

DOUGLAS COUNTY, NV

**2020-940683**

Rec:\$40.00

\$40.00 Pgs=69

01/09/2020 01:10 PM

WILSON TITLE SERVICES

KAREN ELLISON, RECORDER

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
DAVID WALLEY'S RESORT II**

<b>ARTICLE I DEFINITIONS .....</b>	<b>1</b>
<b>ARTICLE II LOCATION .....</b>	<b>7</b>
<b>ARTICLE III DESCRIPTION OF IMPROVEMENTS WITHIN THE RESORT .....</b>	<b>7</b>
Section 3.01 Description of Improvements Within the Resort .....	7
Section 3.02 Description of the Common Area .....	8
Section 3.03 Developer's Reservation of Certain Easements .....	8
Section 3.04 Timeshare Plan.....	9
<b>ARTICLE IV WALLEY'S PROPERTY OWNERS' ASSOCIATION II, INC.....</b>	<b>9</b>
Section 4.01 Organization.....	9
Section 4.02 Membership and Voting .....	10
Section 4.03 Duties of the Association .....	10
<b>ARTICLE V MAINTENANCE RESPONSIBILITY.....</b>	<b>13</b>
Section 5.01 By the Association .....	13
Section 5.02 Acts of Owners .....	13
<b>ARTICLE VI RESERVATION SYSTEM.....</b>	<b>14</b>
Section 6.01 Use of a Unit .....	14
Section 6.02 Restriction on Use, Possession and Occupancy.....	14
Section 6.03 Use Advisory .....	16
<b>ARTICLE VII USE RESTRICTIONS AND ADMINISTRATION .....</b>	<b>16</b>
Section 7.01 Restrictions .....	16
Section 7.02 Administration .....	19
Section 7.03 Exchange Programs .....	19
Section 7.04 Restriction Upon Creation of Additional Plans, Programs or Clubs .....	19
Section 7.05 Reservation and Unit Use Requirements and Limitation Respecting Reservation System.....	20
Section 7.06 Management.....	20
Section 7.07 Occupancy Restriction .....	21
Section 7.08 Timeshare Interest Owner Additional Restriction .....	21
Section 7.09 Protection of Timeshare Interests .....	21
Section 7.10 Separate Mortgages.....	21
<b>ARTICLE VIII COMMON EXPENSE ASSESSMENTS .....</b>	<b>22</b>
Section 8.01 Affirmative Covenant to Pay Expenses .....	22
Section 8.02 Lien .....	23
Section 8.03 Due Dates.....	24

<b>ARTICLE IX FIRST MORTGAGEE RIGHTS.....</b>	<b>25</b>
<b>ARTICLE X REMEDIES OF ENFORCEMENT AND ADDITIONAL RIGHTS OF ASSOCIATION.....</b>	<b>25</b>
Section 10.01 Additional Rights.....	25
Section 10.02 Right of Entry.....	25
Section 10.03 Enforcement.....	25
Section 10.04 Denial of Use.....	26
Section 10.05 Enforcement of Lien Rights and Other Remedies in the Event of Non-Payment of Assessments or Owner Obligations.....	26
Section 10.06 Failure of Owner to Vacate.....	27
<b>ARTICLE XI COMMON EXPENSES.....</b>	<b>27</b>
Section 11.01 Maintenance Fees.....	27
Section 11.02 Utility Charges.....	27
Section 11.03 Liability Insurance.....	28
Section 11.04 Fire, Windstorm and Other Casualty Insurance.....	28
Section 11.05 Destruction of Buildings or Improvements.....	28
Section 11.06 Operational Expenses.....	28
Section 11.07 Reserve Funds.....	28
Section 11.08 Taxes.....	28
Section 11.09 Budget; Indemnity.....	28
<b>ARTICLE XII INSURANCE.....</b>	<b>29</b>
Section 12.01 Liability Insurance.....	29
Section 12.02 Casualty Insurance.....	29
Section 12.03 Proceeds.....	29
Section 12.04 Repair and Reconstruction.....	29
Section 12.05 Group Policies.....	30
<b>ARTICLE XIII CONDEMNATION.....</b>	<b>31</b>
Section 13.01 Deposit of Awards with Board.....	31
Section 13.02 Determination Whether to Continue Timeshare Plan.....	31
Section 13.03 Disbursement of Funds.....	31
Section 13.04 Taking of Common Area.....	32
<b>ARTICLE XIV GRANT OF EASEMENTS AND RESERVATION OF EASEMENTS AND RIGHTS.....</b>	<b>32</b>
Section 14.01 Association Rights.....	32
Section 14.02 Perpetual Non-Exclusive Easement to Public Ways.....	32
Section 14.03 Easement for Encroachments.....	32
Section 14.04 Grant to Association.....	32
Section 14.05 Grant of Easements and Cross-Easements Respecting the Resort.....	33

Section 14.06 Grant and Reservation of Easements Respecting Reservation System.....	33
Section 14.07 Reservation of Certain Easements .....	33
Section 14.08 Reservation of Easement for Use of Units and Common Areas.....	34
Section 14.09 Reservation of Exclusive Easement for Sales and Marketing .....	34
<b>ARTICLE XV AMENDMENTS .....</b>	<b>34</b>
Section 15.01 Amendment by Developer .....	34
Section 15.02 Amendment by Majority of Owners .....	35
Section 15.03 Amendment by the Board .....	35
<b>ARTICLE XVI TERMINATION .....</b>	<b>35</b>
<b>ARTICLE XVII MISCELLANEOUS .....</b>	<b>35</b>
Section 17.01 Manager .....	35
Section 17.02 Adherence to Law .....	36
Section 17.03 Limitations .....	36
Section 17.04 Covenants on Title.....	36
Section 17.05 Invalidity.....	36
Section 17.06 Titles .....	36
Section 17.07 Waiver of Partition.....	37
Section 17.08 Conveyance.....	37
Section 17.09 Service Periods.....	37
Section 17.10 Common Plan.....	37
Section 17.11 Alienability Restrictions; Developer’s Right of First Refusal to Purchase.....	37
Section 17.12 Douglas County Statement of Policy.....	37
<b>EXHIBIT “A” RESORT .....</b>	<b>A-1</b>
<b>EXHIBIT “B” ARTICLES .....</b>	<b>B-1</b>
<b>EXHIBIT “C” BYLAWS .....</b>	<b>C-1</b>
<b>EXHIBIT “D” POINTS APPERTENANT TO EACH PHASE .....</b>	<b>D-1</b>
<b>EXHIBIT “E” POINTS FOR EACH 7 DAY USE PERIOD .....</b>	<b>E-1</b>

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DAVID WALLEY'S RESORT II**

Holiday Inn Club Vacations Incorporated, a Delaware corporation ("Developer"), the owner of record of the fee simple title to the real property situated, lying and being in Douglas County, Nevada, and more particularly described and set forth in Exhibit "A" attached hereto and made a part hereof, together with improvements, equipment, furnishings and fixtures therein and thereon contained and not personally owned by Owners (as hereinafter defined), hereby states and declares that said realty, together with improvements, equipment, furnishings and fixtures therein and thereon contained as may be applicable and appurtenant thereto, is hereby established as a timeshare property pursuant to the Nevada Timeshare Act, Chapter 119A of the Nevada Revised Statutes, and the provisions of said Act are hereby incorporated by reference, and does herewith file for record this Declaration of Covenants, Conditions and Restrictions for David Walley's Resort II.

Each Owner shall own an undivided fee simple interest in the Resort as a tenant in common, rather than any other specific portion of the Resort. No Owner shall at any time have a separate ownership interest in or to a specific Unit or any other portion of the Resort, by virtue of which he or she is obligated to pay for real estate other than his or her Timeshare Interest.

**ARTICLE I  
DEFINITIONS**

The following words and phrases when used in this Declaration, including any and all Documents, shall have the following meanings, unless the context clearly reflect another meaning.

(a) "*Act*" means The Nevada Timeshare Act, Chapter 119A, Nevada Revised Statutes, as amended from time to time.

(b) "*Administrative, Sales & Marketing Facilities*" means those certain structures or areas located or to be located on the Common Area and utilized by Developer, its agents, employees, representatives, contractors, officers and directors for the purpose of sales, marketing and administration of the Resort.

(c) "*Articles*" means the Articles of Incorporation of the Association, as it may be amended from time to time. A copy of the initial Articles in effect at the time of recording of this Declaration is attached hereto as Exhibit "B" and incorporated herein by reference. No amendment of this Declaration shall be required in the event that the Articles is amended from time to time pursuant to its terms.

(d) "*Assessment*" means the share of funds required for the payment of Common Expenses which is assessed against an Owner. Unless the context otherwise requires, the term Assessment shall also include Special Assessment.

(e) “*Assigned Building*” means the Building referenced in the Owner's Deed for inventory control purposes and in order to establish priority use rights based upon Building Type. An Owner of a Timeshare Interest with a particular Building Type shall have a priority use right to reserve a Use Period in a Building with the same Building Type; *provided, however*, that the Assigned Building is not indicative of, nor shall it be interpreted to mean or signify that, the Timeshare Interest may only be used in that Building or establishes any priority or use as to that particular Building. An Owner of a Timeshare Interest shall not be obligated or entitled to occupy a Unit in the Assigned Building but rather shall occupy an available Unit within a Building, which is the same Building Type as the Owner's Assigned Building, wherever located within the Resort, upon reservation pursuant to the Reservation System.

(f) “*Association*” means Walley’s Property Owners’ Association II, Inc., a Nevada non-profit corporation.

(g) “*Board*” means the board of directors of the Association.

(h) “*Buildings*” means the buildings within the Resort containing the Units.

(i) “*Building Type*” means the different types of Buildings which may be designated by Developer in this Declaration. Currently there exists one Building Type – the “Standard Building Type.” In the future, however, the Developer may, in its sole discretion, designate Buildings in any additional Phases as a “Signature Building Type” or a Standard Building Type. The Signature Building Type contains Units with Common Furnishings and other details which are of a level of quality and/or finish that is higher in class or detail than the Common Furnishings in Units which may be located within the Standard Building Type. In addition, occupants of Units located within a Signature Building Type may receive special or different services, or higher service levels, provided by the Association which are not provided to occupants of Units which are located in Standard Building Types, all as determined by the Developer from time to time in its sole and absolute discretion. An Owner’s Building Type will be referenced in the Owner's Deed.

(j) “*Bylaws*” means the Bylaws of the Association as they may be amended from time to time. A copy of the initial Bylaws in effect at the time of recording of this Declaration is attached hereto as Exhibit “C” and incorporated herein by reference. No amendment of this Declaration shall be required in the event that the Bylaws are amended from time to time pursuant to their terms.

(k) “*Division*” as used herein shall be deemed to mean and refer to the Nevada Real Estate Division.

