occupancy agreements, invoices and statements; collection of taxes; occupancy and tax reporting; remittance of taxes and delivery of reports; and any other requirements imposed on such use by applicable laws (as the same may change from time-to-time).

8.6 Use of Hotel Name. During all periods during which the Hotel is operated and identified as a certain brand of hotel, in whole or in part, a Unit Owner of any Unit other than an ADA Unit or an AHU Unit owned by the Hotel Owner may use the names or marks of the Hotel Company only in connection with the promotion or marketing of its Unit for sale or occupancy, and subject to the following:

(i) A Unit Owner and its agents and representatives may use once but only once the Brand Name, but none of the other names or marks of the Hotel Company, in any document (including a website or equivalent offering on the internet) promoting the re-sale of the Unit and such use shall be limited to: (1) stating that the Resort includes a hotel operated under the Brand Name; or (2) identifying the geographic location of the Unit.

(ii) When used in printed materials (including a website or equivalent offering on the Internet), the Brand Name: (i) may appear in word mark format only (i.e., may not be presented in stylized form or with any design elements); (ii) may not appear prior to the first appearance of the name of the Resort in the materials; (iii) may not appear in the title or heading of the materials; and (iv) may not be highlighted or set off from the text of the materials in any manner, including, without limitation, bold face, italics, or font size that exceeds or is smaller than surrounding text.

(iii) A Unit Owner and its agents and representatives shall promptly upon notice to the Unit Owner modify, in accordance with the Hotel Company's instruction, or cease any use of the Brand Name that the Hotel Company, in its sole discretion, determines does not comply with this trademark usage covenant.

(iv) The Hotel Company may terminate or modify the permitted use of its Brand Name under this covenant at any time as the Hotel Company deems appropriate in its sole discretion, and the Hotel Company shall be an express third-party beneficiary of the provisions of this Section 8.6, and shall have the right to sue to enforce the terms of this covenant against any Unit Owner. If at any time Hotel Company terminates the general authorization to operate the Hotel under a Brand Name, all rights of the Unit Owners to use the Brand Name shall automatically terminate. Neither the Master Association nor the Residential Association may modify, supplement or terminate this trademark usage covenant without the then current Hotel Company's express, written consent.

(v) None of the foregoing shall constitute a license to any Unit Owner of any trademarks or service marks owned by the Hotel Company.

Article 9.
MANAGEMENT OF MASTER
ASSOCIATION

9.1 Master Association Manager, Powers and Limitations. As contemplated in Section 8.2.13 and Section 8.2.19 above, the Master Association Manager shall be employed by the Master Association Board and charged with the duty and authority of operating the Master Association and carrying out the duties and powers of the Master Association Board on a day-to-day basis in accordance with the provisions of this Master Declaration. The Master Association Manager shall have such other powers and authority as expressly vested in it by the Master Association Board pursuant to the Master Association Management Agreement; provided, however, that such powers and authority so vested in the Master Association Manager shall not exceed the authority of the Master Association Board as set forth in Section 8.2 above.

9.2 Term of Master Association Manager. The term of any Master Association Management Agreement shall be in accordance with Section 7.4 above and Section 9.3 below.

9.3 Termination of Master Association Manager. Any person serving as Master Association Manager shall serve until:

(a) Written notice of resignation by the Master Association Manager is delivered to the Master Association Board, which notice shall specify an effective date of resignation which shall not be earlier than thirty (30) days after the date of delivery of the notice;

(b) Expiration of the term of the Master Association Management Agreement;

(c) The Master Association Manager ceases to function due to death or incapacity (if a natural person) or incapacity, dissolution or insolvency (if an entity); or

(d) Removal of the Master Association Manager by the Master Association Board as provided in Section 9.8 below.

9.4 Action by Master Association Board. Upon occurrence of any of the events set forth in Section 9.3 above requiring selection of a new Master Association Manager, the Master Association Board shall have the duty to call a meeting for the purposes of replacing the Master Association Manager. The meeting shall be called by delivery of written notice to the Master Association Members not later than forty-five (45) days after occurrence of the event requiring selection of a new Master Association Manager and the meeting shall be held not earlier than ten (10) days nor more than thirty (30) days after written notice calling the meeting is delivered to the Master Association Members. The notice shall state the date, time and place of the meeting. The meeting shall be held at the principal office of the Master Association, or, if that is not feasible, at a location within the Resort.

9.5 Commencement of Service. The Master Association Manager shall commence to serve on the date set forth by the Master Association Board.

9.6 Notice of Selection of Master Association Manager. Following selection of a new Master Association Manager, a written notice setting forth the identity of the new Master Association Manager and making reference to this Master Declaration shall be given to the Master Association and each Master Association Member by the Master Association Board. The failure to give the notice shall not invalidate the selection of the new Master Association Manager or diminish the power and authority of the new Master Association Manager.

9.7 Release of Former Master Association Manager. Upon completion of the assignment or transfer of the duties of the resigning or terminated Master Association Manager, the resigning or terminated Master Association Manager shall be released from all further obligations and liabilities as Master Association Manager, except those liabilities, if any, arising out of acts or omissions occurring before the date of assignment or transfer.

9.8 Removal of Master Association Manager. Except as provided below, the Master Association Manager may be removed as Master Association Manager for cause only by unanimous vote of the Master Association Board.

9.9 Election of Interim Master Association Manager. If a vacancy should ever arise in the position of Master Association Manager which is not filled by action of the Master Association Board under Section 9.4 above, the Master Association Board shall be entitled to meet and select an interim Master Association Manager. At least forty-eight (48) hours' notice

of the time and place of the meeting shall be given to all Master Association Members. Selection of an interim Master Association Manager shall be made by a majority vote of the Master Association Board. The person selected as interim Master Association Manager shall be authorized to exercise all the duties and responsibilities of Master Association Manager, but shall only be authorized to act until the selection of a new Master Association Manager under Section 9.4 above. Upon selection of an interim Master Association Manager, the interim Master Association Manager or the Master Association Board shall immediately give at least ten (10) days' prior written notice to all Master Association Members of the time and place of a meeting for the purpose of selecting a new Master Association Manager. The selection shall be carried out under the procedures set forth in Section 9.4 above, except that the time limits set forth in Section 9.4 above for the calling of the meeting shall not be applicable.

Article 10.
MASTER ASSOCIATION EXPENSES,
COMMON AREA EXPENSES

10.1 Master Association Expenses. One hundred percent (100%) of the Master Association Expenses shall be paid by the Master Association as and when due. Unless a different allocation is set forth in this Master Declaration (including without limitation in Exhibit C-2 attached hereto) or is otherwise approved by the Master Association Board and reflected in the minutes of the Master Association and in a written, recorded amendment to this Master Declaration, all Master Association Expenses shall be funded by allocating the same between Hotel Owner and the Residential Association in amounts proportionate to the ratios of the aggregate square feet of: (a) the Hotel Areas (with such proportion being allocated to Hotel Owner), and (b) the Units (with such proportion being allocated to the Residential Association), in each case as such square footages may exist from time to time and which shall initially be as set forth in Exhibit D attached hereto.

10.2 Shared Expenses.

(a) Master Reserve Expenses. The Master Reserve Expenses shall be funded by Hotel Owner and the Residential Association on a monthly basis with the obligation to do so allocated (unless a different allocation is approved by the Master Association Board and reflected in the minutes of the Master Association and the same is set forth in a written amendment to this Master Declaration) between Hotel Owner and the Residential Association in amounts proportionate to the ratios of the aggregate square feet of: (a) the Hotel Areas (with such proportion being allocated to Hotel Owner), and (b) the Units (with such proportion being allocated to the Residential Association), in each case as such square footages may exist from time to time and which shall initially be as set forth in Exhibit D attached hereto.

(b) Master Operating Expenses. One hundred percent (100%) of the Master Operating Expenses shall be advanced by Hotel Owner or the Master Association; provided, however, the Residential Association and Hotel Owner shall reimburse the Master Association for their respective allocated shares of any amounts advanced by the Master Association on a monthly basis. Hotel Owner shall receive a reasonable overhead and administrative allowance with respect to any advance of Master Operating Expenses made by Hotel Owner. For all purposes hereof, all Master Operating Expenses (whether advanced by Hotel Owner or Master

Association) shall be allocated (unless a different allocation is approved by the Master Association Board and reflected in the minutes of the Master Association and the same is set forth in a written amendment to this Master Declaration) between Hotel Owner and the Residential Association in the manner described in Exhibit C-2 attached hereto. For any advance of Master Operating Expenses by the Master Association, each of Hotel Owner and the Residential Association shall reimburse the Master Association for such advance in accordance with the allocation of such expenses made pursuant to Exhibit C-2. For any advance of Master Operating Expenses by Hotel Owner, Hotel Owner shall not be required to make any additional payment therefor to the Master Association, and the Residential Association shall pay its allocated share of such Master Operating Expenses (calculated in accordance with Exhibit C-2) to the Master Association, and the Master Association shall in turn pay the amount of such allocated share to Hotel Owner as reimbursement to Hotel Owner of the Residential Association's allocated share of such Master Operating Expenses.

(c) Master Utility Expenses. Hotel Owner shall be separately charged and shall separately pay for all utilities charges that are incurred in the operation of the Hotel Areas and any of the ADA Units and the AHU Units that are owned by the Hotel Owner, and the Residential Association shall be separately charged and shall separately pay for all utilities that are applicable to all of the other Units and any appurtenant Balcony/Patio Areas. The Residential Association shall be responsible for allocating the Residential Association's utility charges to the individual Unit Owners. Hotel Owner shall cause the Hotel Areas and the Units to be separately metered at Hotel Owner's sole expense; provided, however, that the ADA Units and the AHU Units that are owned by the Hotel Owner shall be metered with the Hotel. All utility expenses for the Non-Hotel Use and Support Areas shall be a Master Operating Expense and shall be allocated between Hotel Owner and the Residential Association in accordance with Section 10.2(b) above.

(d) Shared Hotel Amenities and Services Expenses. Hotel Owner shall, separately account for all Shared Hotel Amenities and Services Expenses. All Shared Hotel Amenities and Services Expenses shall be allocated between Hotel Owner and the Residential Association in accordance with the applicable allocations described in Exhibit C-2 attached hereto. The Residential Association shall pay its allocated share of Shared Hotel Amenities and Services Expenses (calculated in accordance with Exhibit C-2) to the Master Association, and the Master Association shall in turn pay the amount of such allocated share to Hotel Owner as reimbursement to Hotel Owner of the Residential Association's allocated share of Shared Hotel Amenities and Services Expenses.

(e) Certain Structural and Mechanical Support Expenses. Any and all costs and expenses that the Hotel Owner or the Master Association incurs in providing Structural and Mechanical Support that are not Master Operating Expenses, Master Reserve Expenses or Master Utility Expenses shall be allocated between Hotel Owner and the Residential Association in accordance with the applicable allocations described in Exhibit C-2 attached hereto. For any advance of such costs and expenses by the Master Association, each of Hotel Owner and the Residential Association shall reimburse the Master Association for such advance in accordance with the allocation of such expenses made pursuant to Exhibit C-2. For any advance of such costs and expenses by Hotel Owner, Hotel Owner shall not be required to make any additional payment therefor to the Master Association, and the Residential Association shall pay its

allocated share of such costs and expenses (calculated in accordance with Exhibit C-2) to the Master Association, and the Master Association shall in turn pay the amount of such allocated share to Hotel Owner as reimbursement to Hotel Owner of the Residential Association's allocated share of such costs and expenses.

10.3 Negligence and Misconduct. Notwithstanding the foregoing, each Master Association Member shall pay (without reimbursement by the Master Association) any Master Association Expense and/or Shared Expense that is incurred as the result of the negligence or misconduct of that Master Association Member or its Members or Permittees (or in the case of the Residential Association any Unit Owner or its Permitted Users).

10.4 Hotel Area. Except as otherwise provided in Section 10.2 above, one hundred percent (100%) of the costs and expenses necessary to operate and maintain as well as repair and replace the Hotel Areas (other than the Non-Hotel Use and Support Areas) and one hundred percent (100%) of the charges for water, electricity, sewer and any other utilities used or consumed therein, shall be paid by Hotel Owner.

10.5 Acknowledgment of Amount of Expenses. Hotel Owner and the Residential Association (as a Member of the Master Association and on behalf of the Unit Owners) acknowledge and agree that although Hotel Owner will have absolute control with respect to the determination of the amount of Master Reserve Expenses, the amounts thereof shall never be less than that amount necessary (and the Master Association Board shall always be required to approve budgets with no less than an amount of funding required in order) to repair and replace the major components of the Non-Hotel Use and Support Areas at the Resort Quality Standard. Notwithstanding the foregoing, in no event shall (i) an increase in the Master Reserve Expenses pursuant to this Section 10.5 exceed the amount permitted by application of Section 3.2.4(b) above, or (ii) Hotel Owner be required to expend funds other than those in the related Reserve Account for the repair and replacement of the Non-Hotel Use and Support Areas.