(l) “*Common Area*” means those portions of the Resort other than the Units.

(m) “*Common Expenses*” means all costs incurred in the operation and management of the Resort and includes, by way of example and not limitation: costs incurred in the maintenance, repair, renovation or replacement of the Units, the Common Furnishings, and the Common Area; the funding of reserve accounts; the costs of carrying out the powers and duties of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, or other agents, employees, professionals or independent contractors; the

costs associated with the operation and management of the Reservation System; the costs of insurance coverage deemed appropriate by the Board; all costs and expenses incurred by the Association in connection with regulatory compliance; any valid charge against the Resort as a whole; all costs to repair damages to the Resort in excess of insurance coverage; all real property and personal property taxes applicable to the Timeshare Interests and the Resort; the costs of all services provided to the Resort or Owners and Guests pursuant to agreements entered into between the Association and another party, including, but not limited to, any facilities usage agreement, membership, exchange and other similar fees paid by the Association, and a person or entity providing membership, exchange or other similar services, whereby the Association agrees to collect any or all of such fees from Owners as a Common Expense. The portion of Common Expenses associated with an agreement entered into between the Association and the Primary Exchange Company for any Exchange Program shall be a Common Expense, but may be collected from Owners directly by the Primary Exchange Company on behalf of the Association.

(n) “*Common Furnishings*” shall mean all of the furniture, furnishings, fixtures, appliances and other personal property within the Units.

(o) “*Confirmation*” means an acknowledgment issued by Manager (or its designee) which creates in favor of an Owner, Guest, or other person the exclusive right to use a designated Unit for a specified Use Period. The term Confirmation may also be used to refer to the time at which a Confirmation is issued. The actual Unit which is the subject of the Confirmation will be specified at check-in. A Confirmation is the result of a Reservation Request being properly made, the Owner being current in all Owner Obligations, and a Unit located within the Owner's Building Type being available. Moreover, a Confirmation will not be issued unless all conditions imposed by Article VI hereof and the Rules and Regulations are satisfied and when issued is subject to the occupancy and use limitations imposed by such Article and Rules and Regulations. The issuance of a Confirmation shall not operate as proof that Owners are current in the payment of Owner Obligations.

(p) “*Declaration*” means this Declaration of Covenants, Conditions and Restrictions for David Walley’s Resort II, as may be amended from time to time.

(q) “*Developer*” means HOLIDAY INN CLUB VACATIONS INCORPORATED, a Delaware corporation, its successors and assigns; *provided, however*, that an Owner, shall not, solely by reason of the purchase of a Timeshare Interest, be a successor or assign of Developer unless such Owner is specifically, in writing, so designated in the instrument of conveyance or other instrument executed and recorded in the Official Public Records of Douglas County, Nevada, by Developer.

(r) “*Developer Guarantee*” has the meaning set forth in Section 8.01 of this Declaration.

(s) “*Documents*” shall mean this Declaration, the Articles, the Bylaws, and the Rules and Regulations, and all exhibits annexed to any of the foregoing and any amendments made to the same from time to time.

(t) “*Exchange Company*” means the owner and operator of one of the Exchange Programs.

(u) “*Exchange Program*” means the program, or programs, which Developer has affiliated with the Resort through which Owners are able to exchange the use of their Timeshare Interest for use of an accommodation or recreation right located at different timeshare resorts, or for the use of a Unit at the Resort other than a Unit which the Owner has a right to reserve under this Declaration.

(v) “*First Mortgagee*” means a Mortgagee holding a first priority Mortgage with respect to a Timeshare Interest.

(w) “*Guest*” means a person who is not an Owner, and includes without limitation an Owner's family members, invitees, guests, licensees, employees, agents, Exchange Program participants, lessees, and other persons occupying a Unit with the permission of an Owner, a Guest, Developer or Association.

(x) “*Holdover Owner*” has the meaning set forth in Section 10.06 of this Declaration.

(y) “*Majority*” means the combined affirmative vote of more than fifty percent (50%) of the voting rights of the Owners of all Timeshare Interests.

(z) “*Management Agreement*” means and refers to that certain agreement between Manager and the Association which provides for management of the Resort, including, but not limited to, all Units committed to the Timeshare Plan.

(aa) “*Manager*” means the entity, if any, retained by the Association to manage and operate the Resort and the Timeshare Plan.

(bb) “*Mortgage*” shall mean a mortgage or deed of trust encumbering any Timeshare Interest.

(cc) “*Mortgagee*” shall mean the holder or beneficiary of a Mortgage.

(dd) “*Owner*” means the record owner of a Timeshare Interest, whether one (1) or more persons or other legal entities, and may include Developer.

(ee) “*Owner's Deed*” means the recorded special warranty deed by which legal title for a Timeshare Interest is conveyed to an Owner.

(ff) “*Owner Obligations*” means, at any given time, all amounts owed to the Association, Developer or First Mortgagee by an Owner including, without limitation, any Assessments, late charges, interest, lockout fees, any collection costs, and any other valid charges or fees that may have been imposed, and promissory note obligations associated with a Mortgage of the Timeshare Interest.



(gg) “Phase” means the initial phase of development and construction of the Resort, as well as each additional phase, if any, of development and construction of the Resort. What constitutes a Phase shall be determined in the sole discretion of the Developer. Phase I consists of Parcel O as described in Exhibit A and Phase II consists of Parcel P as described in Exhibit “A.” Additional Phases shall be made subject to this Declaration and the Documents.

(hh) “Points” means the currency by which Owners obtain the right to reserve, use, and occupy the Units pursuant to the terms and conditions of the Documents. An Owner's Points related to their Timeshare Interests shall be set forth in the Owner's Deed. The number of Points appurtenant to each of Phase I and Phase II is set forth on Exhibit “D.” The Points required to use and reserve each seven (7) day Use Period are, as of the date this Declaration is recorded, as set forth on Exhibit “E.” No amendment of this Declaration shall be required in the event that Exhibit “D” is amended from time to time by the Board with Developer’s consent.

(ii) “Preferred Mortgagee” means any entity bank, a federal or state savings and loan association, an insurance company, a mortgage company, a real estate investment or business trust, a commercial finance company, a pension fund, an agency of the United States government, any other lender generally recognized as an institutional type lender owning and holding a purchase money, first priority mortgage or first priority deed of trust encumbering a Timeshare Interest and also includes Developer or its related entities or assigns with respect to mortgages or deeds of trust which it holds encumbering a Timeshare Interest.

(jj) “Primary Exchange Company” means GlobalAccess Exchange, LLC, a Delaware limited liability company, as hereby designated by Developer.

(kk) “Primary Exchange Program” means the Exchange Program owned and operated by GlobalAccess Exchange, LLC, a Delaware limited liability company.

(ll) “Pro Rata Share” means the pro rata share allocated to each Timeshare Interest, solely for the purposes of allocating to each Owner voting rights and Assessments, the numerator of which shall be the Points related to the Timeshare Interest and the denominator of which shall be the combined total number of Points appurtenant to all of the Buildings in the Resort as may be amended from time to time in accordance with this Declaration.

(mm) “Reservation Request” means the method or form provided by the Manager (or its designated agent) which an Owner must completely and timely submit along with payment of all then outstanding Owner Obligations in order to secure a Confirmation. Reservation Requests may be made only if all current Owner Obligations are paid. Occupancy of a Unit will be denied if any applicable Owner Obligation is unpaid. Occupancy of a Unit will also be denied if Owner requests a Use Period which has a Building Type different than the Assigned Building set forth on the Owner's Deed, or if there is no availability which matches the Reservation Request. Reservation Requests may have time constraints imposed on them and, if so, will be expressed in the Rules and Regulations from time to time.

(nn) “Reservation System” means the system through which Owners of Timeshare Interests are able to make a reservation for the exclusive possession and occupancy of a Unit pursuant to the then current Rules and Regulations and Article VI of this Declaration.

(oo) “Resort” means the property described on Exhibit “A” attached hereto, together with all improvements thereon located, which property and improvements are submitted to the provisions of this Declaration, including, but not limited to, the Buildings, the Units, the Common Furnishings, and the Common Area; *provided, however*, that if any additional Phase is made subject to the terms hereof, then any such portion of the additional property contained within the additional Phase shall be deemed to be within the definition of Resort.

(pp) “Restaurant and Bar Facilities” means those certain areas which may, but are not required to, be designated by Developer from time to time, and which may be located on the Common Area and utilized by Developer, its agents, employees, representatives, contractors, and/or assigns for the purpose of the storage, preparation, and delivery of food and alcoholic and non-alcoholic beverages for the Resort, including, without limitation, the utilization of the Building hallways and pool deck throughout the Resort which Developer, its agents, employees, representatives, and contractors, may use for the purpose of service, delivery and storage of food and non-alcoholic beverages.

(qq) “Rules and Regulations” means the Rules and Regulations of the Association, as may be amended from time to time by the Board.

(rr) “Service Period” shall mean that period of time designated by the Board, in its sole discretion, during which a Unit would not be available for occupancy to allow for refurbishment, repair, replacement or upkeep.

(ss) “Special Assessment” means a share of the funds required for the payment of Common Expenses which are, from time to time, assessed against an Owner in addition to the annual Assessment.

(tt) “Timeshare Interest” means, the ownership in fee simple of an undivided interest as tenant in common with the other Owners of the Resort coupled with the right to exclusive occupancy of a Unit during a Use Period or Use Periods each Use Year, subject to the terms and conditions of this Declaration and the Rules and Regulations. The undivided interest of an Owner in the Resort is, and shall remain, an undivided interest, and shall be expressed as a fraction, the numerator of which is the number of Points to which such Owner is entitled each Use Year, and the denominator of which is the combined total number of Points appurtenant to all of the Buildings in the Resort as may be amended from time to time in accordance with this Declaration. Developer has designated herein the number of Points appurtenant to each Building. Developer reserves the right, in its sole and absolute discretion, to re-designate the number of Points appurtenant to each Building from time to time; *provided, however*, that Developer shall no longer be permitted to re-designate the number of Points appurtenant to a Building once the first Owner’s Deed reflecting that Building as the Assigned Building for any Owner is recorded in the Official Public Records of Douglas County, Nevada. An Owner shall be able to combine the aggregate number of Points appurtenant to each Timeshare Interest that such Owner owns for reservation and occupancy purposes so long as such Timeshare Interests have the same Building Type. Neither Developer nor any successor thereof shall have the right to further divide the undivided interest in the Resort conveyed by Developer or any successor thereof to an Owner, and any attempt to do so shall be null and void. Notwithstanding anything contained in this Declaration, in the event that Developer reacquires title to a Timeshare Interest, whether through

foreclosure of otherwise, the Points appurtenant to other Timeshare Interests which have been reacquired by Developer may be allocated to any other Timeshare Interests as Developer subsequently elects to convey.

(uu) “*Timeshare Plan*” means the rights to Timeshare Interests and the obligations and interests appurtenant thereto created by this Declaration.

(vv) “*Unit*” means a portion of the Resort which is designated for separate occupancy by an Owner. The term Unit shall be used in this Declaration solely for the purpose of describing the area that is available for separate occupancy by an Owner or other lawful occupant, but is not descriptive of any condominium unit or any parcel of real estate separate from the Resort. For the avoidance of doubt, Timeshare Interests relate to an undivided interest in the Resort as a whole and are not a fee simple ownership interest in any particular Unit.

(ww) “*Use Period*” means any period of time during which the Owner is entitled to use and occupy a Unit pursuant to the provisions of this Declaration and the Rules and Regulations. In no event may an Owner occupy a Unit prior to the check-in time established by the then current Rules and Regulations, and each Owner shall be required to vacate a Unit on or before the check-out time established in the Rules and Regulations in order to enable the Association to perform routine cleaning and maintenance pursuant to the provisions of this Declaration.

(xx) “*Use Year*” means a calendar year.

## **ARTICLE II LOCATION**

The Resort is located in Douglas County, Nevada. The Resort has a mailing address of 2001 Foothill Road, Genoa, Nevada 89411.

## **ARTICLE III DESCRIPTION OF IMPROVEMENTS WITHIN THE RESORT**

Section 3.01 Description of Improvements Within the Resort. The Resort is being developed for the purpose of the sale of Timeshare Interests. The Resort consists of Phase I and Phase II. Phase I contains two (2) Buildings (Building 4 and Building 5) and each Building in Phase I contains one (1) Unit. Phase II contains two (2) Buildings (Building 2 and Building 3) and each Building in Phase II contains one (1) Unit. Developer reserves the right, in its sole and absolute discretion, to re-designate Buildings with different Building Types from time to time; provided, however, that Developer shall no longer be permitted to re-designate a Building with a different Building Type once the first Owner’s Deed reflecting that Building as the Assigned Building for any Owner is recorded in the Official County Records of Douglas County, Nevada. Developer reserves the right, in its sole and absolute discretion, to subject any additional Phase to the terms of this Declaration pursuant to this Article III, and to alter Unit types, sizes, and configurations, add Units to Buildings, delete Units from Buildings, add Additional Buildings, alter the number of bedrooms and bathrooms in a particular Unit, or re-designate Buildings with different Building Types from time to time; *provided, however*, that Developer shall no longer be permitted to make such alterations, additions or deletions to a Building once the first Owner’s

Deed reflecting that Building as the Assigned Building for any non-Developer Owner is recorded in the Official Public Records of Douglas County, Nevada.

Building 4 is a Standard Building Type and contains a total of one (1) Unit, which is a three bedroom/three bathroom Unit.

Building 5 is a Standard Building Type and contains a total of one (1) Unit, which is a three bedroom/three bathroom Unit.

The number of Points appurtenant to Phase I is 26,020,000.

Building 2 is a Standard Building Type and contains a total of one (1) Unit, which is a two bedroom/two bathroom Unit.

Building 3 is a Standard Building Type and contains a total of one (1) Unit, which is a three bedroom/three bathroom Unit.

The number of Points appurtenant to Phase II is 22,505,000.

Section 3.02 Description of the Common Area. The Common Area includes all of the Resort not included in the Units. The Common Area may include roadways, parking areas, landscaping, a pedestrian access to the adjacent David Walley's Resort, and such additional facilities as may be constructed within the Resort from time to time, including but not limited to Administrative, Sales & Marketing Facilities and Restaurant and Bar Facilities (if developed). The Association has the obligation to maintain, manage, repair and replace the Units, the Common Area, the Common Furnishings and all of the Resort, including all other improvements located within the Resort.

Section 3.03 Developer's Reservation of Certain Easements.

(a) Administrative, Sales & Marketing Facilities, if any, may be located on various portions of the Common Area as may be designated by Developer from time to time. Developer reserves an exclusive easement for use and enjoyment in and to the Administrative, Sales & Marketing Facilities, to the exclusion of the Association and all Owners (although Developer may allow Owners, Guests, and other individuals access to certain areas of the Administrative, Sales & Marketing Facilities as business invitees), which easement is for the benefit of Developer, its successors and assigns and any profits generated by the operation of the Administrative, Sales & Marketing Facilities shall inure to the benefit of Developer. Such easement is for the purpose of sales, marketing, commercial activity, and administration of the Resort as determined by Developer and shall expressly include, by way of example, and not limitation, use by Developer, its employees, agents, representatives, contractors, invitees and officers and directors for sales and marketing of the Resort, and timeshare and Exchange Program sales and marketing. This easement is further reflected in Section 14.07 of this Declaration. In furtherance of this easement and not to be merged therein, the Association covenants and agrees to (i) not interfere with Developer's use of such easement, (ii) enter into a lease agreement for \$10.00 per year by which Developer leases such Administrative, Sales & Marketing Facilities (if developed), (iii) consistently keep in effect Rules and Regulations which reserve any Administrative, Sales & Marketing Facilities from use by any possible Owner, other person, or

entity and (iv) acknowledge and honor all rights of entry, access, ingress and egress in respect to access over the Common Area to and from such Administrative, Sales & Marketing Facilities (if developed). By express reservation hereby, Developer does reserve over, across and upon the Common Area an easement for access, ingress and egress to and from any Administrative, Sales & Marketing Facilities, which easement shall be useable by Developer, its Guests, invitees, agents, employees, representatives, contractors, officers and directors.

(b) Restaurant and Bar Facilities, if any, may be located on various portions of the Common Area as may be designated by Developer from time to time. Developer reserves an exclusive easement for use and enjoyment in and to any Restaurant and Bar Facilities, to the exclusion of the Association and all Owners (although Developer may allow Owners, Guests, and other individuals access to certain areas of the Restaurant and Bar Facilities as business invitees), a non-exclusive easement for ingress and egress between the Restaurant and Bar Facilities and the remainder of the Resort which easements are for the benefit of Developer, its successors and assigns and any profits generated by the operation of the Restaurant and Bar Facilities shall inure to the benefit of Developer. Such easements are for the purpose of providing food and alcoholic and non-alcoholic beverage service to the Resort as determined by Developer from time to time. These easements are further reflected in Section 14.07 of this Declaration. In furtherance of these easements and not to be merged therein, the Association covenants and agrees to (i) not interfere with Developer's use of such easements, (ii) enter into a lease agreement for \$10.00 per year by which Developer leases such Restaurant and Bar Facilities (if developed), (iii) consistently keep in effect Rules and Regulations which, except as otherwise permitted by Developer, its successors and assigns, reserve the Restaurant and Bar Facilities from use by any possible Owner, other person, or entity and (iv) acknowledge and honor all rights of entry, access, ingress and egress in respect to access over the Common Area to and from such Restaurant and Bar Facilities (if developed). By express reservation hereby, Developer does reserve over, across and upon the Common Area an easement for access, ingress and egress to and from any Restaurant and Bar Facilities, which easement shall be useable by Developer, its Guests, invitees, agents, employees, representatives, contractors, officers and directors.

Section 3.04 Timeshare Plan. Developer shall cause to be conveyed, by an Owner's Deed, the ownership in fee simple of a Timeshare Interest, which interest shall be an undivided interest in the Resort and which shall constitute each such Owner's Timeshare Interest. An Owner may be the Owner of more than one (1) Timeshare Interest. The Owner's Deed shall reference an Assigned Building and Building Type. Each Owner shall not be obligated or entitled to occupy a Unit in the Assigned Building, but rather shall occupy such Unit as is available within any Building which is the same Building Type as the Owner's Assigned Building, wherever located within the Resort, upon reservation pursuant to the Reservation System. All Use Periods, and the use thereof, are subject to the Reservation System.

#### **ARTICLE IV WALLEY'S PROPERTY OWNERS' ASSOCIATION II, INC.**

Section 4.01 Organization. The Association is a Nevada non-profit corporation. The Association shall be the governing body for the operation of the Resort. The Board shall conduct the affairs of the Association in accordance with this Declaration, the Articles and the Bylaws, as the same may be amended from time to time. The Board shall consist of between three (3) and

five (5) members; *provided, however*, that the Board shall always consist of an odd number of members. Developer shall have the right to appoint and remove the members of the Board and the officers of the Association until no later than the earlier of the following (the “*Developer Control Period*”): (a) the 120<sup>th</sup> day after ninety-five percent (95%) of the Timeshare Interests that were created by the Timeshare Plan have been conveyed to Owners other than Developer, or (b) the fifth anniversary of the date after Developer ceased to offer Timeshare Interests for sale in the ordinary course of business, under either the Timeshare Plan itself or another Timeshare Plan in which the Timeshare Interests are included, whichever is later.

Section 4.02 Membership and Voting. All Owners, by virtue of their ownership of a Timeshare Interest, are automatically members of the Association. All Owners shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to this Declaration and in accordance with the Articles and Bylaws; *provided, however*, that the Board shall be entitled to decide whether or not to permit those Owners who are delinquent in the payment of Assessments to vote. Subject to the provisions of the Bylaws, the vote of any Owner entitled to vote shall be equal to the Pro Rata Share of each Timeshare Interest owned by such Owner. Association membership shall be appurtenant to the Timeshare Interest giving rise to such membership and shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon the transfer of title to said Timeshare Interest, and then only to the transferee of title to such Timeshare Interest. Any attempt to make a prohibited transfer of a membership shall be void. Any transfer of title of a Timeshare Interest shall operate automatically to transfer the membership in the Association to the new Owner thereof. Notwithstanding any other provisions contained herein to the contrary, the Association or Manager may not publish the membership roster of the Association or provide a copy of the membership roster of the Association to any third party, except as reasonably required to conduct legitimate association business, or as authorized or required by law. Developer shall be a member of the Association with respect to Timeshare Interests owned by Developer. For the avoidance of doubt, each Owner shall be subject to this Declaration. No person or entity holding a deed of trust, mortgage, or other encumbrance on a Timeshare Interest or the Resort (including a Preferred Mortgagee) shall have any membership rights in the Association by virtue of such deed of trust, mortgage, or encumbrance.

Section 4.03 Duties of the Association.

(a) The Association shall be responsible for the maintenance, repair and replacement of all of the improvements and property located within the Resort. The Board, on behalf of the Association and all Owners, may enter into an agreement with such firms or companies, as it may determine, to provide certain services and/or maintenance for and on behalf of the Owners whereby the maintenance and services are provided on a regular basis for any maintenance and service as the Board deems advisable and for such period of time and on such basis as it determines. The fee for such services shall be a Common Expense.