10.6 Commencement and Collection of Expenses. Except as expressly provided hereunder, monthly assessment of Shared Expenses and/or Master Association Expenses against the Master Association Members shall commence on the date of the closing of escrow for the sale of the first Unit (with the monthly assessment prorated for any portion of a month) unless the Master Association Manager chooses to assess Shared Expenses and/or Master Association Expenses less frequently than monthly, in which case the Master Association Members shall pay assessments of Shared Expenses and/or Master Association Expenses at such intervals as determined by the Master Association Manager. The Master Association Manager may estimate the amount of the Shared Expenses and/or Master Association Expenses due from the Master Association Members in advance of the Shared Expenses and/or Master Association Expenses being actually incurred and invoice the Master Association Members based on the estimate. In such case, the Master Association Manager shall submit to the Residential Association and Hotel Owner within one hundred twenty (120) days following the end of the Fiscal Year of the Master Association (or as soon thereafter as practical) a statement of the actual amount of the Shared Expenses and/or Master Association Expenses for such Fiscal Year showing each Master Association Member's share thereof. If payments made by a Master Association Member pursuant to such an estimate exceed the amount shown to be due on such statement, the Master Association Manager in its discretion shall either credit the Master Association Member the

excess amount against future assessments of Shared Expenses and/or Master Association Expenses, or return the excess amount to the Master Association Member. In addition, if the Master Association Manager is able to recover any delinquent amounts that were previously included in Shared Expenses and/or Master Association Expenses as a deficit, each Master Association Member shall be credited for that portion of the recovered amount previously paid by such Master Association Member against the next accruing payment of Shared Expenses and/or Master Association Expenses to be paid by such Master Association Member, provided such Master Association Member was not responsible for the deficit. If the payments previously made by a Master Association Member are less than the amount shown to be due, the Master Association Member, within ten (10) days following Master Association Manager's delivery of an invoice, shall pay to the Master Association Manager the balance due. If any payment by any Master Association Member is more than five (5) days delinquent, the Master Association Manager may impose a reasonable late charge, not to exceed five percent (5%) of the delinquent amount, in order to compensate the Master Association Manager for administrative time and expense required to pursue collection of such amount. Any payment due under this Master Declaration shall bear interest at the Agreed Rate from date of delinquency until paid.

10.7 Brand Affiliation Management Fee. Hotel Owner shall have the right to charge each Unit Owner (other than the Hotel Owner with respect to any ADA Unit or AHU Unit owned by the Hotel Owner), for the benefit of that Unit Owner, a Brand Affiliation Management Fee in an amount established pursuant to this Section 10.7. The Hotel Owner shall submit such charges to the Residential Association, which shall collect such charges from the appropriate Unit Owners and remit the same to the Hotel Owner. The Brand Affiliation Management Fee shall be used to pay the fees charged by the Hotel Manager: (i) for the use of its brand name at the Resort in strict accordance with applicable management and license agreements; (ii) for providing amenities and services including the Basic Services; (iii) for providing access to the A la Carte Services (determined by Hotel Owner or Hotel Manager in its sole discretion and available on a pay-per-use basis) to Unit Owners; (iv) for providing access to Hotel Manager's centralized services; and (v) for operating the Resort to the Resort Quality Standard. Neither the Residential Association nor any Unit Owner (other than the Hotel Owner with respect to any ADA Unit or AHU Unit owned by the Hotel Owner) may waive or otherwise escape liability for payment of the Brand Affiliation Management Fee by reason of the non-use (whether voluntary or involuntary) of any Unit or any portion of the Resort or any abandonment of the right to use same. The Brand Affiliation Management Fee, once implemented, may be adjusted once annually by Hotel Owner, in its sole discretion, such that the adjusted Brand Affiliation Management Fee shall not exceed the greater of: (a) the Indexed Brand Affiliation Management Fee; and (b) the Brand Affiliation Management fee multiplied by 1.035.

10.8 Right to Inspect Books. At any time during the term of this Master Declaration any duly authorized representative of Hotel Owner and/or the Residential Association, upon at least five (5) days' prior written notice to the other Master Association Member and the Master Association Manager and during reasonable business hours, may inspect at the Master Association's principal office the books and records of the Master Association Board and the Master Association pertaining to Master Association Expenses, and may cause an audit to be performed of the books and records, at the requesting party's sole expense; provided the books and records of the Master Association Board and the Master Association shall not be required to be audited more frequently than once during a calendar year. Any payments or reimbursements

determined to be due as a result of the audit shall be made within thirty (30) days after completion of the audit and written notice of the results shall be sent to the Master Association Members. No Master Association Member shall delay, reduce or set-off the payment of any assessment due pending an audit or because of any amount or credit that may be due such Master Association Member as a result of the audit. If the audit reveals that amounts assessed for Master Association Expenses differed from actual Master Association Expenses by more than two percent (2%) of the latter, then the party paying for such audit shall be reimbursed for the reasonable cost thereof by the Master Association as a Master Association Expense.

10.9 Payment of Real Property Taxes. Each Master Association Member shall pay, before delinquency, all Tax Assessments assessed against such Member's interest in and property at the Resort. In the event any real property taxes are separately assessed and billed by the County to the Hotel Owner, the Master Association, the Residential Association or a Unit Owner, the recipient of such bill shall be liable and responsible for payment therefor; provided, however, in the event that: (i) Hotel Owner is separately assessed and billed by the County for any Taxes allocated to the Non-Hotel Use and Support Areas and/or any of the Units (other than a Unit owned by the Hotel Owner), Hotel Owner shall be reimbursed by (x) the Master Association with respect to taxes on the Non-Hotel Use and Support Areas (in which event the amount of such reimbursement shall be allocated between the Hotel Owner and the Residential Association in the manner required by this Master Declaration for Shared Expenses), and (y) the Residential Association with respect to taxes on any Unit that is not owned by Hotel Owner, (ii) Master Association is separately assessed and billed by the County for any Taxes, the Master Association shall be reimbursed by the Master Association Members in the amounts allocable to each such Member for its share of such tax (in which event the amount of such reimbursement shall be allocated between the Hotel Owner and the Residential Association in the manner required by this Master Declaration for Shared Expenses), and (iii) the Residential Association is separately assessed and billed by the County for any Taxes on the Residential Association Property, the Residential Association shall be reimbursed by the Residential Association Members in the amounts allocable to each such Member for its share of such tax. In addition to the foregoing, a Unit Owner may receive a tax bill from the County for his or her Unit (in which case such Unit Owner shall pay the related Taxes).

10.10 Payments. Any assessment of Shared Expenses and/or Master Association Expenses or other amount due from a Master Association Member to the Master Association, together with interest and late charges, shall be paid within fifteen (15) days after Master Association Manager's delivery of an invoice therefor, unless due on demand or at an earlier time as may be provided in this Master Declaration. Unless otherwise mutually agreed upon, the Master Association shall invoice the Residential Association for Shared Expenses on a monthly basis and by procedures determined by the Master Association Manager. The priority of payment of any expense or obligation of the Master Association shall be paid in the following order: 1) to the Master Association Manager; 2) to Hotel Owner (as payment and/or reimbursement to Hotel Owner of any amount due and owing under this Master Declaration or otherwise); 3) to fund the Reserve Account for Non-Hotel Use and Support Areas; 4) to pay any other expense or obligation of the Master Association; and 5) to fund applicable working capital accounts of the Master Association.

10.11 Liens.

10.11.1 Master Association Members. There is hereby created a claim of lien, with foreclosure by advertisement and power of sale, on the property of each Master Association Member to secure prompt and faithful performance of each Master Association Member's obligations under this Master Declaration, including but not limited to, payment of Master Association Expenses or any other amount due from a Master Association Member levied under this Master Declaration, together with interest thereon at the Agreed Rate from the date such payment becomes Delinquent, and all late charges and costs of collection which may be paid or incurred by such Master Association Member in connection therewith, including reasonable attorneys' fees. The lien is perfected from and after the recording of this Master Declaration without the necessity of recording any notice of lien.

10.11.2 Notice. Any notice of lien filed in the official records of the County pursuant to Section 10.11.1 above shall contain the following information:

- (a) The name of the Master Association Member that owns the property which is subject to the lien;
- (b) A description of the property which is subject to the lien;
- (c) A statement of the amount due, including interest and late charges, as of the statement date; and
- (d) If the amount secured by the lien represents an amount paid by a Curing Entity, the name of the Curing Entity.

10.11.3 Security, Subordination and Default of a Lien. The lien shall secure the amount due from the Master Association Member. If the amount secured by the lien is in default and written notice has been given to the Master Association Member of the default and demand for payment made in respect thereof, then in addition to any other remedy available under applicable law, the lien may be foreclosed by the Master Association Manager or by any Curing Entity by action brought in any court of competent jurisdiction or foreclosure by advertisement and power of sale in accordance with the provisions of Utah Law applicable to foreclosure by advertisement and power of sale in mortgages and deeds of trust. In any such foreclosure, the Master Association Member shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Master Association hereby appoints Park City Title Company as trustee for the purpose of exercising the power of sale in connection with any non-judicial foreclosures hereunder; provided, however, the Master Association reserves the right to substitute and appoint a successor trustee as provided under applicable Utah Law. Each Master Association Member hereby conveys all of its right, title and interest in the Resort to such trustee, in trust, with a power of sale, for the sole purpose of securing each Master Association Member's obligations under this Master Declaration, including but not limited to the obligation to pay all assessments and/or other amounts due under this Master Declaration. The Master Association may, through its duly authorized agents, bid on the property subject to such lien at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Master Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Master Declaration, a first Mortgage as

provided for in Section 14.3 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the property.

10.11.4 Third Party Beneficiaries to Lien Rights. Hotel Owner is hereby declared to be a third party beneficiary of any and all lien rights set forth in this Section 10.11 that may accrue to the Master Association against the Residential Association.

10.12 Obligations to Pay Expenses. Any amount due, including interest, administrative charges and late charges, from a Master Association Member to the Master Association Manager or to a Curing Entity shall be the personal obligation of such Master Association Member at the time the charge is levied. No Master Association Member may exempt itself from payment of Shared Expenses and/or Master Association Expenses or any other amount due under this Master Declaration by waiver of the use or non-use of any of the Use Areas or abandonment of any property that is subject to this Master Declaration.

10.13 Other Remedies. In addition to any remedies that Hotel Owner and/or Master Association may be entitled to pursuant to this Article 10 for failure of any party to pay any assessments or other amounts due and owing to Hotel Owner and/or Master Association, Hotel Owner and Master Association shall each retain and have the right to exercise any and all other rights and remedies to which it may be entitled to under applicable law, including, but not limited to remedies at law and in equity.

10.14 Right to Cure. If any Defaulting Entity defaults in its obligation to pay its share of Master Association Expenses or any other amounts due under this Master Declaration, the Master Association must provide the Defaulting Entity with written notice of such defaults pursuant to Section 15.4 below, after which the Defaulting Entity shall have fifteen (15) business days to cure such default. If, after the expiration of such fifteen (15) day period, the Defaulting Entity does not cure such default by paying the amounts due plus any interest accrued thereon or penalties due therefor, then any Curing Entity may pay the amount to be paid by the Defaulting Entity (and thereby cure the default) in which event the Curing Entity shall be reimbursed by the Defaulting Entity, upon demand by the Curing Entity, the amount paid by the Curing Entity, together with interest at the Agreed Rate from the date such amounts are paid by the Curing Entity until the Curing Entity is reimbursed in full. In the event the Curing Entity makes any such payment, the Curing Entity shall have all of the rights of the Master Association Board and the Master Association Manager to collect the amount to be reimbursed by the Defaulting Entity including, but not limited to, in the case of Hotel Owner as the Defaulting Entity, a lien upon the Hotel, and in the case of the Residential Association as the Defaulting Entity, a lien against the Residential Association Property, in each case with power of sale, as security for the obligation of the Defaulting Entity to reimburse the Curing Entity for the full amount advanced by the Curing Entity and interest as provided herein. In any action to recover the amount due, the Curing Entity shall be entitled to recover costs and reasonable attorneys' fees.