(b) After the initial decoration of each Unit and Building, the Board shall determine the interior color scheme, decor and furnishings of each Unit in the Resort, as well as the proper time for redecorating and replacements thereof. In addition, after the initial decoration of each Building exterior, the Board shall determine the color scheme of the buildings and all exteriors and the color scheme of the Common Area. During the Developer Control Period, Developer shall have the right to review and approve, or disapprove, any of the interior color

schemes, exterior color schemes, design, decor and furnishings at the Resort. The Resort shall be maintained in a condition equal to or better than the standard that exists when the first Timeshare Interest is sold.

(c) The Association or the Manager shall acquire water, sewer, garbage disposal, electrical, telephone, gas and other necessary utility services for the Resort.

(d) The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as the Association may from time to time deem advisable, in its sole discretion.

(e) The Association shall collect all taxes and assessments from its members in accordance with this Declaration, the Act and all applicable laws.

(f) The Association shall perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles, Bylaws or Association rules and regulations.

(g) The Association shall perform or otherwise employ a Manager who shall perform all duties as required by the Act. The Manager shall act in the capacity of a fiduciary to the Owners. In addition to such other requirements as set forth in the Act, the Association either itself or through a retained Manager shall:

(1) provide, each year, to all Owners an itemized annual budget, which shall include a listing of all expenses and receipts;

(2) maintain all books and records concerning the Resort, including, but not limited to, a list of all Owners and their addresses which shall be updated no less frequently than quarterly. All such books and records shall be reasonably available for inspection by any Owner or the authorized agent of any Owner, provided that, except as expressly otherwise provided herein, the list of the names and addresses (and other personal contact information) of all Owners shall not be published, provided to any Owner, or any third party; arrange for an annual independent audit of all the books and financial records of the Timeshare Plan by a certified public accountant in accordance with generally accepted auditing standards as may be requested by the Board;

(3) make available for inspection by the Division the books and records of the Timeshare Plan as required under Nevada law;

(4) schedule the occupancy of Units in the Resort, and;

(5) perform any and all other functions and duties which are necessary and proper to maintain the Resort.

(h) In addition to such other powers as may be set forth in the Documents, the Association shall have all of the powers of a non-profit corporation organized under the laws of the State of Nevada subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles or Bylaws. The Association (or the Manager on its behalf) shall have the power to do any and all lawful things which may be authorized,

permitted or required to be done by the Association under the Documents, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association including, without limitation:

(1) to levy Assessments on the Owners and to enforce payment of Assessments;

(2) to enter upon any portion of the Resort for the purpose of enforcing by peaceful means any other provisions of this Declaration, or for the purpose of maintaining or repairing any such area if, for any reason whatsoever, maintenance is required thereto;

(3) to grant and convey to Developer any third party easements, licenses and rights of way in, on, over or under any of the Resort for the purpose of constructing, erecting, operating and maintaining therein or thereon or thereunder any and all utility services including, by way of example and not limitation, lines, cables, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, telephone, television, internet connectivity, or other purposes and including, by way of example and not limitation, sewers, storm and water drains, pipes, water systems, sprinkler system, water, heating and gas lines or pipes and similar public or quasi-public improvements or facilities;

(4) to employ the services of any person or corporation as a Manager or otherwise to employ or retain the services of any other person. Such agent shall have the right to ingress and egress over such portion of the Resort as is necessary for the performance of such business, duties and obligations;

(5) to employ professional counsel and advise such persons, firms or corporations such as, but not limited to, landscape architects, recreation experts, planners, lawyers and accountants;

(6) to create, in its sole discretion, various classes of service and to make appropriate charges therefor for the users thereof, including, but not limited to, reasonable admission and other fees for the use of any recreational facilities situated in the Common Area and to avail itself of any rights granted by law without being required to render such charges and to such other rules and regulations as the Board deems proper. In addition, the Board shall have the right to discontinue any service on nonpayment or to eliminate such services for which there is no demand therefor or adequate funds to maintain the same out of charges, except that the Association shall not discontinue or eliminate such service without the consent of Developer; and

(7) to sue and be sued; pay taxes; make and enter into contracts; and to insure, enter into leases or concessions as respects the Resort; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; insure its own liability for claims against it and against its officers, directors, employees and contractors.

Notwithstanding anything contained in this Declaration, no member of the Board nor any officer of the Association or Developer or the Manager shall be personally liable to any Owner or to any other party, including, without limitation, the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager, or any other representative or employee of the Association, provided that



such person, firm or entity has, upon the basis of such information as may be possessed by such person, firm or entity, acted in good faith, without intentional misconduct or a knowing violation of law.

## **ARTICLE V MAINTENANCE RESPONSIBILITY**

Section 5.01 By the Association. The Association shall maintain and keep in good repair, the expense of which shall be a portion of the Common Expenses, all of the Resort. Such obligation shall include the obligation of the Association to repair, replace, keep up and maintain the Units, Common Furnishings and Common Area. The Association may enter into an agreement with such firms, contractors or companies as it may determine to provide certain services and/or the maintenance for and on behalf of the Owners whereby the maintenance and services are provided on a regularly scheduled basis and for any maintenance or service as the Association deems advisable and for such periods of time on such basis as the Board or the Manager determines. The fee for any such service shall be a part of the Common Expenses and included in the Assessment thereby established. Subject to Section 4.03 of this Declaration, the Association shall be solely responsible for the decoration of the Resort (to the exclusion of the Owners), including, but not limited to, determination of the interior and exterior color schemes, decor and furnishings as well as the proper time for redecorating and the replacements thereof. The Association shall maintain and keep the Resort in a reasonably acceptable standard, subject to reasonable wear and tear, commensurate with the condition existing at the time that portion of the Resort was subjected to this Declaration. To accomplish the Association's obligation of maintenance, repair and replacement, each Owner agrees:

- (i) to pay the Pro Rata Share of the Common Expenses;
- (ii) not to make, cause or allow to be made any repairs, modifications, alterations or replacements to the Resort, without the prior written consent of the Board or the Manager;
- (iii) that the Manager or Board, as the case may be, is authorized to enter into any area of the Resort, including any Unit, for the purposes described in this Declaration.

Section 5.02 Acts of Owners. In the event the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or an Owner's Guests, then the Association may give the Owner, the Guest, or both written notice of the repair, replacement or maintenance work needed and an estimated cost to accomplish such repair, replacement or maintenance work. Upon demand by the Association, an Owner shall have fifteen (15) days within which to pay the Association for expenses incurred due to the Owner or the Owner's Guest and in the event of a failure to pay, such costs shall be added to and become a part of the Assessment to which such Owner is subject and shall become a lien against such Owner's Timeshare Interest.

## ARTICLE VI RESERVATION SYSTEM

Section 6.01 Use of a Unit. Owners of Timeshare Interests shall only be entitled to the exclusive possession and occupancy of a Unit in accordance with the then current Rules and Regulations, and this Article VI. Payments of all Owner Obligations that may have been imposed, and Owner Obligations (as estimated for any future year in which occupancy is requested) shall be a condition precedent to Manager issuing a Confirmation. Manager may cancel and dishonor Confirmations if any of an Owner's Owner Obligations become delinquent. Notwithstanding the foregoing, suspension or denial of use of a Unit shall also be subject to Section 10.04 of this Declaration. Reservation Requests shall be honored on a "first-come, first-served" basis and as described in the Rules and Regulations. Such Owners who do not make a Reservation Request in a timely manner will be obligated to use and occupy whatever remaining Use Periods are available, if any. An Owner whose Reservation Request or Confirmation is deemed disqualified, may be eligible for a new Reservation Request once the disqualification is removed, but such Owner will be obligated to use and occupy whatever remaining Use Periods are available, if any. If the available Use Periods are not convenient to such Owner's plans or schedule or the reserved Use Period is not used or exchanged, the Owner may lose the use, possession and occupancy of a Unit, or any Exchange Program opportunities for that year. In such event, neither Developer, the Association, its Board, or the Manager is obligated to make alternative arrangements or to excuse payment of Owner Obligations or to refund any of the Owner's payments and Developer shall have the right to rent any Unit during any unreserved or otherwise unused Use Periods with all revenues derived from such rental inuring solely to Developer. Notwithstanding anything contained in this Declaration, in the event of a disqualification of a Reservation Request or a failure of an Owner or Guest to occupy a Unit at the beginning of a Use Period as set forth in the Confirmation, Developer shall have the right to rent any such Unit for the applicable Use Period, on a transient basis to members of the general public, and all revenues derived from such rental shall inure solely to Developer.

Section 6.02 Restriction on Use, Possession and Occupancy. Regardless of the Assigned Building referenced in any Owner's Deed, no Owner shall have any right whatsoever to occupy a particular Unit for any particular Use Period, except pursuant to a Confirmation properly made through the Reservation System. Said reservations and other rights associated with use of a Use Period shall be in accordance with the following:

(a) Owners shall be entitled to use their Points every Use Year, to use and occupy available Units as determined by the Manager in accordance with the Reservation System, together with the non-exclusive right to use the Common Area. Unless otherwise determined by the Board, Owners shall not be permitted to use the Common Elements or enter upon the Resort property except during their use and occupancy of a Unit reserved in accordance with the Reservation System.

(b) Reservation Requests for Use Periods will be honored by the Manager in the order in which they are received; *subject, however*, to the terms of this Declaration, the Rules and Regulations, and the following:

(1) Each Owner of a Timeshare Interest shall, at least sixty (60) days and not more than three hundred ninety-five (395) days prior to the commencement of such Owner's intended Use Period, request from the Manager or its designated agent a Confirmation. The aforesaid request must take the form of a Reservation Request and be timely and properly made. Each Reservation Request is filled on a first-come, first-served reservation basis within the Owner's Building Type.

(2) Reservation Requests may only be made for a Use Period equal to a seven (7) night stay and the check-in day which is a Friday, Saturday or Sunday.

(3) Developer hereby reserves in favor of itself, its affiliates, successors or assigns, the right and easement to reserve and use any Unit during a Use Period for which a Confirmation has not been issued sixty (60) days prior to the beginning of a given Use Period. Further, hereby granted and reserved to Developer, its affiliates, successors or assigns, is the right and easement to reserve and use any Unit which is not then being occupied by an Owner or Guest for any reason including that (i) such Owner failed to obtain a Confirmation; (ii) such Owner obtained a Confirmation but neither the Owner nor Guest was present at the beginning of the Use Period set forth on the Confirmation (unless Owner or Guest arranges and confirms such late arrival with Manager in advance); or (iii) the Owner or Guest vacated the Unit prior to the end of the Use Period set forth on the Confirmation. Such right and easement includes leasing, gift, donation, or any other use and enjoyment and for any reason, including renting on a transient basis in nightly increments or multiples thereof. Developer or its affiliates, successors or assigns may keep for their own account all revenues occasioned by the exercise of such right and easement. Such use, occupancy, and enjoyment shall be without cost or charge to Developer, its affiliates, successors and assigns, and no amounts shall be owed to Association, such Owner, Guest, or any other person.

(4) If an Owner's Confirmation has been dishonored due to an error made by Manager, use reasonable efforts shall be made by Manager to find, at no cost to such Owner, alternative accommodations of reasonably comparable quality and location for such Owner.

(5) There shall be no accrual or carry-over of unused time or Use Periods from one (1) Use Year to the next.

(6) Any Exchange Company may make Reservation Requests on behalf of Owners who are members of an Exchange Program.

(7) The Developer may permit any of its Confirmations to be used by itself or any third parties and such use may be for the entire Confirmation or for any portion, or portions, of the Confirmation.

(8) Any Exchange Company may permit its members or the general public to use any of its Confirmations and such use may be for the entire Confirmation or for any portion, or portions, of the Confirmation.

(c) Cancellations, check-in and check-out times and other ministerial or administrative functions shall be in accordance with the terms of this Declaration and in accordance with the Rules and Regulations as may be adopted from time to time by the Board.

(d) Prior to the rental or exchange of any Use Period, an Owner must make a Reservation Request and obtain a Confirmation from Manager.

Section 6.03 Use Advisory. Owners should note the Reservation Request timeframes and Building Type requirements for making a proper Reservation Request. In addition, Owners should note that Manager will issue Confirmations on a “first-come, first-served” basis subject to availability. The longer an Owner waits to make a Reservation Request, the less likely it is that he or she will obtain a Confirmation for his or her first choice of Use Periods. Furthermore, Owners who do not make their Reservation Requests for a Use Period in a timely manner or Owners whose Reservation Request or Confirmation are disqualified or dishonored for failure to pay Owner Obligations may not obtain a Confirmation for the Use Period they desire or any Use Period at all, based on lack of availability.

## **ARTICLE VII USE RESTRICTIONS AND ADMINISTRATION**

Section 7.01 Restrictions. The Units shall be and are restricted exclusively to use in accordance with the terms hereof. Restrictions herein contained regarding use of Units and the Common Area are as follows and also as may be adopted by the Board by its adoption of Rules and Regulations:

(a) The Resort and the Units shall be for Owners' and Guests' personal transient resort occupancy only. Except for commercial uses by Developer or its affiliates including sales models, sales offices, rental of Use Periods (whether in connection with Timeshare Interests owned by Developer or controlled by its affiliates) construction offices, storage, food and beverage services, related uses, or as otherwise permitted in this Declaration, no trade, business, profession or any type of commercial activity may be conducted in any Unit or with respect to any Timeshare Interest, including, but not limited to, the operation of a rental business and the resale of Timeshare Interests. Each Owner shall have the exclusive right to use and occupy a Unit during a Use Period for which an Owner has a valid Confirmation pursuant to the terms of this Declaration and the Rules and Regulations.

(b) No structures of a temporary character, trailer, tent, shack, carport, garage, barn, or other outbuilding, structure, or facility, other than the Units, shall be used as a residence or sleeping quarters on any portion of the Resort at any time, either temporarily or permanently.

(c) Each Timeshare Interest shall be conveyed as a separately designated legal interest subject to the terms, conditions, and provisions of this Declaration.

(d) An Owner shall not keep any pet, animal, livestock or poultry of any kind in any Unit nor shall any pet, animal, livestock or poultry of any kind be raised, bred, kept or brought onto any part of the Resort unless specifically provided otherwise by the Rules and Regulations promulgated by the Board from time to time. This restriction shall not apply to service animals as permitted by applicable law.

(e) No garbage, refuse, equipment, personal property, or any apparatus or item whatsoever shall be kept, placed, or maintained on the Common Area. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon.

(f) Without prior written approval and authorization of the Board, neither any exterior television, radio or other antennas of any sort nor any satellite dish or other device for receipt of telecommunication signals shall be placed, allowed or maintained upon any portion of the Resort or the improvements to be located within the Resort nor shall such be placed, allowed or maintained upon any other structure situated within the Resort, including Units, other than an antenna or other system for the receipt of telecommunication signals, should any such master system or systems be utilized and require any such exterior antenna or other apparatus as the same may be approved by the Board. Each Owner shall keep the Unit in a good standard of preservation and cleanliness during occupancy and shall not sweep or permit to be swept or thrown therefrom or from the doors, windows, porch or balcony thereof, any dirt or other substances. Owners, other than Developer, may not make or cause to be made any structural modifications to the Units or any portion of the Resort.

(g) No Owner shall annoy other Owners by unreasonable noises or otherwise and no Owner shall commit or permit to be committed any nuisance or immoral or illegal act within the Resort.

(h) Vehicles shall be parked only in authorized areas and no vehicle repairs, other than emergency repairs or repairs of a minor nature needed to be performed to move a vehicle off the Resort, shall be allowed on the Resort. No vehicles shall be parked or stored on blocks or other such devices within the Resort. No vehicles containing any combustible or explosive materials shall be parked or stored within the Resort.

(i) An Owner shall not permit or suffer anything to be done or kept in any Unit which will increase the rate of insurance obtained by the Association or which will obstruct or interfere with the rights of other Owners, Developer, Association or the Manager.

(j) Notwithstanding any of the provisions contained herein to the contrary, Developer reserves and retains the right for Developer or its affiliates to rent or lease Timeshare Interests owned or controlled by Developer or its affiliates to others, including non-Owners and the general public, and any such rental (including rentals of Use Periods of one night, or multiples thereof) shall be permitted under a reservation for use of such Timeshare Interests in accordance with the Reservation System as the same allows other Owners to reserve their Timeshare Interests. Any funds received in respect to such use shall be solely funds of Developer or its affiliates as applicable.

(k) No Owner shall permit his interest in any funds from time to time in the possession of the Association, Board, or Manager to be subjected to any attachment, lien, claim, or charge or other legal process and each such Owner shall promptly restore any funds held by the Association, the Board, or the Manager to the extent depleted by reason of the assertion of any such attachment, lien, claim, charge, or other legal process and reimburse the holders of such funds for all reasonable attorney's fees or other costs incurred in respect thereof.

(l) In the event of damage to or destruction of any Unit, the Common Furnishings, or the Common Area caused by an Owner or Owner's Guests, such Owner shall be liable for the cost of necessary repairs and reconstruction to restore the Unit, the Common Furnishings or the Common Area to its original condition and the cost thereof shall be a lien in the same manner as an Assessment for Common Expenses as set forth herein.

(m) No Owner, with the exception of Developer for so long as Developer owns any Timeshare Interest, shall display any sign, advertisement or notice of any type on the exterior of the Unit, the Common Area or in any window or other part of the Unit, or on any portion of the Resort otherwise; *provided, however*, the right of Developer to do such is only a reasonable right associated with necessary activity for its marketing and sale of Timeshare Interest(s). No Owner shall cause anything to project out of any window, door, porch or patio except as may be approved in writing by the Board other than as might be installed as of the date that this Declaration is recorded or as thereafter installed by Developer.

(n) An Owner, excluding Developer, shall not be permitted to keep or store any boat, trailer, truck, camper, or van in excess of twenty (20) feet long, recreational vehicle or other vehicle which is not a passenger car used for private use on any portion of the Resort or any such vehicle shall be removed at the expense of the Owner responsible therefor; *provided, however*, the right of Developer to do such is only a reasonable right associated with necessary in connection with Developer's rights under this Declaration. The use of parking spaces may be further regulated and limited by the Rules and Regulations promulgated by the Board; *provided, however*, that Developer and Manager shall be permitted to reserve a reasonable number of parking spaces for use in connection employee parking and parking for Owners or Guests attending timeshare presentations provided by Developer or its affiliates.

(o) No Owner shall use or carry into any Unit, porch or patio any inflammable oils or fluids such as gasoline, kerosene, naphtha, lighter fluid, benzene or other explosive articles deemed hazardous to life, limb or property.

(p) No clothesline or similar devices shall be allowed on any portion of the Resort and no clothes, sheets, blankets, laundry, rugs of any kind or any other article shall be dried, aired, beaten or dusted by extending same from any windows, doors, porches or balconies of the Units.

(q) Water closets and other water apparatus within a Unit or otherwise located within the Resort shall not be used for any purpose other than those for which they were constructed.

(r) No Owner shall cook or barbecue on any porch or balcony, other than on grills designated and approved by Manager or the Association. Only furniture placed by Developer or Association on porches and patios shall be permitted on porches and patios. The hanging of articles of any type on the porch or balcony railings is not permitted.

(s) The lighting and burning of candles in any Unit, porch or patio is prohibited.

(t) The Association will retain a pass key to each Unit. No Owner shall alter any lock or install a new lock on any door leading into its Unit.

(u) Subject to the terms and conditions of this Declaration and the Rules and Regulations, each Owner shall have the exclusive right to occupy a Unit and to use and enjoy the rights appurtenant to such occupancy during the Use Period set forth in the Owner's Confirmation. No Owner shall occupy any Unit or exercise any other rights of ownership in respect to a Unit or the Resort other than during such Use Period.

Section 7.02 Administration. Each Owner shall keep the Unit and all Common Furnishings in good condition and repair during his reserved Use Period, vacate the Unit at the expiration of his or her reserved Use Period, remove all persons and property therefrom, excluding only Common Furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable check-in, check-out, and other procedures as may from time to time be contained in the Rules and Regulations. Each Owner hereby agrees that the Board is expressly authorized to adopt, amend, and repeal such Rules and Regulations as may be desired to enhance all Owners' use and enjoyment of the Unit and the Resort, including Rules and Regulations regarding check-in and check-out times and Service Periods.

Section 7.03 Exchange Programs. Developer shall have the exclusive right to affiliate the Resort and Timeshare Plan with one or more Exchange Programs from time to time as it determines in its sole discretion. The Association shall not facilitate exchanges or use of the Units or any portion of the Resort on behalf of any exchange program, club, or other program which is not designated by Developer as an "Exchange Program" under this Declaration. In the event that there are more than one Exchange Programs affiliated with the Resort and Timeshare Plan at any given time, then Developer shall designate one of the Exchange Programs as the Primary Exchange Program and shall designate the owner and operator of the Primary Exchange Program as the Primary Exchange Company. If only one Exchange Program is affiliated with the Resort and Timeshare Plan, then such Exchange Program shall be considered the Primary Exchange Program and its owner and operator shall be considered the Primary Exchange Company. With Developer's prior approval, the Association may enter into an agreement with the Primary Exchange Program whereby Owners automatically become members of the Primary Exchange Program (and may have access to additional Exchange Programs through such membership); *provided, however*, that no Owner shall be obligated to use the benefits of any Exchange Program and Owners shall have the option, in their sole discretion, to participate, or not, in any Exchange Program.