Notwithstanding the foregoing, in the event a lien becomes effective against any Residential Association Property and such Residential Association Property includes a Unit or Units, each Unit Owner may remove his or her Unit from such lien by payment of the fractional or proportional amount attributable to the Unit to be released. Such payment shall be computed by

reference to the respective Percentage Ownership Interests of the Units subject to such lien. Subsequent to any such payment, or other discharge or satisfaction for a given Unit subject to such lien, the Unit with respect to which such payment, discharge or satisfaction is made shall be free and clear of the lien so paid, satisfied or discharged. Such payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any other Residential Association Property for which such payment, discharge or satisfaction has not been made.

Article 11.
ARCHITECTURAL CONTROL

11.1 Approval Required. The requirements of zoning and other land use laws and regulations governing the Resort and approvals given by the City establish minimum standards for the Resort. It is intended that after the initial improvement of the Resort as described in Recital B above, Hotel Owner may make any changes it desires to the Resort so long as the same are approved by the City and so long as the same are approved by the Master Association Board if required under Section 3.2.4 above. Notwithstanding the foregoing, there shall be no material changes made to the Resort by the Residential Association or any Unit Owner (except for changes to the interior of a Unit) of any kind without the express prior written consent of Hotel Owner.

11.2 Enforcement. Hotel Owner and/or Master Association shall have the authority to bring an action to enjoin the demolition, erection, installation, alteration, repair, restoration, painting or other use that has not been approved, and which is required by this Master Declaration to be approved, by Hotel Owner and/or Master Association under this Article 11. In any such action, Hotel Owner and/or Master Association shall be entitled to recover its costs and expenses, including reasonable attorneys' fees.

11.3 Resort Design Guidelines and Resort Design Review Board.

11.3.1 Resort Design Guidelines. Master Association has adopted, and the Resort Design Review Board has approved and shall apply to the Resort, the initial Resort Design Guidelines, copies of which, together with any amendments thereto adopted from time to time by the Master Association in accordance with the following sentence, shall be held at the offices of the Master Association and shall be made available for review and inspection by Lessor, Hotel Owner or any Unit Owner during normal business hours of the Master Association. Notwithstanding any provision in this Master Declaration to the contrary, (i) the Resort Design Guidelines shall apply to the Resort (excluding initial construction of the Resort), and (ii) the Resort Design Guidelines shall not be amended, modified, supplemented, repealed or terminated by the Master Association unless each of the Hotel Owner, the Master Association and Lessor shall have consented, in writing, to same.

11.3.2 Resort Design Review Board.

(a) Creation and Responsibility. There is hereby established the Resort Design Review Board which shall be responsible for the administration and enforcement of the Resort Design Guidelines, and to carry out all other responsibilities

assigned to the Resort Design Review Board by this Master Declaration. The Resort Design Review Board shall act in accordance with, enforce and take reasonable actions to ensure compliance with the Resort Design Guidelines. The Resort Design Guidelines shall be uniformly, non-discriminatorily and consistently enforced by the Resort Design Review Board. The Master Association and the Master Association Board may retain architects, engineers or other persons as deemed necessary to review applications or otherwise assist the Resort Design Review Board.

(b) Membership. The Resort Design Review Board shall be composed of three (3) members (each of which may be an individual person or entity), two (2) of which shall be appointed by the Hotel Owner in its sole discretion, and one (1) of which shall be appointed by the Residential Association. Members of the Resort Design Review Board need not be Members.

(c) Purpose. The Resort Design Review Board shall review, study and either approve or disapprove (in each case by a majority vote of the total number of Resort Design Review Board members) all proposed development of and improvements to the Resort (excluding the initial construction of the Resort). The standard for the Resort Design Review Board's review and approval or disapproval shall be whether a given proposed development or improvement complies with the provisions of this Master Declaration and the Resort Design Guidelines. Each Person proposing to undertake activity on the Resort for which Resort Design Review Board approval is required pursuant to this Master Declaration shall establish to the Resort Design Review Board's satisfaction that such activity (i) has, to the extent required by applicable law, been approved by the appropriate governmental authorities; (ii) complies with the provisions of this Master Declaration; and (iii) complies with the applicable provisions of the Resort Design Guidelines.

In addition:

(i) Each Member or Unit Owner proposing to undertake activity for which such approval is required pursuant to this Master Declaration shall comply with any construction mitigation plan set forth in the Resort Design Guidelines, and shall cause to be prepared and submitted to the Resort Design Review Board for review and approval by the Resort Design Review Board an activity-specific construction mitigation plan for such activity.

(ii) The Resort Design Review Board shall exercise its reasonable judgment to require, as a condition to any such approval, that any such activity conform and harmonize with the other existing or proposed structures on the Resort as to external design, quality and type of construction, materials, colors, siting, height, grade and finished elevation, and any aesthetic considerations set forth in this Master Declaration (that apply to the Resort) or the Resort Design Guidelines. No exclusions, waivers or variances from the Resort Design Guidelines shall be permitted without the consent of Hotel Owner and Lessor.

(iii) No improvement shall be constructed, erected or otherwise placed on the Resort (or any portion thereof), and no work on the exterior of any such improvement shall be commenced, until plans for such improvement have been approved by the Resort Design Review Board.

(iv) The actions of the Resort Design Review Board in the exercise of its discretion by its approval of plans and any other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

(d) Terms of Office. The terms of the three (3) members of the Resort Design Review Board shall be staggered, so that the term of one of the members first appointed by Hotel Owner expires on the first December 31st after the date on which the Resort Design Review Board is first appointed, the term of the other member first appointed by the Hotel Owner expires on the second December 31st after such date, and the term of the member first appointed by the Residential Association expires on the third December 31st after such date. The term of office of each member of the Resort Design Review Board thereafter appointed to replace each of the first three (3) members (and thereafter) shall be three (3) years, and shall commence on January 1st of the appropriate year. Each Resort Design Review Board member shall serve until his or her successor is appointed and assumes office. If a Resort Design Review Board member resigns, dies or becomes incapacitated, a successor member may be appointed in the manner described in above by the person that had the right to appoint such member. The person having the right to appoint a member of the Resort Design Review Board shall also have the right to remove such Resort Design Review Board member at any time, for any reason (or for no cause) and without notice.

(e) Chairperson. The members of the Resort Design Review Board shall, by majority vote, elect the chairperson of the Resort Design Review Board.

(f) Operations. The chairperson of the Resort Design Review Board shall have charge of and conduct all meetings of the Resort Design Review Board, and shall provide for reasonable notice to each other member of the Resort Design Review Board prior to any meeting. Such notice shall state the time and place of the meeting for which notice is being given. Such notice may be waived by any member of the Resort Design Review Board. In the absence of the chairperson of the Resort Design Review Board, the chairperson may appoint a substitute or successor for the duration of such absence.

(g) Voting. The affirmative vote of a majority of the members of the Resort Design Review Board shall govern the Resort Design Review Board's actions and be the act of the Resort Design Review Board. A quorum shall consist of a majority of the members of the Resort Design Review Board. No action shall be taken by the Resort Design Review Board unless and until notice of the proposed action has been given to each of its members.

(h) Fees; Expenses. The members of the Resort Design Review Board shall be volunteers and shall not receive any compensation for performing their duties as such members. The Resort Design Review Board shall have the right to establish and charge (i) a fee for each application submitted to it for review, and (ii) a fee for construction compliance review and inspection, each in amounts as may be established from time-to-time by the Resort Design Review Board. The Resort Design Review Board may use the proceeds of such fees to pay its costs and expenses.

The Resort Design Review Board shall provide written notice of failure to pay to any such applicant who fails to make payment of any such fees, specifying the unpaid fees and stating that unless payment thereof is made in full within fourteen (14) days, the Resort Design Review Board may cease action on the related application and deem such application withdrawn (in which event the applicant shall cease any work related to the activity for which the application was made). The applicant shall be personally liable for all such fees.

(i) Applicable Law Governs. Compliance with the Resort Design Guidelines is and shall not be a substitute for compliance with applicable law and the requirements of any governmental authority (including without limitation building codes, subdivision and zoning regulations and requirements).

(j) Limitation of Liability. The Resort Design Review Board shall use reasonable judgment in approving or disapproving all plans submitted to it in connection with any application submitted to it. Neither the Resort Design Review Board, nor any member or consultant thereof, shall be liable to any person for any act or omission taken or not taken in connection with the performance by the Resort Design Review Board of its functions under this Master Declaration, except with respect to gross negligence or willful misconduct. Approval of any plans and/or specifications by the Resort Design Review Board shall be solely for the purposes described hereunder, and shall not constitute or be deemed to be a determination or statement that such plans and/or specifications comply with applicable law or represent safe, sound or proper design. Approval of any such plans and/or specifications by the Resort Design Review Board does not assure the approval of the same by governmental authorities. None of the Resort Design Review Board, the Master Association, the Hotel Owner or any of their respective advisors, affiliates, agents, consultants, employees, members, officers, officials or owners shall in any way be responsible for any defects in any plans and/or specifications submitted to and/or reviewed and/or approved by the Resort Design Review Board, or for any defect in or other condition related to any improvement provided or otherwise contemplated by any such plans and/or specifications. The Resort Design Review Board, and the members thereof, shall in all events be defended and held harmless by the Master Association in any action, suit or other proceeding which may arise by reason of the performance by the Resort Design Review Board of its functions under this Master Declaration. The Master Association shall not, however, be obligated to indemnify any member of the Resort Design Review Board for gross negligence or willful misconduct except to the extent that the court or other fact finder in any other forum in which such action, suit or other proceeding is brought determines that, despite an adjudication of

liability of such member and in view of all circumstances of such action, suit or other proceeding, such member is reasonably entitled to indemnification to such extent as the court or forum determines appropriate.

(k) Inspection and Compliance. The Resort Design Review Board shall have the right, but not the obligation, to from time-to-time exercise the inspection rights of entry granted by this Master Declaration (but limited to the outside of, and specifically excluding the interior of, any improvement) to verify compliance with the Resort Design Guidelines and any plans and/or specifications approved by the Resort Design Review Board. If the Resort Design Review Board is notified in writing of or discovers a violation of the Resort Design Guidelines or any non-conformance with any plans and/or specifications approved by the Resort Design Review Board, the Resort Design Review Board shall provide written notice of such violation or non-compliance, which notice shall specify and describe such violation and/or non-compliance and state that, unless corrective action is taken within fourteen (14) days after the date of such notice, the Resort Design Review Board may: (i) withdraw its approval relating to the related improvement (in which case work shall immediately cease on such improvement); and/or (ii) recommend that the Master Association take action (including without limitation commencement of a legal action or lawsuit) to enforce the related provisions of the Resort Design Guidelines and/or to remedy such non-compliance.

Article 12.

DESTRUCTION; CASUALTY PURCHASE RIGHT; OBSOLESCENCE

12.1 Repair in Event of Casualty.

12.1.1 Requirement to Re-Build. Subject to the terms and conditions of the Talisker Lease and unless otherwise prohibited by applicable law, if any portion of the Resort is damaged, Hotel Owner, as to the portions of the Resort that are affected by such damage, shall, subject to Article 11 above, immediately commence and proceed with due diligence to repair such damages to a comparable or better condition than that which previously existed (it being understood that the Resort must always be restored to a condition no less than the Resort Quality Standard) all of which shall be undertaken and completed with reasonable promptness (even though it may not be feasible to restore all of the Resort as soon as Hotel Owner and/or the Residential Association may desire or to restore all of the elements of the Resort to exactly the condition as existed prior to such damage or destruction); provided, however, that in the event that all such elements are not reconstructed exactly as existed prior to such damage or destruction, the Hotel Owner shall use good faith efforts to accommodate the rights of the Residential Association set forth herein in a manner that is as equitable as possible to Hotel Owner and the Residential Association. The Hotel Owner and the Residential Association shall be responsible for payment of any amounts (including deductibles) not covered by the proceeds of the insurance policies in the same proportion as they share the premiums for the casualty insurance, as more particularly set forth in Article 6 above.

12.1.2 Residential Association Election not to Re-Build. In the event the Residential Association elects, pursuant to Section 57-8-31 of the Act and following damage to

or destruction of that portion of the Building constituting the condominium regime created by the Residential Declaration, not to repair or rebuild the portion of the Building constituting such condominium regime. Hotel Owner shall distribute the casualty insurance proceeds relating to such damage or destruction to the Residential Association and the Hotel Owner in the same proportion of such insurance proceeds as the Residential Association and the Hotel Owner share the responsibility for payment of the premiums for the casualty insurance for the Building required to be obtained pursuant to Article 6 above. In addition, Hotel Owner shall have the option, at Hotel Owner's sole discretion, to purchase all of the interests of the Unit Owners in the Resort upon payment of the Post-Casualty Fair Market Value of such interests, less the amount of the casualty insurance proceeds previously distributed to the Residential Association pursuant to this Section 12.1.2. Hotel Owner shall give notice of its election to purchase such interests within the time period and in the manner described in Section 12.6 below, the "Post-Casualty Fair Market Value" of each such interest shall be determined in the same manner as the Pre-Casualty Fair Market Value, and the closings of the Hotel Owner's purchase of such interests shall be closed in the manner described in Section 12.6 below, provided however, such determination shall take into account the following:

- (i) The interests shall be valued in their post-damage or destruction condition;
- (ii) The Hotel Owner shall be under no obligation to reconstruct any portion of the Building so as to accommodate the use of any air space rights owned by the Unit Owners; and
- (iii) The determination shall not include the value of any easements for support of the Units.

Upon the Hotel Owner's purchase of the Unit Owner's interests as set forth above, the Governing Instruments shall be terminated and shall be of no further force and effect, the condominium regime shall be terminated and shall be of no further force and effect, the interests of the Unit Owners in and to the air space comprising the Units shall be terminated and shall be of no further force and effect and any easement rights granted to the Residential Association or the Unit Owners under the Master Declaration shall be terminated and shall be of no further force or effect.

12.2 Expanded Meaning of Damage and Repair. As used herein and without limiting the common meaning of the terms, "damage" shall include partial or complete destruction of property and "repair" shall include demolition, appropriate removal and legal disposition of the remains of any demolition, rebuilding and restoration, and the costs thereof shall be deemed to include all related expenses including design professionals' fees, permits and construction period insurance.

12.3 Assessment of Owners. Assessment of Master Association Members for the costs and expenses of the Master Association Board and/or the Master Association Manager under this Article 12 shall be levied by the Master Association Board on the Master Association Members and all of such Master Association Member shall reimburse the Master Association Board for such amounts with thirty (30) days following its request.

12.4 Fees and Expenses. The expenses of the Master Association Board and/or the Master Association Manager under this Article 12 shall include, but are not necessarily limited to, those reasonably incurred in the employing of experts to advise on whether to continue the Resort, the collecting and disbursing of insurance proceeds, the eliminating or correcting of unsafe or hazardous conditions, the holding of any meeting of the Master Association Board, the filing of notices of actions taken, the exercising of the authority given to the Master Association Board and the Master Association Manager and the performing of any other authorized duties under this Article 12.

12.5 Assessments for Repair. In the event of any damage or destruction other than by normal wear and tear, whether resulting from an insured or uninsured casualty, to all or any portion of the Resort (excluding the Units), to the extent Hotel Owner elects to rebuild the Resort, the Residential Association shall pay to Hotel Owner the Residential Association's share of the amount required to make up any deficiencies between the total insurance proceeds and the contract price for such repair and rebuilding. The costs of the rebuilding shall be allocated among the Hotel Owner and/or the Residential Association in accordance with 12.1.1 above.

12.6 Hotel Owner's Right to Purchase.

(a) Casualty Purchase Right. Notwithstanding anything to the contrary herein, if the Building suffers material damage to more than fifty percent (50%) of the total square footage of the Building at any time after the fiftieth (50th) anniversary of the date of recordation of this Master Declaration, then Hotel Owner at its option may elect to purchase all of the Units in accordance with the provisions of this Section 12.6 (the "Casualty Purchase Right") rather than restoring the Building. If the Hotel Owner decides to exercise the Casualty Purchase Right, it shall notify the Residential Association and each of the Unit Owners of such election by written notice (a "Casualty Purchase Election Notice") delivered within two hundred seventy (270) days after the occurrence of the casualty in the circumstances described in the first sentence of this Section 12.6(a). Failure of Hotel Owner to deliver notice of its election to exercise the Casualty Purchase Right within the time period described in the preceding sentence shall be deemed an election by Hotel Owner to repair the Resort in accordance with this Article 12.

(b) Determination of Fair Market Value By Agreement. If Hotel Owner exercises the Casualty Purchase Right in accordance with Section 12.6(a) above, then the purchase price to be paid for each Unit shall be the "Casualty Purchase Price," as described in Section 12.6(d) below. Hotel Owner's Casualty Purchase Election Notice to each Unit Owner shall include the Hotel Owner's proposed determination of Pre-Casualty Fair Market Value for the applicable Unit. During the thirty (30) day period following delivery of the Casualty Purchase Election Notice, Hotel Owner and the applicable Unit Owner shall negotiate to agree upon the Pre-Casualty Fair Market Value of the applicable Unit. If the parties are unable to so agree within such thirty (30) day period, then the Pre-Casualty Fair Market Value of the applicable Unit shall be determined by appraisal pursuant to Section 12.6(c) below.

(c) Determination of Fair Market Value By Appraisal.

(i) If the parties are unable to agree upon the Pre-Casualty Fair Market Value of a Unit within the thirty (30) day period described in Section 12.6(b) above, then within thirty (30) days after the expiration of such thirty-day negotiation period each of the parties shall appoint an appraiser that is an MAI appraiser having no less than ten (10) years of experience valuing luxury condominium residences in the County (an appraiser meeting such qualifications being an "Appraiser"). If either party fails to appoint such an Appraiser within such period, then the Appraiser appointed by the party that appointed its Appraiser shall determine the Pre-Casualty Fair Market Value. If both parties timely appoint an Appraiser, then the two Appraisers so appointed shall meet within ten (10) business days after the second Appraiser is appointed, and the two Appraisers shall attempt to determine the Pre-Casualty Fair Market Value by mutual agreement.

(ii) If the two Appraisers cannot agree upon the Pre-Casualty Fair Market Value within ten (10) business days after the appointment of the second Appraiser, then the two Appraisers shall appoint a third Appraiser; provided that the third Appraiser shall not be someone who is, on the date of appointment or was within three years prior thereto, employed or otherwise engaged by either party, and the parties shall agree that they shall not employ or engage such person for at least three years following such person's appointment as the third Appraiser. If the two Appraisers are unable to agree upon such appointment of the third Appraiser within five (5) business days after expiration of such ten (10) business day period, then they shall request appointment of such a qualified person by the then president of the Utah Association of Realtors (or if the Utah Association of Realtors is no longer functioning or fails or refuses to make such appointment, by a similar board or association designated by the two Appraisers). Within ten (10) business days after the appointment of the third Appraiser, each of the three Appraisers shall submit in writing to the parties his or her determination of the Pre-Casualty Fair Market Value. The Pre-Casualty Fair Market Value shall then definitively be the amount which is the average of the two of the three appraised values that are closest to each other (with the appraised value which is furthest from the other two being "thrown out").

(iii) In the event of a failure, refusal or inability of any Appraiser to act, his successor shall be appointed by the party that initially appointed such Appraiser, but in the case of the third Appraiser, his or her successor shall be appointed in the same manner as set forth herein with respect to the appointment of the original third Appraiser. Each party shall pay the fees and expenses of its respective Appraiser and both shall equally share the fees and expenses of the third (3rd) Appraiser. The Appraisers shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of the Pre-Casualty Fair Market Value. The Appraisers shall have no power to modify the provisions of this Master Declaration. The determination of the Pre-Casualty Fair Market Value made in accordance with the terms of this Section 12.6(c) shall be final and binding upon the parties.

(d) Determination of Purchase Price; Retention of Insurance Proceeds. The Casualty Purchase Price for each Unit shall be the applicable Pre-Casualty Fair Market Value less the expected amount, if any, that the applicable Unit Owner would be obligated to pay as such Unit Owner's share (determined pursuant to the provisions of the Residential Declaration) of the amount to be paid by the Residential Association under Section 12.5 above if Hotel Owner had elected to restore the Building rather than exercising the Casualty Purchase Right. The amount of any of such payment shall be based upon the amount by which the projected repair costs for all repairs that would have had to be performed by Hotel Owner exceeds the projected insurance proceeds, as reasonably determined by the Hotel Owner in consultation with the insurance claims adjuster for the insurance company providing the casualty insurance and any other consultants, contractors or other experts the Hotel Owner determines are necessary or advisable to assist in making such determination. The Hotel Owner shall make such determination and shall present such determination (along with an explanation of how such amount was calculated) to Unit Owners within ninety (90) days after the date Hotel Owner sends out the Casualty Purchase Election Notice. All insurance proceeds payable under the policies maintained by Hotel Owner shall be retained by Hotel Owner. All insurance proceeds payable under any policies maintained by any Unit Owner shall be retained by the applicable Unit Owner.

(e) Closing of Purchases. The closing of the purchase and sale of each of the Units shall take place on the day (the "Casualty Purchase Closing Date") that is the first business day following the date which is one hundred twenty (120) days from the date Hotel Owner sends out the Casualty Purchase Election Notice (or, as to any Unit, such earlier date as may be agreed upon by Hotel Owner and the applicable Unit Owner). Closing shall be conducted pursuant to standard escrow closing procedures as are customary at the time of the closings and shall be conducted through a title insurance company selected by Hotel Owner. Hotel Owner shall deposit the Casualty Purchase Price for each Unit in escrow at least two (2) business days prior to the Casualty Purchase Closing Date. Fee simple title to each Unit shall be conveyed by the applicable Unit Owner free of all leases and all Mortgages and other liens, and the Casualty Purchase Price shall be first applied to the payment of any amounts secured by any such Mortgages or other liens. Real estate taxes and assessments shall be prorated as of the closing date based on the most recent ascertainable amounts. Hotel Owner shall pay the cost of any title insurance Hotel Owner elects to purchase. Escrow fees and other closing costs shall be paid in accordance with local custom in effect at the time of closing. Each Unit Owner shall vacate its Unit and remove all personal property therefrom on or prior to the Casualty Purchase Closing Date. Any personal property remaining in any Unit after the Casualty Purchase Closing Date shall be deemed abandoned and shall become the property of Hotel Owner. Following Hotel Owner's purchase of the Units, Hotel Owner may terminate the Governing Instruments. The obligations of the Unit Owners to consummate the transfers provided for in this Section 12.6 shall be enforceable by specific performance.

(f) Right of First Offer on New Units. If during the five (5) year period following the acquisition by Hotel Owner of the first Unit from a Unit Owner pursuant to the Casualty Purchase Right as set forth in this Section 12.6, Hotel Owner, in its sole and

absolute discretion, elects to rebuild on the Development Land either: (i) a hotel or other commercial use that also contains residential condominiums; or (ii) a residential condominium resort, and (in either case) intends to make such new residential condominiums available for sale to the public, each party who is a Unit Owner as of the date of the exercise of the Casualty Purchase Right shall have a right of first opportunity ("Post-Casualty Unit ROFO") to negotiate with Hotel Owner to purchase any available residential condominium upon terms and conditions mutually agreed upon by Hotel Owner and such Unit Owner, prior to the residential condominium units being offered for sale to the general public. The Post-Casualty Unit ROFO of each Unit Owner shall be pari passu with that of the other Unit Owners, but shall entitle each Unit Owner to a prior opportunity over the general public to negotiate with Hotel Owner as to the available residential condominiums. Hotel Owner shall provide each Unit Owner having a Post-Casualty Unit ROFO a thirty (30) day period within which to reach terms that are mutually agreeable to both Hotel Owner and the applicable Unit Owner each in their sole discretion for the sale and purchase of a new residential condominium. If after such thirty (30) day period has expired, Hotel Owner and a Unit Owner have not entered into a mutually acceptable purchase contract for a residential condominium in the new resort, Hotel Owner shall have no further obligation to such Unit Owner in connection with the sale of any residential condominiums in the new resort.

12.7 Purchase Right Upon Obsolescence.

(a) Hotel Owners Determination of Obsolescence. Hotel Owner may in its sole discretion determine at some time in the future that the Hotel has become obsolete and that it is no longer practical to continue to operate the Hotel as then constructed consistent with the Resort Quality Standard and that it accordingly would be preferable to either demolish the Building or to substantially renovate the Building in such a manner that would make it impractical for the Units to continue to be used and occupied in the same locations and manner as before. Accordingly, at any time after the seventy-fifth (75th) anniversary of the date of recordation of this Master Declaration, Hotel Owner may make the determination described in the preceding sentence and then elect to purchase all of the Units in accordance with the provisions of this Section 12.7 (the "Obsolescence Purchase Right"). If Hotel Owner decides to exercise the Obsolescence Purchase Right, it shall notify the Residential Association and each of the Unit Owners of such election by written notice (an "Obsolescence Purchase Election Notice"). If Hotel Owner exercises the Obsolescence Purchase Right, the purchase price to be paid for each Unit shall be one hundred five percent (105%) of the Obsolescence Fair Market Value (the "Obsolescence Purchase Price"). "Obsolescence Fair Market Value" shall mean the fair market value (determined as set forth below) of the Unit (including any related assigned parking space and storage space within the Parking Area) as it existed as of the date on which Hotel Owner delivered the Obsolescence Purchase Election Notice.