Section 7.04 Restriction Upon Creation of Additional Plans, Programs or Clubs. No timeshare plan, vacation plan, vacation ownership plan, fractional plan, exchange program, interval interest plan, timeshare or vacation club, points-based program, ownership occupancy program, fractional interest program, shared use plan, destination or equity club, or similar ownership or use program shall be created, established, operated or maintained with respect to the Resort, the Timeshare Plan, any Timeshare Interest, or any Unit except by Developer or except with the prior written authorization from Developer, which authorization may be given or withheld in Developer's sole discretion, and which authorization, if given, shall be evidenced by a written instrument executed by Developer, recorded in the Official Public Records of Douglas County, Nevada and containing a reference to this Declaration and this Section. As of the recordation of this Declaration, the Exchange Program and the Primary Exchange Program have been created, or agreed to, by Developer and therefore, do not require the recording of a separate authorization.

Section 7.05 Reservation and Unit Use Requirements and Limitation Respecting Reservation System. Each Owner, by acceptance of an Owner's Deed or any deed of conveyance for a Timeshare Interest from a successor in interest to Developer, agrees and acknowledges that a reservation procedure and Unit use limitation for Unit occupancy is needed for the orderly use of the Units by such Owner. The reservation procedure and Unit occupancy and use limitation is as provided for in the Reservation System, this Declaration and the Rules and Regulations, to which each Owner agrees he or she is bound.

Section 7.06 Management. Management of the Units, including, but not limited to, maintenance and repair of such Units, acquisition, maintenance, repair, and replacement of Common Furnishings therein, and administration of the affairs of Owners with respect to the use and occupancy of the Units and payment of expenses and costs enumerated in respect to the Timeshare Plan as set forth in this Declaration, shall be under the direction and control of the Board. The Board may contract with any Manager to perform its services and duties in respect to the Resort and the Units. Each Owner does by acceptance of an Owner's Deed or any deed of conveyance for a Timeshare Interest from a successor in interest to Developer, therefor appoint as their true and lawful attorney-in-fact the Board and Manager, as applicable, to act on his or her behalf as provided herein. The Board and Manager, as applicable, shall have exclusive possession of a Unit during any Service Period and between check-in and check-out times as may exist. The Board and Manager, as applicable, are expressly authorized to do any or all of the following:

- (a) repair, maintain, repaint, remodel, furnish, landscape or refurnish all improvements within the Resort, including, without limitation, the Units; establish reserves for anticipated costs, including the acquisition and replacement of Common Furnishings; and acquire and pay for materials, supplies, furniture, furnishings, labor, or services which the Board or Manager deems necessary or proper for the maintenance and operation of the Resort;
- (b) collect all taxes and assessments, including Assessments by the Association, and other costs or charges affecting or relating to the Resort; and discharge, contest, or protest liens or charges affecting the Resort;
- (c) obtain and pay the cost of recreational privileges and electrical, telephone, television, internet, gas, cable television, fire suppression and alarm systems, and other utility services for the Resort;
- (d) adopt from time to time and enforce Rules and Regulations relating to the possession, use occupancy and enjoyment of the Units and the Common Area by the Owners;
- (e) obtain and pay the cost of legal, accounting and other professional services necessary or proper in the maintenance and operation of the Resort and the enforcement of this Declaration, and assist in the management of the Timeshare Plan, including, without limitation, all Units;
- (f) do all other acts and things necessary or appropriate to the ordinary and necessary operation and maintenance of the Resort;



(g) delegate, to the extent permitted under applicable law, the authority and responsibilities of the Board or Manager hereunder to one or more subagents or contractors for such period and upon such terms as either deems proper; and

(h) subject to Section 7.03 of this Declaration, enter into and terminate agreements with the Primary Exchange Company enrolling all Owners, as a group, as members of the Primary Exchange Program.

Section 7.07 Occupancy Restriction. Any Owner who intends to authorize, on his or her own behalf, any person to occupy a Unit through the rights of such Owner (other than a member of his or her family residing with such Owner or an incoming user through an Exchange Program) must obtain a Confirmation in such person's name as required in this Declaration and the Rules and Regulations.

Section 7.08 Timeshare Interest Owner Additional Restriction. Except as otherwise done under the direction of the Board or Manager or as required to prevent damage or injury to persons or property in an emergency, no Owner shall make improvements, decorations, or repairs (including, but not limited to, painting, tiling, waxing, wallpapering, landscaping or otherwise refinishing, repairing or redecorating) to any portion of the Resort or contract to do so or subject any portion of the Resort to any liens for the making of improvements, decorations, or repairs. No Owner shall (a) create or permit to exist any nuisance at the Resort, (b) commit waste at the Resort, or (c) permit anything to be done or kept at the Resort which would cause such risks as to increase the cost of insurance upon any portion of the Resort. No Owner shall remove any of the Common Furnishings from the Resort.

Section 7.09 Protection of Timeshare Interests. No Owner shall permit his or her Timeshare Interest to be subject to any lien (other than a purchase money lien or the lien for Common Expenses, which lien must be immediately cleared), claim, or charge, the enforcement of which may result in a sale or threatened sale of the Timeshare Interest of any other Owner or any part thereof, or in any interference with the use or enjoyment of the Resort by any other Owner; and in the event that the sale of the entire Unit or Common Furnishings or the interest of any Owner or any part thereof, or the use and enjoyment by any Owner is threatened by reason of any lien, claim, or charge against the interest of any other Owner, or proceedings are instituted to affect any such sale or interference, any Owner or Owners or the Board acting on behalf of any one or more Owner, unless promptly indemnified to his or their satisfaction, may but shall not be required to, pay or compromise the lien, claim, or charge without inquiry into the proper amount or validity thereof and, in that event, the Owner whose Timeshare Interest was subjected to such lien, claim, or charge shall forthwith repay the amount expended by the other Owner, Owners, or Board, to the person or entity who paid or compromised the lien, claim, or charge together with such reasonable attorney's fees and related costs as he or they may have incurred.

Section 7.10 Separate Mortgages. Each Owner shall have the right to mortgage or otherwise encumber the Timeshare Interest owned by such Owner. Developer shall have the right to mortgage or otherwise encumber the unsold Timeshare Interests which it owns. Neither Developer nor any Owner shall attempt to mortgage or otherwise encumber in any manner whatsoever any other portion of the Resort. Any Mortgage shall be subordinate to all of the provisions of this Declaration and, in the event of foreclosure, the provisions of this Declaration

shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise. Notwithstanding any other provision of this Declaration, no breach of the provisions herein contained nor the enforcement of any lien created pursuant to the provisions hereof shall defeat or render invalid the lien of any Mortgage of any Owner's Timeshare Interest if such Mortgage is recorded in the Official Public Records of Douglas County, Nevada, and is given in good faith and for value.

## **ARTICLE VIII COMMON EXPENSE ASSESSMENTS**

Section 8.01 Affirmative Covenant to Pay Expenses. In order to (1) fulfill the covenants herein contained in the Declaration; (2) to preserve the Resort, including the Units, Common Area and Common Furnishings, for the recreation, safety, welfare and benefit of the Owners and Guests; and (3) to provide for improvement, maintenance and preservation of the Resort, including the Units, Common Area and Common Furnishings, and the services provided for herein, there is hereby imposed upon the Association and the Owners, the affirmative covenant and obligation to pay the Common Expenses, including such as are as defined and more particularly set forth in Article XI of this Declaration. The Association by its Board shall prepare and adopt in accordance with the Bylaws an annual budget setting forth the Common Expenses for the operation and management of the Resort. The Association shall assess each Owner its Pro Rata Share of the Common Expenses, which share shall be assessed annually as an Assessment, and the Association shall collect said sums. Annual Assessments shall be payable in advance of the year in which such Assessments apply or upon such other date as may be from time to time determined by the Board. Notwithstanding the foregoing, each Owner shall be obligated to pay such Special Assessments as shall be levied in addition to the annual Assessments levied by the Board against his or her Timeshare Interest, as a result of (a) extraordinary items of expense; (b) non-recurring capital expenditures; (c) the failure or refusal of other Owners to pay their annual Assessment or Special Assessments; (d) any sums expended by the Association for the repair, renovation, or replacement of a Unit, Common Area or Common Furnishings which has been damaged; (e) any sums expended by the Association for the removal of any addition or alteration to any portion of the Resort, including any Unit, the Common Area or Common Furnishings, made by any person or entity in violation of the provisions of the Declaration, the Articles, Bylaws and/or Rules and Regulations of the Association; or (f) such other reason or basis determined by the Board in its sole discretion.

Notwithstanding any other provision contained herein to the contrary, or otherwise contained in the Bylaws or Articles, the Common Expenses shall include adequate amounts for the operation and management of the Resort and all obligations, rights and duties of the Association in respect to any and all of its other rights and powers hereunder including, but not limited to, the upkeep, maintenance, replacement, renovation, repair and other duties and obligations as may be applicable by the Association to the Resort, including, without limitation, Units, Common Furnishings and Common Area. Developer reserves the right, but is not obligated, to enter into an agreement (a "*Developer Guarantee*") with the Association to pay the difference between the actual expenses incurred by the Association and the sum of the amounts payable to the Association as Assessments by Owners, other than Developer, and other revenues received by the Association, in lieu of paying Assessments to the Association for any Timeshare Interests that Developer owns.

Notwithstanding any other provisions contained in this Declaration, or otherwise, the Association shall be authorized, but not obligated, to establish, on behalf of and for the benefit and convenience of each Owner, an escrow or pre-payment arrangement into which annual Assessments, Special Assessments, and any other amounts that may be owed by an Owner to the Association, are to be deposited. Such arrangement shall authorize the agent thereunder to release to the Association amounts deposited into such account, at such time as provided for in such agreement; *provided, however*, release of amounts to the Association shall be at the commencement of the respective year as relates to the budget pursuant to which such amounts are paid (or if paid during the year as relates to such budget, then immediately upon receipt) and release shall be provided for in the agreement. Receipt by the agent shall, for purposes of the Reservation System, be deemed payment entitling a Reservation Request to be Confirmed. Such escrow account shall be for the sole benefit and convenience of Owners with the express purpose to provide custodial care of such payments until the respective time when they are delivered to the Association or the obligee otherwise entitled thereto. The Association is, to the fullest extent permitted by applicable law, authorized to enter such escrow agreement and endorse and deposit therein such amounts, all on behalf of and as agent for each Owner, which agency is irrevocable and coupled with an interest. Deposits into the foregoing escrow account shall be deemed a deposit made by the Owner paying such amount, refundable to such Owner until the first to occur of the same being due to the Association or the respective obligee entitled thereto or such actually being paid by the escrow agent to the Association or such obligee.

Section 8.02 Lien. The Owners shall be personally liable, jointly and severally to the Association for the payment of the Assessments levied by the Association against their respective Timeshare Interests and for all costs of collecting such Assessments, including interest, delinquent Assessments and attorneys' fees at all pre-trial, trial and appellate levels; *provided, however*, that in the event that Developer sells a Timeshare Interest to a third-party purchaser and such purchaser defaults under the purchase agreement which has not closed, and Developer is thereby delinquent for Assessments owed to the Association in connection with such Timeshare Interest, then Developer shall either (a) pay the Assessment owed, or (b) pay such amounts as are required pursuant to any Developer Guarantee which may be in effect in accordance with Section 8.01 of this Declaration. The Association, within ten (10) business days after the receipt of a written request, shall furnish to an Owner or any Mortgagee thereof, a statement setting forth the amount of unpaid Assessments made against the Owner's Timeshare Interest. Such statement is binding on the Association, the Board and every Owner. The Assessments, together with interest, late charges, collection agency fees, any costs of collection, including reasonable attorneys' fees at all pre-trial, trial and appellate levels all of which shall be considered part of the Assessment under this Declaration are hereby declared to be a charge upon the Timeshare Interest and shall be a continuing lien upon the Timeshare Interest. Such lien may, to the fullest extent permitted under Nevada law, be enforced by the non-judicial foreclosure of the defaulting Owner's Timeshare Interest by the Association. Payments of any Assessment shall be considered delinquent and shall bear interest at the highest rate permitted under Nevada law from the date when due until paid. In addition, the Board may charge an administrative late charge on delinquent accounts equal to the greater of \$25.00, five percent (5%) of the delinquent payment, or such other greater amount permitted by Nevada law, but in no event greater than the amount permitted by Nevada law.

Each Assessment shall be the personal obligation of the Owner of the Timeshare Interest so assessed. Said lien shall be effective only from and after the date recorded in the Official Public

Records of Douglas County, Nevada, of a written notice of delinquency signed by the Association setting forth the amount of the Assessment and other charges due to the Association as of the date the notice is signed, a description of the Timeshare Interest against which the lien has been assessed, and the name of the Owner of such Timeshare Interest. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of the statement of lien. A Preferred Mortgagee acquiring title to a Timeshare Interest as a result of foreclosure of such Mortgage or deed in lieu of foreclosure shall not be liable for the Pro Rata Share of Common Expenses and all other charges chargeable to the former Owner which became due prior to such acquisition of title to the Timeshare Interest. A successor in title to a Preferred Mortgagee holding a Mortgage shall be entitled to the same benefits of such Preferred Mortgagee. The lien of any Owner Obligation (and any penalties, interest thereon, late charges, or the like) shall be subordinate to the lien of any Preferred Mortgagee's Mortgage. A Preferred Mortgagee, or its designee or assignee, who comes into possession of a Timeshare Interest by virtue of judicial foreclosure, non-judicial foreclosure, or by deed in lieu of foreclosure shall take the Timeshare Interest free of any Owner Obligations attributable to such Timeshare Interest which accrue prior to the time such person or entity acquires title to the Timeshare Interest.

Notwithstanding anything contained herein to the contrary, any lien against a Timeshare Interest shall encumber only that Timeshare Interest and shall not encumber the property, real or personal, of any other Owner, nor any other portion of the Resort. Further, unless sooner satisfied and released or the enforcement by sale by the Association in accordance with the Act, the lien for Assessments expires and has no further force or effect one (1) year after the date of recordation of the notice of assessment; provided, however, the one (1) year period may be extended by the Association for a period not to exceed one (1) additional year by recording a written extension thereof.

Section 8.03 Due Dates.

(a) Annual Assessments shall be due and payable to the Association at such times as may be determined, from time to time, by the Board; *provided*, all Owners shall pay such Assessments in compliance with Section 8.01 of this Declaration.

(b) The Board may also give notice of any delinquency in the payment of any assessment to any Exchange Company. Assessments may be payable in advance of the year in which such Assessments apply or upon such other date as may from time to time be determined as aforesaid. The Board may determine whether the Assessment in the initial Use Year is due, and if due, may establish that the Assessment in such initial Use Year is due and payable at the time of closing, or at such other time prior to use of a Unit or a Reservation Request is made, as determined by the Board.

(c) The Board may establish electronic fund transfers as a means of payment of the annual Assessment, or other methods as determined by the Board from time to time.

(d) Unless otherwise provided by the Board or the Manager as may be retained by the Association, all Assessments payable for the year(s) in which occupancy is requested and as are due and owing for all prior years shall be paid by each Owner before a Reservation Request

is accepted or a Confirmation is issued as more particularly set forth in Section 6.01 of this Declaration.

## **ARTICLE IX FIRST MORTGAGEE RIGHTS**

Upon written request from any Preferred Mortgagee, such Preferred Mortgagee shall be entitled to:

- (x) prompt notice of any default in the Owner Obligations not cured within thirty (30) days of default; and
- (y) the right to examine copies of the books and records of the Association and to require annual reports and other financial data.

## **ARTICLE X REMEDIES OF ENFORCEMENT AND ADDITIONAL RIGHTS OF ASSOCIATION**

Section 10.01 Additional Rights. In addition to the restrictions set forth in this Declaration, the Board shall have the right to make and enforce reasonable Rules and Regulations governing the use of the Resort and the Reservation System. This right shall include the right to impose and assess fines and monetary penalties in such reasonable amounts as may be determined, from time to time, by the Board; *provided, however*, no fine shall exceed the amounts set forth in the Bylaws or the Rules and Regulations.

Section 10.02 Right of Entry. The Association shall have the right to enter into the Buildings, Units and any portion of the Resort for emergency, security, maintenance and safety purposes which right may be exercised by the Board, the Association's officers, agents, employees, the Manager, and all policemen, firemen, medic and other similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or Developer in occupancy, if any. This right of entry shall include the right of the Association, at reasonable times, to cure any condition which may increase the possibility of a fire or other damage. In furtherance of this right of entry, the Association shall retain a pass key to each Building, each Unit and each structure on the Resort. No Owner shall alter any lock or install a new lock on any door at the Resort.

Section 10.03 Enforcement. This Declaration and the covenants and restrictions herein contained may be enforced by the Association in any judicial proceeding seeking any relief recognizable at law or in equity, including damages, injunction, and other mandatory relief against any person, persons, firm or entity violating or attempting to violate any provision hereof or any covenant or restriction herein or to enforce any lien created pursuant to the terms of this Declaration. The failure by the Association to enforce any provision, covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any such litigation to enforce this Declaration or any of the Rules and Regulations shall be entitled to reasonable attorneys' fees and court costs, including the cost and fees at all trial and appellate levels. All such costs incurred by the Association shall be a continuing lien upon the Timeshare Interests or the defaulting Owner and such lien may be included as part of the lien for

Assessments for Common Expenses as set forth in Article VIII of this Declaration. All rights, remedies or relief of whatsoever nature or kind provided herein in favor of the Association shall be cumulative and not exclusive and no such rights shall exclude, jointly or severally, any other right, remedy or relief permitted by law or otherwise available to the Association. Any fine as levied pursuant to the terms hereof, may be levied for each violation of breach of this Declaration or the Rules and Regulations and, in the event of a continuing violation of the Rules and Regulations or this Declaration, such fine may be assessed for each day that such violation continues. Any such fine shall be collectable as a personal charge and individual assessment against the Owner against whom the fine is levied and, to the extent permitted by applicable law, so also shall be a continuing lien as aforesaid, collectible as set forth otherwise as liens held by the Association hereunder for Common Expenses.

Section 10.04 Denial of Use. The Association shall have the right to deny the use of the Units and the Resort to any Owner who is (i) in violation of any term or provision of this Declaration or the Rules and Regulations, or (ii) delinquent in the payment of any Owner Obligation. Such denial of use shall also extend to those parties claiming under such Owner. Additionally, the Association may deny an Owner the right to make a Reservation Request and the Manager may cancel an existing Confirmation and refuse to issue a new Confirmation if such Owner is (i) in violation of any term or provision of this Declaration or the Rules and Regulations, or (ii) delinquent in the payment of any Owner Obligation.

Section 10.05 Enforcement of Lien Rights and Other Remedies in the Event of Non-Payment of Assessments or Owner Obligations.

(a) As stated hereinabove, subject to Article VIII of this Declaration, all Assessments for Common Expenses shall be the personal obligation of the Owner, regardless of how he or she acquires his or her Timeshare Interest, including a purchaser at judicial sale, while such Owner holds title to a Timeshare Interest. A successor-in-interest is jointly and severally liable with his or her predecessor-in-interest for all unpaid Assessments against such predecessor up to the time of transfer of the Timeshare Interest, as the case may be, to such successor without prejudice to any right a successor-in-interest may have to recover from his or her predecessor-in-interest any amounts assessed against such predecessor and paid by such successor; subject to the provisions of Article VIII of this Declaration. Each predecessor-in-interest shall provide the Association with a copy of a recorded deed of conveyance of the Timeshare Interest, containing the name and mailing address of the successor-in-interest within fifteen (15) days after the date of transfer and such deed of conveyance shall reference the Assigned Building and Building Type set forth on the original Owner's Deed executed by Developer for such Timeshare Interest. The Association shall not be liable to any person for any inaccuracy in its books and records arising from the failure of the predecessor-in-interest to timely and correctly notify the Association of the name and mailing address of the successor-in-interest. In addition to the personal obligation as set forth hereinabove, the Assessment, as provided for in Article VIII of this Declaration, shall be a charge upon the Timeshare Interest and shall be a continuing lien upon the Timeshare Interest effective from the date of recording the notice of delinquency as provided for in Article VIII of this Declaration. Such lien shall include interest, late charges, collection agency fees, any costs of collection, including reasonable attorneys' fees at all pre-trial, trial and appellate levels as provided hereinabove and such amounts shall also be the personal obligation of the Owner whether included in the lien or not. The Association may bring an action in its name to foreclose the lien for

Assessment as set forth hereinabove and may also bring an action to recover a money judgment for the unpaid Assessment without waiving any claim of lien. The power of sale may not be exercised until (i) the Association has first executed and caused to be recorded in the Official Public Records of Douglas County, Nevada, a notice of default and election to sell the Timeshare Interest or cause its sale to satisfy the lien, which notice must describe the deficiency in payment, and (ii) the Owner of such Timeshare Interest has failed to pay the amount of the lien, including all costs, fees and expenses incident to its enforcement, for thirty (30) days following the day upon which the notice of default and election to sell is recorded and a copy of the notice is mailed by certified or registered mail, postage prepaid, to the Owner at his address if the address is known, otherwise to the address of the Resort. Notwithstanding anything contained herein to the contrary, any lien for Assessment against the Timeshare Interest shall encumber only such Timeshare Interest and rights appurtenant thereto and shall not encumber the property, real or personal, of any other Owner.

(b) If the Owner remains in possession of the Timeshare Interest and a claim of lien is foreclosed, the Owner shall pay a reasonable rental fee for the use of a Unit and the Association is entitled to be appointed to collect the rent.