(b) Determination of Obsolescence Fair Market Value. Hotel Owner's Obsolescence Purchase Election Notice to each Unit Owner shall include Hotel Owner's proposed determination of Obsolescence Fair Market Value for the applicable Unit. During the thirty (30) day period following delivery of the Obsolescence Purchase Election Notice, Hotel Owner and the applicable Unit Owner shall negotiate to agree

upon the Obsolescence Fair Market Value of the applicable Unit. If the parties are unable to so agree within such-thirty (30) day period, then the Obsolescence Fair Market Value of the applicable Unit shall be determined by appraisal in the same manner and pursuant to the same process as is set forth in Section 12.6(c) above (except that the Appraisers will determine Obsolescence Fair Market Value rather than Pre-Casualty Fair Market Value).

(c) Closing of Purchases. The closing of the purchase and sale of each of the Units shall take place on the day (the "Obsolescence Purchase Closing Date") that is the first business day following the date which is one hundred twenty (120) days from the date Hotel Owner sends out the Obsolescence Purchase Election Notice (or, as to any Unit, such earlier date as may be agreed upon by Hotel Owner and the applicable Unit Owner). Closing shall be conducted pursuant to standard escrow closing procedures as are customary at the time of the closings and shall be conducted through a title insurance company selected by Hotel Owner. Hotel Owner shall deposit the Obsolescence Purchase Price for each Unit in escrow at least two (2) business days prior to the Obsolescence Purchase Closing Date. Fee simple title to each Unit shall be conveyed by the applicable Unit Owner free of all leases and all Mortgages and other liens, and the Obsolescence Purchase Price shall be first applied to the payment of any amounts secured by any such Mortgages or other liens. Real estate taxes and assessments shall be prorated as of the closing date based on the most recent ascertainable amounts. Hotel Owner shall pay the cost of any title insurance Hotel Owner elects to purchase. Escrow fees and other closing costs shall be paid in accordance with local custom in effect at the time of closing. Each Unit Owner shall vacate its Unit and remove all personal property therefrom on or prior to the Obsolescence Purchase Closing Date. Any personal property remaining in any Unit after the Obsolescence Purchase Closing Date shall be deemed abandoned and shall become the property of Hotel Owner. Following Hotel Owner's purchase of the Units, Hotel Owner may terminate the Governing Instruments for the Residential Association. The obligations of the Unit Owners and the Residential Association to consummate the transfers provided for in this Section 12.7(c) shall be enforceable by specific performance.

(d) Right of First Offer on New Residential Units. If during the five (5) year period following the acquisition by Hotel Owner of the first Unit from a Unit Owner pursuant to the Obsolescence Purchase Right as set forth in this Section 12.7, Hotel Owner, in its sole and absolute discretion, elects to rebuild on the Development Land either: (i) a hotel or other commercial use that also contains residential condominiums; or (ii) a residential condominium resort, and (in either case) intends to makes such new residential condominiums available for sale, each party who is a Unit Owner as of the date of the exercise of the Obsolescence Purchase Right shall have a right of first opportunity ("Post-Obsolescence Unit ROFO") to negotiate with Hotel Owner to purchase any available residential condominium upon terms and conditions mutually agreed upon by Hotel Owner and such Unit Owner, prior to the residential condominium units being offered for sale to the general public. The Post-Obsolescence Unit ROFO of each Unit Owner shall be pari passu with that of the other Unit Owners, but shall entitle each Unit Owner to a prior opportunity over the general public to negotiate with Hotel Owner as to the available residential condominiums. Hotel Owner shall provide each

Unit Owner having a Post-Obsolescence Residential ROFO a thirty (30) day period within which to reach terms that are mutually agreeable to both Hotel Owner and the applicable Unit Owner each in their sole discretion for the sale and purchase of a new residential condominium. If after such thirty (30) day period has expired, Hotel Owner and a Unit Owner have not entered into a mutually acceptable purchase contract for a residential condominium in the new resort, Hotel Owner shall have no further obligation to such Unit Owner in connection with the sale of any residential condominiums in the new resort.

Article 13. ENFORCEMENT

13.1 Abatement and Suit.

13.1.1 Entry onto Land. Subject to the restrictions set forth in this Master Declaration and those imposed by law, in the event of any violation or threatened violation by any person of any of the terms, restrictions, covenants and conditions provided in this Master Declaration, Hotel Owner and the Hotel Manager, and the Master Association Manager, shall have the right to enter upon such portion of the Development Land upon or as to which said violation exists and to summarily abate and remove, at the expense of the applicable Unit Owner, Hotel Owner, Association or their respective Permitted Users or Permittees, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of this Master Declaration.

13.1.2 Commencement of Proceedings. Hotel Owner and/or the Master Association Board, through the Master Association Manager, shall have the right to prosecute a proceeding at law or in equity, or initiate arbitration proceedings pursuant to Section 15.16 below, against any person or persons who have violated or who have attempted to violate any of the provisions, covenants, conditions, and restrictions set forth in this Master Declaration, to enjoin or prevent them from doing so, to cause said violation or breach to be remedied or to recover damages for said violation; provided, however, that nothing herein contained shall be deemed to impose upon Hotel Owner, the Master Association Board, or the Master Association Manager any liability for the failure to correct or prosecute a violation or breach of this Master Declaration.

13.1.3 Joint and Several Liability. Each person or entity comprising a Unit Owner shall be jointly and severally liable with each other person or entity comprising such Unit Owner and, each person or entity comprising Hotel Owner shall be jointly and severally liable with each other person or entity comprising Hotel Owner, for the violation or breach of any covenant, condition, restriction or provision contained in this Master Declaration (a) existing upon any part of the Resort owned by such Unit Owner or Hotel Owner, or (b) caused or committed by such Unit Owner, Hotel Owner or their respective Permitted Users or Permittees.

13.2 Deemed to Constitute a Nuisance. The result of every action or omission whereby any covenant, condition, restriction or provision herein contained is violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against anyone causing a nuisance shall be applicable against the Master Association

Members, the Unit Owners or their respective Permitted Users or Permittees, or any other person responsible for such action or omission, and may be exercised by the Master Association Board, the Master Association Manager and/or any aggrieved Master Association Member.

13.3 Occupants. Any Occupant's compliance with all of the provisions of the Governing Instruments and applicable laws, and any breach of any of the foregoing by any Occupant of the related Unit shall constitute a breach by the Unit Owner(s). If any Occupant breaches any restriction contained in any of the Governing Instruments or applicable laws, the Unit Owner(s) of the applicable Unit shall, on demand from the Master Association and/or the Hotel Owner, immediately take such steps as may be necessary to correct the breach. Any breach of this Section 13.3 by any Unit Owner (whether by reason of the failure of an Occupant to comply with all of the provisions of the Governing Instruments or applicable laws or the failure of a Unit Owner to correct such breach) shall subject such Unit Owner to enforcement action by the Master Association, including without limitation the imposition of fines for each such violation pursuant to the applicable provisions of this Master Declaration and applicable law. Any remedy provided in this Section 13.3 is not exclusive and is and shall be in addition to any other remedies which the Hotel Owner and/or the Master Association (as applicable) may otherwise have. The Hotel Owner and/or the Master Association (as applicable) may recover against the Unit Owner all of the costs, including without limitation court costs and reasonable attorneys' fees, it incurs in enforcing the provisions of this Section 13.3.

13.4 Inspection. Hotel Owner, its representatives (including the Hotel Manager), and the Master Association Manager, may, from time to time at any reasonable hour or hours and without notice to any Master Association Member or Unit Owner, or their respective Permitted Users or Permittees, enter and inspect any part of the Resort (other than a Unit or a guest room in the Hotel) to ascertain whether such part of the Resort, the improvements thereon and the uses thereof are in compliance with this Master Declaration. In such event, no entering person shall thereby be deemed guilty of, or become liable for, any manner of trespass or unlawful entrance in connection with such entry and inspection.

13.5 Failure to Enforce Not a Waiver of Rights. The failure of Hotel Owner, the Master Association Board, or the Master Association Manager to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right thereafter to do so, nor of the right to enforce any other covenant, condition, restriction or provision set forth in this Master Declaration.

13.6 Termination. Notwithstanding anything contained or implied in this Master Declaration to the contrary, in no event shall the remedies available hereunder for a breach of the provisions hereof include termination of this Master Declaration. Instead, it is Hotel Owner's intention that this Master Declaration shall be terminable only upon an agreement by Hotel Owner and the Residential Association (upon the affirmative vote of the owner(s) of a majority of the voting power of the Unit Owners) or upon Hotel Owner's exercise of its Casualty Purchase Right or Obsolescence Purchase Right in Sections 12.6 and 12.7 above respectively. Each Master Association Member hereby waives any right under law, equity or otherwise, to terminate this Master Declaration under any circumstance other than as set forth in this Article 13.

13.7 Remedy. Notwithstanding the foregoing, no party may exercise any remedy hereunder unless, after the failure of a defaulting party to cure a breach within any applicable cure period, the non-defaulting party delivers notice of the breach to each Mortgagee of the defaulting party of which the non-defaulting party has received notice under Section 14.6 below, and provides such Mortgagee with the opportunity to cure such breach within an additional cure period as the Master Association Manager may determine in its reasonable discretion, but in no event longer than fifteen (15) days; provided, however, that nothing herein shall entitle such Mortgagee to arbitrate a breach that has already been arbitrated hereunder. Moreover, except and to the extent of monetary damages resulting from either Hotel Owner's or the Residential Association's failure to pay assessments and except in the event of a party's intentional misconduct or gross negligence, none of the Hotel Owner, the Master Association or the Residential Association shall have the right to seek a monetary award against the other and the only remedy any such party shall have to enforce any provision of this Master Declaration or to remedy any breach or default hereunder by any other party shall be specific performance or other similar equitable relief.

13.8 Force Majeure. Except as otherwise provided in this Article 13 or elsewhere in this Master Declaration, each party shall be excused from performing any obligation or undertaking provided in this Master Declaration, except any obligation to pay any money (unless such payment is conditioned upon performance of an obligation or undertaking excused by this Section 13.8), in the event but only to the extent and for so long as the performance of any such obligation is prevented or delayed, retarded or hindered by Force Majeure Event. Each party claiming a right to such delay shall give notice of any such delay to the other party hereto within thirty (30) days of the claiming party's actual knowledge of the occurrence of the event with respect to which the claiming party intends to claim a permitted delay hereunder.

Article 14.

PROTECTION OF MORTGAGEES

14.1 Conflict. Hotel Owner shall have the right to mortgage or otherwise to encumber all, or any portion, of the Resort (other than Units that have been conveyed to Non-Hotel Owners), and each Unit Owner shall have the right to mortgage or otherwise to encumber its Unit; provided, however, any Mortgage shall be subordinate to all of the provisions of the Governing Instruments and, in the event of foreclosure, the provisions of the Governing Instruments shall be binding upon any Hotel Owner or Unit Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. The provisions and requirements of this Article 14 and any other provisions and requirements of this Master Declaration relating to the rights of Mortgagees shall prevail over any conflicting provisions of this Master Declaration, the Master Articles, or the Master Bylaws.

14.2 Application of Assessments. No Mortgagee shall be liable for the payment of assessments against the mortgaged property, except those accruing after such Mortgagee obtains title to the property pursuant to its remedies under its Mortgage.

14.3 Subordination of Assessment Lien. The lien of any assessment created under this Master Declaration which arises before the time at which a Mortgagee obtains title to the mortgaged property shall be subordinate to the lien of the Mortgage held by the Mortgagee.

However, the sale or transfer of title to property by deed, assignment or conveyance in lieu of foreclosure, or any other voluntary conveyance of title, shall not relieve: (i) a party or its grantee (other than a Mortgagee) or other successors and assigns (whether as a result of a foreclosure or deed-in-lieu of foreclosure or otherwise but specifically excluding any Mortgagee itself) from liability from any charges or assessments which become due and payable before such sale or transfer; or (ii) a party or its grantee or other successors and assigns from liability from any charges or assessments which thereafter become due and payable, as the case may be.

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

14.5 Notice by Mortgagees. All persons and entities holding a Mortgage affecting any portion of the Resort shall give written notice to the Master Association Board of the nature of their interests in the Resort, the recording information pertaining to all deeds of trust, mortgages and other security instruments encumbering property in the Resort, and the amount of indebtedness secured by any such deed of trust, mortgage or security instrument. Any person who has not given the notice required by this Section 14.5 shall not be entitled to the rights of a Mortgagee accorded by this Master Declaration.

14.6 Notice. All Mortgagees are entitled to receive, upon written request and after furnishing their addresses in writing to the Master Association, written notice from the Master Association of any default by the Mortgagee's borrower under this Master Declaration which is not cured within thirty (30) days from the date that Mortgagee's borrower receives notice of default from the Master Association.

Article 15. GENERAL PROVISIONS

15.1 Amendment. Subject to Lessor's approval rights under the Talisker lease, prior to the conveyance of the first Unit to an owner other than Hotel Owner, this Master Declaration may be amended in any respect by the execution by Hotel Owner of an amendment. Subject to Lessor's approval rights under the Talisker lease, thereafter, this Master Declaration may be amended or terminated only by an instrument of amendment approved by unanimous vote of the Master Association Members and recorded in the office of the recorder of the County. Notwithstanding the foregoing or any provision in this Master Declaration to the contrary and subject to Lessor's approval rights pursuant to the Talisker Lease, Hotel Owner, acting alone, reserves to itself the right and power: (i) to correct clerical, typographical or technical errors; (ii) to modify and amend this Master Declaration to comply with the requirements, standards, or guidelines of state department of real estate, real estate commission or other similar state agency or any governmental authority having jurisdiction over the Resort, including, but not limited to, any registration requirements under the Interstate Land Sales Full Disclosure Act; or (iii) after completing an increase or decrease in the number of Units from the number set forth in Exhibit C-2 attached hereto pursuant to the provisions of this Master Declaration, to amend any provision herein or exhibit hereto rendered inaccurate as a result of such increase or decrease or

to add, delete or amend related provisions or exhibits necessary to effectuate such increase or decrease (including, but not limited to, fair and equitable revisions to such Exhibit C-2).

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

15.3 Covenant Against Discrimination. Each Unit Owner and Hotel Owner herein covenants by and for itself, its successors and assigns, and all persons and entities claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, religion, creed, sex, marital status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Resort, or any part thereof, nor shall any party or any person claiming under or through such party establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Unit Owners, lessees, subtenants, sublessees, or vendees in or of the Resort. The foregoing covenants shall run with the land.

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

Notices to Hotel Owner shall be addressed as follows:

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

Notices to the Master Association shall be addressed as follows:

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

Notices to the Residential Association shall be addressed as follows

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

Notices to the Master Association Manager shall be addressed to the address designated by the Master Association Manager by written notice to the Master Association Members.

The addresses and addressees for purposes of this Section 15.4 may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is received, the last address and addressee as stated by notice or as provided herein, if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

15.5 Constructive Notice and Acceptance. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Resort is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Master Declaration, whether or not any reference to this Master Declaration is contained in the instrument by which such person acquired an interest in the Resort.

15.6 Liberal Construction. The provisions of this Master Declaration shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this Master Declaration shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

15.7 Effect of Invalidation. Each covenant, condition and restriction of this Master Declaration is intended to be, and shall be construed as, independent and severable from each other covenant, condition and restriction. If any covenant, condition or restriction of this Master Declaration is held to be invalid by any court, the invalidity of such covenant, condition or restriction shall not affect the validity of the remaining covenants, conditions and restrictions hereof.

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

15.9 Attorneys' Fees and Costs. If any party shall bring an action or proceeding (including, without limitation, any cross-complaint, counter-claim, third party claim or arbitration proceeding) against any party by reason of the alleged breach or violation of any

provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Master Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including but not limited to its actual attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award. For the purposes of this Master Declaration, the term "attorneys' fees" shall mean the fees and expenses of counsel to the parties hereto, which may include fees incurred with respect to post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, bankruptcy, litigation, and may include expenses such as printing, photostating, duplicating, facsimiles, filing fees, air freight charges and fees billed for law clerks, paralegal and other persons not admitted to the bar but performing services under the supervision of an attorney, all of which shall be deemed to have accrued upon the occurrence of the act or omission giving rise to the incurrence of such fees.

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

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

15.12 Approvals by Master Association Board in Absence of Hotel Owner. In any case where the approval of Hotel Owner is required by this Master Declaration, if Hotel Owner no longer holds any Ownership Interest in real property comprising any portion of the Resort, then the right of approval shall vest in the Master Association Board.

15.13 Headings. The headings used in this Master Declaration are for convenience and reference only and the words contained herein shall not be held to expand, modify, or aid in the interpretation, construction or meaning of this Master Declaration.

15.14 Gender and Number. Wherever the context so requires, each gender shall include any other gender, and the singular number shall include the plural and vice-versa.

15.15 Exhibits. The following exhibits attached are incorporated herein and made a part of this Master Declaration by this reference:

Exhibit A: Legal Description of the Development Land

Exhibit B: Master Definitions

Exhibit C-1: Basic Services

Exhibit C-2: Allocation of Shared Expenses

Exhibit D: Initial Aggregate Square Footage

15.16 Arbitration. Except with respect to Alleged Defects as provided in Section 15.17 below, in no event shall any Unit Owner have the standing to exercise any rights under this Master Declaration. In the event any such Unit Owner is aggrieved and wishes to pursue a claim with respect to any provision hereunder or otherwise against the Master Association, the Master

Association Board or Hotel Owner, such Unit Owner may only do so through action it causes the Residential Association to take on its behalf. All disputes not involving claims for indemnity and arising under this Master Declaration between Hotel Owner, on the one hand, and the Residential Association on the other hand, shall, upon the request of either party, be resolved by binding arbitration conducted by a single, neutral arbitrator. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator selected shall be qualified in the subject matter of the arbitration service and such rules shall specifically include rules of practice, procedure and evidence. The decision of the arbitrator shall be conclusive and binding upon the parties and shall be enforceable through procedures adopted under the laws of the State of Utah for the enforcement of arbitration awards. The cost of the arbitration shall be borne equally by the parties unless otherwise awarded by the arbitrator. Any claim which any party has against another party pertaining to the matters set forth or referred to in this Master Declaration must be presented by the claiming party to the other within one (1) year of the date the claiming party knew or should have known of the facts giving rise to the claim. Unless the party against whom any claim is asserted waives the time limits set forth above, any claim not brought within the time periods specified shall be waived and forever barred. When a matter must be resolved by arbitration, the arbitrator shall use the following standard to resolve such matters: the arbitrator shall determine whether the action in question needs to be taken, and if so, then the arbitrator shall determine which party's position is most reasonable under the circumstances. When considering whether the action must be taken, the arbitrator shall rule that such action be taken if such action is required to maintain or elevate the Resort to the Resort Quality Standard.

HOTEL OWNER, THE MASTER ASSOCIATION, THE RESIDENTIAL ASSOCIATION, AND EACH UNIT OWNER AGREE TO HAVE ALL DISPUTES DESCRIBED HEREIN DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE SUCH A DISPUTE LITIGATED IN A COURT OR JURY TRIAL. HOTEL OWNER, THE MASTER ASSOCIATION, THE RESIDENTIAL ASSOCIATION, AND EACH UNIT OWNER ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF HOTEL OWNER, THE MASTER ASSOCIATION, THE RESIDENTIAL ASSOCIATION, OR A UNIT OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE FEDERAL ARBITRATION ACT.

15.17 Hotel Owner's Right to Cure Alleged Defects. It is Hotel Owner's intent that all improvements constructed or made by Hotel Owner in the Residential Association Property be built or made in compliance with all applicable building codes and ordinances and that such improvements be of a quality that is consistent with the Resort Quality Standard. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Hotel Owner's responsibility therefor. It is Hotel Owner's intent to resolve all disputes and claims regarding Alleged Defects amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Residential Association, Residential Association Board and all Unit Owners shall be bound by the following claim resolution procedure with respect to Alleged Defect, and any claims or

disputes regarding Alleged Defects shall be governed by the following procedure and shall not for any purpose be considered to have arisen under or relate to the Residential Declaration (and the arbitration procedures set forth in the Residential Declaration shall therefore not apply to any Alleged Defect):

(a) Hotel Owner's Right to Cure. In the event that the Residential Association, Residential Association Board or any Unit Owner or Unit Owners (collectively, "Claimant") claim, contend or allege that any portion of the Residential Association Property, including, without limitation, any Unit, and/or any improvements constructed on the Residential Association Property, is defective or that Hotel Owner or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Hotel Owner hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) Notice to Hotel Owner. In the event that a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Hotel Owner in writing, at the address specified in Section 15.4 of this Master Declaration, or such other address at which Hotel Owner maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Hotel Owner of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Hotel Owner, as part of Hotel Owner's reservation of rights, Hotel Owner shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit, and/or any improvements or other portion of the Residential Association Property for the purposes of inspecting and, if deemed necessary by Hotel Owner, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Hotel Owner shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) Legal Actions. No Claimant shall initiate any legal action, cause of action, proceeding, reference or arbitration against Hotel Owner alleging damages: (i) for the costs of repairing or the replacement of any Alleged Defect; or (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, unless and until: (1) Claimant has delivered to Hotel Owner a Notice of Alleged Defect; and (2) Hotel Owner has, within one hundred twenty (120) days after its receipt of such Notice of Alleged Defect, either: (x) failed to repair or replace such Alleged Defect; or (y) if such Alleged Defect cannot reasonably be repaired or replaced within such one hundred twenty (120) day period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion. In no event whatsoever shall Hotel Owner be liable to another for, and Unit Owners, the Residential Association and the Residential Association Board hereby waive, release and covenant not to sue or make demand for any consequential damages or punitive damages.

(e) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section 15.17 shall be construed to impose any obligation on Hotel Owner to inspect, repair or replace any item or Alleged Defect for which Hotel Owner is not otherwise obligated to do under applicable law. The right of Hotel Owner to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Hotel Owner in the Office of the County Recorder.

(f) Waiver. Notwithstanding anything to the contrary in this Section 15.17, Hotel Owner hereby disclaims any representations and warranties in respect of, shall have no continuing liability to any Unit Owner for, any design or construction defects (whether known or unknown) relating to any portion of the Resort other than the Units, including latent defects.

The dispute resolution procedures set forth above do not apply to any of the Excluded Disputes described below.

(i) The enforcement and resolution of any Warranty Claim shall be governed and resolved solely by the dispute resolution procedures provided in such warranty.

(ii) The above procedures do not apply to Hotel Owner's normal customer service procedures. Unit Owners, the Residential Association and the Residential Board are encouraged to resolve any potential dispute first through Hotel Owner's normal customer service procedures, if applicable.

(iii) The above procedures do not apply to any action taken by the Master Association to enforce the Residential Association's obligation to pay assessments or the Residential Association's obligation to allocate, levy, assess and collect assessments on behalf of the Master Association, which shall be governed by this Master Declaration.

(iv) The above procedures do not apply to any action taken by the Residential Association to enforce a Unit Owner's obligation to pay assessments levied pursuant to the Residential Declaration.

15.18 Provisions Run With Land. The provisions of this Master Declaration are intended to run with the land. When any interest in real property in the Resort is conveyed, the interest shall be burdened by the provisions of this Master Declaration for the benefit of the remaining portions of the Resort and the interest conveyed shall be entitled to the benefit of this Master Declaration until this Master Declaration is terminated.

15.19 Incorporation of this Master Declaration into Deeds. Any deed or other instrument by which all or any portion of the Resort is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Master Declaration and any instrument of conveyance shall be deemed to incorporate the provisions of this Master Declaration, whether or not such instrument makes reference to this Master Declaration.

15.20 Successors. The provisions of this Master Declaration shall be binding upon all Unit Owners and Hotel Owner and shall be for the benefit of each Unit Owner and Hotel Owner

and such Unit Owner's and Hotel Owner's heirs, successors and assigns. Each Unit Owner and Hotel Owner shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Ownership Interest upon ceasing to own such Ownership Interest and paying all sums and performing all obligations hereunder insofar as the same relate to each Ownership Interest up to the time such Unit Owner's or Hotel Owner's Ownership Interest is terminated. The obligations and rights of Hotel Owner under this Master Declaration shall be binding upon, and inure to the benefit of, any and all successors in Ownership Interest to the Hotel. Each interest owner of the Hotel shall be fully discharged and relieved of liability on the covenants herein upon ceasing to own such Ownership Interest in the Hotel and paying all sums and performing all obligations hereunder insofar as the same relate to the time such Ownership Interest is terminated.

15.21 Conflict of Provisions. In the event of any conflict between this Master Declaration and any of the Governing Instruments (other than this Master Declaration), this Master Declaration shall control. In the event of any conflict between the Master Articles and the Master Bylaws, the Master Articles shall control.

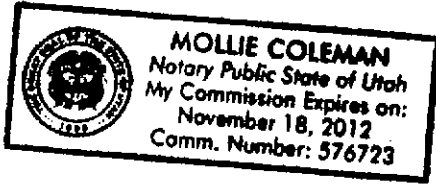
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IN WITNESS WHEREOF, Hotel Owner has caused this Master Declaration to be executed as of the date first above written.

HOTEL OWNER

DV LUXURY RESORT LLC,
a Delaware limited liability company

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



By: [Signature]
Name: Alex Hill
Its: Vice President

STATE OF Utah)
COUNTY OF Wasatch) :ss.

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

[Signature]
Notary Public

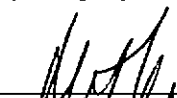
My Commission Expires:
11/18/2012
(SEAL)

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

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

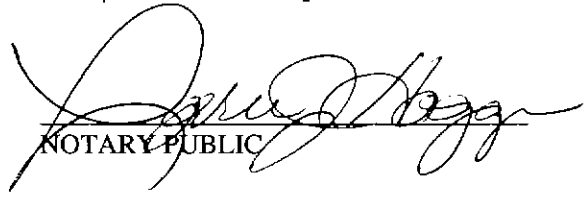
The above consent and acknowledgement shall not act to modify, affect, vitiate, limit or alter the obligations of: (i) Hotel Owner under the Talisker Lease, as between Hotel Owner and Lessor; or (ii) the obligations and conditions of the Hotel Owner and/or owners of the Units with respect to those terms,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

Talisker Empire Pass Hotel LLC, a Delaware limited liability company

By: 
Its: Unit President

STATE OF Utah)
COUNTY OF Summit) :ss.

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


NOTARY PUBLIC

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

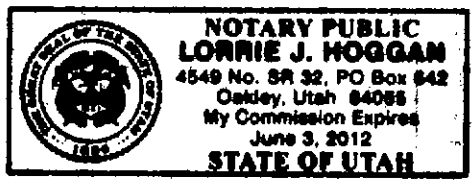


EXHIBIT A

TO

MASTER DECLARATION

LEGAL DESCRIPTION OF THE DEVELOPMENT LAND

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

EXHIBIT B
TO
MASTER DECLARATION
MASTER DEFINITIONS

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

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

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

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

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

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

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

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

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

“Alleged Defect” means, pursuant to Section 15.17 of the Master Declaration, any claim, contention or allegation that any portion of the Residential Association Property and/or any improvements constructed on the Residential Association Property, is defective or that Hotel Owner or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof.

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

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

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

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

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

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

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

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

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

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

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

“City” means Park City Municipal Corporation.

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

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

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

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

“County” means Summit County, Utah.

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

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

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

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

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

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

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

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

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

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

“Expandable Property” means that portion of the Development Land designated as such on the Condominium Plat and which may be annexed to and become subject to the Residential

Declaration by Hotel Owner without the approval, assent or vote of any other Unit Owners in accordance with the Residential Declaration.

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

- (a) Carpet, hard surface flooring and other flooring materials
- (b) Ceramic tile, stone, slate, marble, granite and other similar materials (e.g., for shower, vanity, tub enclosure, counter top)
- (c) Shower door and tub enclosure
- (d) Cabinets and shelves
- (e) Wall coverings (e.g., paint, wallpaper, cloth coverings)
- (f) Interior doors and door frames
- (g) Interior window coverings (e.g., shutters, drapes, blinds, curtains)
- (h) Fireplace, hearth and mantle
- (i) Kitchen and bath counter tops and splashes
- (j) Interior wood work and other finish work (e.g., wainscoting, molding, thresholds)
- (k) Light fixtures, recessed lighting and can lights, electrical outlets, light switches, switch plate covers, cable TV connectors, phone jacks
- (l) Alarm system components within a Unit
- (m) Fire sprinkler heads and other fire suppression equipment
- (n) Stairways and railings
- (o) Hardware (e.g., hinges, knobs, handles)
- (p) Toilet
- (q) Sinks, sink faucets and drain covers
- (r) Shower head
- (s) Bathtub
- (t) Built-in furniture

- (u) Towel bars, toilet paper holders, paper towel holders
- (v) Closets and any built-ins therein (e.g., shelving, clothes bars)
- (w) Appliances (e.g., range, microwave, stove, refrigerator, washer, dryer, dishwasher, trash compactor, wine storage units, oven hood, warming drawers, garbage disposal)
- (x) Exhaust fans and vent covers
- (y) Mirrors and medicine cabinets
- (z) Water heaters and air conditioning units (if located within a Unit)
- (aa) Home theaters
- (bb) Networking equipment.

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

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

“Force Majeure Event” means: (a) act of God or other deity, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, act of terrorism, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; (b) failure of normal transportation, strike, lockout, action of labor unions; (c) condemnation, requisition, law, order of governmental or civil or military authorities; (d) the inability to obtain governmental approvals or permits despite the exercise of due diligence and good faith efforts; or (e) or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the person or entity affected thereby (financial ability or negligence excepted).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Master Utility Expenses” means, collectively, the specific expenditures (whether incurred by Hotel Owner or the Master Association) required to be made at any time and from time to time to provide for the provision of utilities to the Non-Hotel Use and Support Areas,

including, but not limited to, assessments for capital improvements levied by governmental agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Open Space/Transit Management Declaration” means that certain Declaration of Covenants, Conditions and Restrictions and Agreement regarding Open Space/Transit

Management Fee, dated May 17, 2007 and recorded May 23, 2007, as Entry No. 814179, in Book 1867, at Page 842, Summit County Recorder's Office.

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

"Original Deed" means each deed from Hotel Owner and Lessor recorded after the date hereof conveying a Unit, excluding, however, any deed which conveys all or substantially all of the interest in the Resort then owned by Hotel Owner and which expressly recites that it is not an Original Deed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (b) to operate and manage the Residential Association;
- (c) to provide for the collection of funds on an annual basis in an amount sufficient to provide financing for Residential Association-sponsored activities for the benefit of Members;
- (d) to provide for the collection of funds on an annual basis over the useful life of the Residential Association Property in an amount sufficient to meet the Residential Reserve Expenses;
- (e) to provide for a contingency fund in the event that some Residential Assessments may not be paid on a current basis;
- (f) to carry out the other duties and powers of the Residential Association under the Residential Declaration; and
- (g) to provide for the payment of the fees of the Residential Association Manager.

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

- (i) all charges, costs, and expenses whatsoever incurred by the Residential Association for or in connection with the administration of the Residential Association Property;
- (ii) Taxes, to the extent such Taxes are not separately levied by the County or other governmental agency against each Unit, specifically excluding that portion of the Taxes constituting real property taxes that are assessed to Unit Owners as part their Tax Assessment in accordance with the Residential Declaration;
- (iii) assessments and other similar governmental charges levied on or attributable to the Residential Association Property;
- (iv) insurance obtained pursuant to the Residential Declaration;
- (v) to the extent not covered by proceeds of insurance, any liability whatsoever for loss or damage, fire, accident, or nuisance to or arising from the Residential Association Property;
- (vi) to the extent not covered by proceeds of insurance, the cost of repair, reinstatement, rebuilding and replacement of the Residential Association Property;
- (vii) the cost of all basic utility expenses billed to the Residential Association;
- (viii) the unpaid share of any Residential Assessment levied during the previous Fiscal Year against any Unit Owner for which a default in payment thereof has occurred, to the extent that the same becomes uncollectible;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Shared Expenses” means, collectively:

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

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

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

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

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

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

“Structural and Mechanical Support” means the support and the enclosure from the elements that the Development Land and the Hotel provide to the Units which is structural (e.g., columns, beams, walls, floors, roofs, exterior windows, exterior doors, etc. providing enclosure

for and/or structural support of, as well as access through and over driveways, parking areas, lobbies, corridors, elevators, etc. to, the Units) and/or mechanical (e.g., by virtue of the provision of utilities, HVAC, fire suppression, life safety devices and systems, etc.).

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

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

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

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

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

“Unit” means an individual air space unit consisting of any enclosed room or rooms occupying all or any part of a floor or floors of the Hotel to be used for residential purposes and designated for separate ownership or occupancy, each of which: (i) is or shall be separately shown, numbered and designated as such on the Condominium Plat; (ii) is or shall be bounded by and contained within the interior finished surfaces of the perimeter walls, interior walls, floors, ceilings, windows and doors thereof, and the interior surfaces of the firebox of the fireplace, if any, located therein extending from the floor to the top of the fireplace; and (iii) does or shall include the airspace so encompassed, excepting therefrom: (1) the bearing walls, windows and window frames, exterior door and door frames, columns, exterior floors, roofs, railings, fences, foundation slabs, exterior wall surfaces and central services, pipes, ducts, chutes, and flues, conduits, wires and other utility installations wherever located within each such individual air space unit; and (2) all balconies and patios contiguous and related to each such individual air space unit. A Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be defined by its boundaries rather than by the metes

and bounds (or other description) expressed in the deed or Condominium Plat, regardless of settling or minor variance between boundaries.

“Unit Owner” means the owner of a Unit.

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

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

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

EXHIBIT C-1

TO

MASTER DECLARATION

BASIC SERVICES

- | | |
|-------------------------------------|--|
| 1. Concierge Services | Director of Residences or Other |
| 2. Reception/Check in | |
| 3. Bell Services | |
| 4. Parking Program | Self Parking and Valet |
| 5. Charging Privileges | |
| 6. Telephone Services | House phone, Voicemail, and In-house Extension |
| 7. Television | Basic TV Channel Line-up |
| 8. Pool and Hot Tubs | Exterior Pools and Hot-Tubs, Terry Service |
| 9. Limited Access to Spa Facilities | |
| 10. Bike Storage | |
| 11. Owners Lounge | |
| 12. Common Corridor Housekeeping | |
| 13. Internet Access | |
| 14. Mail and Deliveries | |
| 15. Business Services | |
| 16. Newspaper Delivery | |
| 17. Transportation | Limited Local Transportation |
| 18. Refuse / Recycling Collection | |
| 19. Basic Maintenance | Filter replacement, Exterior Window Cleaning, Fire and Life Safety Systems Maintenance |

EXHIBIT C-2

TO

MASTER DECLARATION

Several categories of expenses, including Master Operating Expenses, Master Utility Expenses and certain Structural and Mechanical Support Expenses are allocated between the Hotel Owner and the Residential Association using formulas that are unique to those categories of expenses. In this Master Declaration, reference is made to this Exhibit C-2 for further information as to how these expenses are to be allocated. Within such categories of expenses there may be differing formulas of allocation, all of which are designed for the purpose of allocating expenses in a way that is reasonably proportionate to the benefit received from the expenses incurred, as determined by the Hotel Owner, in its reasonable business judgement. The following are summary descriptions of how the different categories of expense are allocated.

1. Allocated Exclusively to Residential Owners. Expenses that are incurred solely for the sole benefit of the Units, such as cleaning of residential hallways, upkeep of the Residential Lounge and utility expenses for the Units, shall be charged exclusively to the Residential Association. These form the bulk of the Residential Basic Expenses.

2. Allocated Exclusively to Hotel Owner. Expenses that are incurred solely or primarily for the benefit of the Hotel Areas, such as the maintenance and operations of the pools and associated hot tubs, shall be charged exclusively to the Hotel Owner.

3. Allocated Based on Keys. Certain expenses that benefit the hotel rooms and the Units, and that are not dependent upon the extent or intensity of actual use of the hotel rooms and Units, such as snow removal and residential and hotel space cleaning, are allocated based on the number of keys, or separate occupiable spaces. Based on the initial configuration of the project¹, the initial budget allocates such expenses as follows:

Residential Units	81 keys	31.46%
Hotel Spaces	171 keys	66.41%
Hotel Spaces—ADA Units	3 keys	1.17%
Affordable Housing Units	<u>10 keys</u>	<u>0.97%</u> ²
	265 keys	100.00%

¹ This is the number of keys as of the date that the initial budgets were prepared. Final budgets will be based on actual constructed keys in the project.

² AHU keys are given only 25% of full value because they are not considered a revenue-generating component of the project. Accordingly, the 10 AHU keys are treated as 2.5 keys, and the total number of key for calculating the percentages is 257.5.

4. Allocated Based on Parking Spaces. The expenses of the parking lots are allocated based on the number of parking spaces allocated to the various uses in the project as follows:

Residential Units	122 spaces	22.93%
Hotel Spaces	380 spaces	71.43%
Commercial Spaces	<u>30 spaces</u>	<u>5.64%</u>
	532	100.00%

5. Allocated Based on Area. The expenses of upkeep and operation of space in the project that is utilized by the Hotel guests, commercial visitors and Unit owners, such as local licenses and fees, property and liability insurance, upkeep of elevators, heating and cooling facilities, are allocated based on square footage, as follows:

	<u>Total Sq. Ft³</u>	<u>Percentage</u>
Residential Units	227,804	31.09%
Hotel Spaces	438,327	59.81%
Commercial Space	<u>66,674</u>	<u>9.10%</u>
	732,805	100.00%

³ This is the square footage as of the date that the initial budgets were prepared. Final budgets will be based on actual constructed square footage as shown on the Condominium Plat.

EXHIBIT D

TO⁴

MASTER DECLARATION

INITIAL AGGREGATE SQUARE FOOTAGES

The following are the initial estimated aggregate square footages of certain components of the Hotel and Residences at Empire Canyon Resort:

Aggregate Area of Residential Units (81 Units):	227,804 square feet
Aggregate Area of ADA Units (3 Units):	4,889 square feet
Aggregate Area of AHU Units:	6,235 square feet
Aggregate Area of Hotel Areas	426,858 square feet

⁴ The square footages on this Exhibit are taken from the Condominium Plat. They are subject to change from time to time in the event of any amendments to the Condominium Plat.

BYLAWS
EMPIRE CANYON RESORT
MASTER ASSOCIATION

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BYLAWS

EMPIRE CANYON RESORT MASTER ASSOCIATION

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

1. Application of Bylaws. Hotel Owner, Empire Canyon Resort Residences Association, Inc. (the "Residential Association") and all present and future Unit Owners, Mortgagees, and occupants of Units and their respective employees and guests are subject to the Master Declaration, these Bylaws and all rules and regulations made pursuant hereto and any amendments hereof. Membership in the Master Association or the Residential Association, or the occupancy of any Unit, shall constitute an acceptance and ratification of and an agreement to comply with the provisions of the Master Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time.

2. Master Association Board.

2.1. Administration of Master Association. The administration of the affairs of the Master Association shall be conducted by the Master Association Board consisting of not less than three (3) persons who shall be appointed as provided in the Master Declaration.

2.2. Master Association Manager. The Master Declaration establishes a Master Association Manager, which shall be employed by the Master Association Board and charged with the duty and authority of operating the Master Association and carrying out the duties and powers of the Master Association on a day-to-day basis in accordance with the provisions of the Master Declaration.

2.3. Initial Master Association Board Members. The initial members of the Master Association Board shall be the following persons, who shall also act as the officers of the Master Association unless and until Hotel Owner and the Residential Association decide otherwise:

Bill Claypool	President
c/oAliso Creek	
31106 South Coast Highway	
Laguna Beach, CA 92651	
(949) 715-1413	

Ashley Damron
101 California Street
Suite 2450
San Francisco, CA 94111
(415) 946-8889

Vice President

Mark Rodeheaver
136 Heber Avenue Suite 103
Park City, UT 84060
(435)200-0444

Secretary

2.4. Term. Members of the Master Association Board shall serve at the pleasure of whichever Member of the Master Association appointed such member of the Master Association Board. The members of the Master Association Board shall serve until their respective successors are appointed, or until death, resignation, or removal.

2.5. Resignation. Any member of the Master Association Board may resign at any time by giving written notice to the President of the Master Association or to the remaining Master Association Board members.

2.6. Removal. A member of the Master Association Board may only be removed by the Residential Association or Hotel Owner, whichever appointed such member of the Master Association Board.

2.7. Vacancies. Any vacancy in the Master Association Board occurring by reason of death, resignation or removal of a Master Association Board member may be filled by the Member of the Master Association which appointed such Master Association Board member.

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

2.9. Powers. The Master Association Board, for the benefit of the Master Association, shall manage the business, property and affairs of the Master Association and enforce the provisions of the Master Declaration, Master Articles, these Bylaws and any rules and regulations established by the Master Association Board pursuant to this Section (collectively, the "Master Association Governing Instruments"). The Master Association Board is authorized to adopt rules and regulations relating to the functions of the Master Association to be performed under the Master Declaration, which shall become effective ten (10) days after adoption by the Master Association Board. The

Master Association Board shall have the powers, duties and responsibilities as contained in the Master Association Governing Instruments.

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

2.11. Special Meetings of the Master Association Board. Special meetings of the Master Association Board may be called by written notice signed by any two (2) members of the Master Association Board. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Resort or some other reasonable location in Summit County unless a meeting at another location would significantly reduce the cost to the Master Association and/or inconvenience to the members of the Master Association Board. To the extent permitted by Utah law, special meetings of the Master Association Board may be held by telephonic conference or other means as described in Section 2.10 above.

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

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

2.14. Actions and Open Meetings. The Master Association Board members shall act only as a Master Association Board, and individual Master Association Board members shall have no powers as such. Regular and special meetings of the Master Association Board shall be open to all

Residential Association; provided, however, that the Master Association or Residential Association members who are not on the Master Association Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Master Association Board. The Master Association Board may, with the approval of a majority of a quorum of its members, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Master Association is or may become involved, and similar orders of business. The nature of any and all business to be considered in executive session shall first be announced in open session.

2.15. Action Without a Meeting. Any action that is required or permitted to be taken at a meeting of the Master Association Board may be taken without a meeting if one or more consents in writing, setting forth the action so taken, are signed by all of the Master Association Board members and such signed consents are filed with the records of the Master Association. The consents of the Master Association Board members may be sent by electronically transmitted facsimile or other form of wire or wireless communication providing a complete copy of the document, including a copy of the signature of the Master Association Board member.

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

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

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

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

3. Officers.

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

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

3.3. President-Treasurer. The President-Treasurer (sometimes referred to as simply the "President") shall be the chief executive of the Master Association Board and shall preside at all meetings of the Master Association and of the Master Association Board and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Master Association and its affairs. He or she shall sign, and either the Vice President or Secretary shall witness, on behalf of the Master Association, all conveyances, mortgages and contracts of material importance to its business. Additionally, he or she shall be responsible for the fiscal affairs of the Master Association, but may delegate the daily handling of funds and the keeping of records to the Master Association Manager. He or she shall do and perform all acts which the Master Association Board may require.

3.4. Vice President. The Vice President shall perform the functions of the President in his or her absence or inability to serve.

3.5. Secretary. The Secretary shall keep minutes of all proceedings of the Master Association Board and of the meetings of the Master Association and shall keep such books and records as may be necessary and appropriate for the records of the members and the Master Association Board.

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

4. Master Association Expenses; Assessments.

4.1. Payment of Master Association Expenses. All Master Association Expenses shall be assessed in accordance with the Master Declaration.

4.2. Calculation of Master Association Expenses. The Master Association Board shall approve or disapprove the estimated Master Association Expenses and capital contributions for the coming Fiscal Year. Master Association Expenses shall be assessed on an annual basis, unless the Master Association Board determines otherwise, to Hotel

Owner and the Residential Association in accordance with the provisions of the Master Declaration.

4.3. Assessment Records. The President-Treasurer shall keep detailed records of all receipts and expenditures incurred and to be paid by the Master Association. Such records shall be available for examination by the Members of the Master Association, or their duly authorized representatives, during regular business hours. In accordance with the actions of the Master Association Board in assessing Master Association Expenses pursuant to the Master Declaration, the President-Treasurer shall keep an accurate record of such Master Association Expenses and of the payments thereof by Hotel Owner and the Residential Association.

4.4. Enforcement. The Master Association Board shall have the rights and remedies contained in the Act and in the Master Declaration to enforce the payment of Master Association Expenses.

5. Litigation.

5.1. Expenses. If any action is brought by a member of the Master Association Board on behalf of the Master Association with the consent of the Master Association Board, the expenses of suit, including reasonable attorneys' fees, shall be a Master Association Expense. Except as otherwise provided by the Master Declaration or applicable Utah law, if any action is brought against the Master Association or against the Master Association Board or the officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Members of the Master Association, the expenses of suit, including attorneys' fees, shall be a Master Association Expense. If any action is brought against one Member of the Master Association, with the result that the ultimate liability would, if proved, be borne solely by such Member, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Member of the Master Association, as a Master Association Expense or otherwise.

5.2. Defense. Except as otherwise provided by applicable Utah law, any action brought against the Master Association, the Master Association Board or the officers, employees or agents thereof, in their respective capacities as such, shall be directed to the Master Association Board, and shall be defended by the Master Association Board; and the Members of the Master Association and any Mortgagees shall have no right to participate in such defense other than through the Master Association Board. Actions against one Member of the Master Association shall be directed to such Member, who shall promptly give written notice thereof to the Master Association Board, and such action shall be defended by such Member.

6. Enforcement.

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

6.1.1. To enter the Units or the Use Areas to summarily abate and remove, at the expense of the defaulting Unit Owner or Hotel Owner, as applicable, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof or the Master Declaration, and the Master Association Board shall not thereby be deemed guilty in any manner of trespass provided that items of construction may not be altered or demolished without proper judicial proceedings; and/or

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

6.2. Monetary Fines. The Master Association Board may assess a fine against the Residential Association or Hotel Owner for violations of the Master Association Governing Instruments, provided that the Master Association Board shall first give written notice to the Residential Association or the Hotel Owner of the violation and inform the Residential Association or Hotel Owner that a fine will be imposed if the violation is not cured within the time designated by the Master Association Board in such notice, which time shall be at least 48 hours after the date on which such notice is given. The Master Association Board may levy fines in the amounts that it, in its sole discretion, shall determine to be reasonable for each violation of the Master Association Governing Instruments, provided that cumulative fines for a continuing violation may not exceed \$500 per month unless otherwise allowed by law. The Hotel Owner or the Residential Association who is assessed a fine may request an informal hearing before the Master Association Board to protest or dispute the fine within thirty (30) days after the date on which the Hotel Owner or the Residential Association, as applicable, receives written notice that such fine has been assessed.

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

7. Accounting.

7.1. Accounting and Recordkeeping. The books and accounts of the Master Association shall be kept in accordance with generally accepted accounting procedures under the direction of the President-Treasurer. The Master Association shall maintain financial records, records of payment of Master Association Expenses as required by Section 4.3 above and such other records as required by the Master Declaration or by law. The cost of any audit of such books and records shall be a Master Association Expense, unless otherwise provided in the Master Declaration.

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

7.3. Budget. Pursuant to the Master Declaration, a Master Association budget for each Fiscal Year shall be adopted by the Master Association Board and distributed to

the Members of the Master Association not less than sixty (60) days prior to the beginning of the Fiscal Year to which the budget applies.

7.4. Maintenance and Inspection of Records. The Master Association membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Master Association, of the Master Association Board and of committees of the Master Association Board and all other records of the Master Association, maintained by the Master Association or Master Association Manager, shall be made available for inspection and copying by Hotel Owner or the Residential Association or its duly appointed representative at any reasonable time and for a purpose reasonably related to its interest as a Member of the Master Association, at the office where the records are maintained. Upon receipt of an authenticated written request from Hotel Owner or the Residential Association, along with the fee prescribed by the Master Association Board to defray the costs of reproduction, the custodian of records of the Master Association shall prepare and transmit to the requesting Member a copy of any and all records requested. The Master Association Board shall establish reasonable rules with respect to:

7.4.1. Notice to be given to the custodian of the Master Association records by the Member desiring to make the inspection or obtain copies;

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

7.4.3. Payment of the cost of reproducing copies of documents requested by a Member.

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

8. Amendment of Bylaws.

Except as otherwise provided in the Master Declaration, these Bylaws, or by applicable law, these Bylaws may be amended by Hotel Owner and the Residential Association at a meeting duly called for such purpose. Upon such action, the Master Association Board shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative action of Hotel Owner and the Residential Association, and the amendment shall be effective upon recording in the Office of the Recorder of Summit County, Utah.

9. Miscellaneous.

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

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

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

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

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

EXECUTED this 15th day of January, 2010.

CERTIFICATION

I, the undersigned, do hereby certify:

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

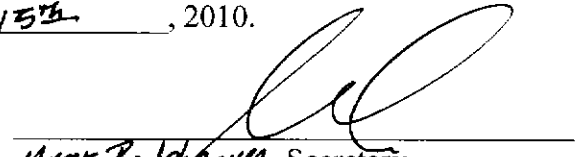
That the foregoing Bylaws constitute the original Bylaws of said Master Association, as duly adopted at a meeting of the Master Association Board thereof held on the 15th day of JANUARY, 2010.

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



President-Treasurer

Certified to be the Bylaws adopted by the Master Association Board of Empire Canyon Resort Master Association, Inc. dated January 15th, 2010.



Secretary