**Section 10.06 Failure of Owner to Vacate.** Any Owner who fails to vacate a Unit at the expiration of his or her Use Period as is reserved, or at such earlier time as may be restricted by the Rules and Regulations shall be deemed a holdover owner ("*Holdover Owner*"). It shall be the responsibility of the Association to take reasonably practical steps to remove such Holdover Owner from a Unit. The Holdover Owner shall be charged for any costs associated with the Association's efforts to secure alternative accommodations and any other costs incurred due to the failure to vacate together with a daily administrative fee, in such amount as the Board shall determine, during this period of holding over. In the event that the Association contracts for a period greater than the actual period of holding over in order to secure alternative accommodations, the entire period shall be the responsibility of the Holdover Owner, although the daily administrative fee shall cease upon actual vacation of the Unit by the Holdover Owner. The Association shall submit a bill to the Holdover Owner in accordance with this Section. In the event the Holdover Owner fails to pay same within ten (10) days of the date of same, such amount shall be deemed a Common Expense allocated to such Holdover Owner. The foregoing provisions shall not abridge the Association's right to take such other actions as provided by law or equity with respect to Holdover Owners.

## **ARTICLE XI COMMON EXPENSES**

The following expenses are declared to be Common Expenses which the Owners are obligated to pay as provided herein:

**Section 11.01 Maintenance Fees.** All expenses for the repair and upkeep of the Resort, including the repair and upkeep of a Unit for normal wear and tear, and the repair and replacement of the Common Area, Common Furnishings, furniture, fixtures, appliances and carpeting.

**Section 11.02 Utility Charges.** All charges levied for utilities providing services for any portion of the Resort, whether they are supplied by a private or public firm. It is contemplated that

this obligation will include all charges for water, gas, television, internet, fire suppression and alarm systems, telephone, all sewer system components and any other type of utility or any other type of service charge.

Section 11.03 Liability Insurance. The premiums on the policy or policies of insurance as described in Article XII of this Declaration.

Section 11.04 Fire, Windstorm and Other Casualty Insurance. The premiums and deductibles for insurance as described in Article XII of this Declaration.

Section 11.05 Destruction of Buildings or Improvements. Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any portion of the Resort by fire, windstorm or other casualty regardless of whether or not the same is covered in whole or in part by insurance. In the event insurance money shall be payable, such insurance money shall be paid in accordance with the provisions of Article XII of this Declaration.

Section 11.06 Operational Expenses. The costs of administration and operation of the Association, including any employees, Manager, entities necessary to carry on the obligations and covenants of the Association, and professionals such as attorneys and accountants.

Section 11.07 Reserve Funds. The cost to establish an adequate reserve fund or funds for replacement and/or capital refurbishment and/or capital improvements of all or any portion of the Resort determined proper and sufficient by the Board. Each Owner acknowledges, understands and consents that such reserve fund(s), if any, are the exclusive property of the Association as a whole and that no Owner shall have any interest, claim or right to any such reserves. Reserve funds and operating funds may be collected as distinct components of any Assessment.

Section 11.08 Taxes. The Board, or the Manager, as an agent of the Owners, shall collect and remit any and all taxes levied or assessed against the Resort, including the Units, Timeshare Interests, Common Area, Common Furnishings and personal property and improvements thereon, at any and all times by any and all taxing authorities, including all taxes, charges, assessments and Impositions and liens for public improvements, special charges in assessments in water drainage districts and in general all taxes and tax liens, including any interest, penalties or other charges which may be included thereon.

Section 11.09 Budget; Indemnity. The Owners within the Resort shall be assessed by the Association for Common Expenses pursuant to a budget, which budget shall include Assessments to pay for all Common Expenses. The Association covenants and agrees that it will indemnify and save harmless Developer and Manager from and against any and all claims, suits, actions, damages and/or causes of action arising from any personal injury, loss of life, and/or damage to property, sustained on the Resort, and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered thereon; *provided, however*, such indemnification shall not be applicable if Developer or Manager is adjudged guilty of gross negligence or willful misconduct. Included in the foregoing provisions of indemnification are any expenses that Developer or Manager may be compelled to incur in bringing suit for the purpose of enforcing rights hereunder or for the purpose



of compelling the specific enforcement of the provisions, conditions and covenants contained in the Declaration to be kept and performed by the Association and its members.

## **ARTICLE XII INSURANCE**

Section 12.01 Liability Insurance. The Board shall obtain liability insurance with such coverage and in such amounts as it may reasonably determine from time to time for the purpose of providing liability insurance coverage for the Resort, including the Common Area, the Units, the Common Furnishings and the Timeshare Interests. Premiums for such insurance shall be part of the Common Expense. Such insurance shall also include public liability, worker's compensation, and hired automobile coverage. All liability insurance shall contain a cross liability endorsement to cover liabilities of the Owners as a group to each Owner. The policy or policies shall cover the Association, the Board, and the officers of the Association, all agents and employees of the Association, and all Owners, for occurrences commonly insured against or arising out of or in connection with the use, ownership or maintenance of the Resort.

Section 12.02 Casualty Insurance. The Association shall obtain casualty insurance with such coverage and in such amounts as may be determined from time to time for the purpose of providing casualty insurance coverage for the Resort, including the Common Area, the Units and the Common Furnishings, which coverage shall afford fire and extended coverage insurance, vandalism and malicious mischief insurance (and flood insurance sponsored by the federal government if it is determined that the Resort, or a portion of the Resort, is located in the flood hazard zone), all of which insurance shall insure all of the insurable improvements within the Resort, including the Common Area and the Units, in and for the interest of the Association and all Owners and Mortgagees as their interest may appear. Such insurance shall be placed with a company acceptable to standards set by the Board for and in an amount commensurate with the full replacement value as determined annually by the Board. The premiums for such coverage and other expenses in connection with such insurance shall be paid by the Association and charged to the Owners as part of the Common Expenses. The company or companies with which the Association shall place insurance coverage and the insurance agent or agents providing such insurance must be authorized to do business in the State of Nevada. The Board is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association in which Owners may or may not have an interest.

Section 12.03 Proceeds. In the event of any damage to the Resort, including the Common Area, Units, or the Common Furnishings, no Mortgagee shall have any right to participate in the determination of whether such is to be rebuilt or replaced; nor shall any Mortgagee have the right to apply insurance proceeds received by the Association to the repayment of its loan, unless such proceeds are distributed to Owners and/or their respective Mortgagees.

Section 12.04 Repair and Reconstruction. In the event of damage to or destruction of all or any part of the Resort, including the Units, Common Furnishings or Common Area, as a result of fire or other casualty, unless two-thirds (2/3) or more of the Owners agree that the Resort has been destroyed or substantially damaged, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure in accordance with the original plans or as determined by the Board. In the event of damage or destruction, prior to any

consideration not to rebuild, each First Mortgagee shall be entitled to written notice of the damage as provided in Article IX of this Declaration. Nothing in this Declaration shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such insured property.

The procedure for repair and reconstruction shall be:

(a) Immediately after a fire or other casualty causing damage to the property insured by the Association, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair as determined by the Board, or if at any time during the reconstruction and repair or upon completion or reconstruction and repair the funds for payment of the costs thereof are insufficient, assessments shall be made against all Owners in the case of damage to the Resort, including the Units, Common Furnishings or Common Area. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Any such reconstruction or repair of the Resort shall be of a quality at least high as the original construction.

(d) The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.

(e) The construction fund shall be paid by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the building as are designated by the Board.

(f) If repair is required as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such repair in the absence of insurance.

(g) Encroachments upon or in favor of Buildings or the Common Area and upon or in favor of the Common Area and Buildings shall not constitute a claim or basis for any proceedings or action upon any reconstruction or rebuilding. Such encroachments shall be allowed to continue in existence for so long as the reconstructed Building or Common Area shall stand.

Section 12.05 Group Policies. The Association may satisfy its obligations under this Article through group or umbrella insurance policies which may (i) include other associations, Developer and Developer related entities as covered entities; (ii) include property owned or controlled by Developer, Developer's related entities, or associations for other timeshare resorts, including, but not limited to, the other resorts developed by Developer or its affiliates, and (iii)

insure against risks unrelated to the Resort or the Association, so long as the premium for such policies are appropriately allocated to the proper parties as reasonably agreed to by the Board.

### **ARTICLE XIII CONDEMNATION**

Section 13.01 Deposit of Awards with Board. The taking of any portion of the Resort by condemnation shall be deemed to be a casualty and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Board. Even though such awards may be payable to Owners, in the event of failure to do so, in the discretion of the Board, a Special Assessment shall be made against a defaulting Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to the Owner.

Section 13.02 Determination Whether to Continue Timeshare Plan. Whether the Timeshare Plan will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by condemnation shall be deemed to be a casualty.

Section 13.03 Disbursement of Funds. If the Timeshare Plan is terminated after condemnation of any portion of the Resort, the proceeds of the condemnation awards and special assessments will be deemed to be common property of the Owners and shall be owned and distributed in the manner of the insurance proceeds distributions. If the Timeshare Plan is not terminated after condemnation, the size of the Resort will be reduced by the Owners and Mortgagees of Timeshare Interests will share pro rata in such funds. If any Owner is needed to be removed from the Timeshare Plan as a result of condemnation or casualty and no rebuilding then such Owners shall be determined on the basis of Assigned Buildings and they and their Mortgagees shall be first made whole prior to any other distribution of any funds. In such event, the award shall be paid first, in accordance with their respective priorities, to all Mortgagees in an amount sufficient to pay off their Mortgages due from those Timeshare Interests relating to such Assigned Buildings which are not tenantable; and then paid to repairing the Resort to a natural condition with any balance payable jointly to the Owners of Timeshare Interests relating to such Assigned Buildings not tenantable in an amount equal to the market value of the Timeshare Interests relating to such Assigned Buildings immediately prior to the taking and with credit being given for payments previously reserved for Mortgagees. The remaining portion of the Resort, if any, shall be placed in condition for use by all Owners in the manner approved by the Board, provided, that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required for further improvements of the Common Area. If the amount of the award for the taking is not sufficient to pay the market value of the condemned Timeshare Interests relating to such Assigned Buildings to the Owners thereof and to condition the remaining portion of the Resort for use as part of the Common Area, the additional funds required for those purposes shall be raised by Special Assessments against all Owners who will continue as Owners of Timeshare Interests after the changes in the Resort affected by the taking. The Special Assessments shall be made in proportion to the Owners after the changes affected by the taking.

If the market value of a Timeshare Interest relating to an Assigned Building prior to the taking cannot be determined by agreement between the Owners and Mortgagees of the Timeshare Interests relating to such Assigned Building and the Association within thirty (30) days after notice by either party, the value shall be determined by arbitration in accordance with the existing rules of the American Arbitration Association, except that arbitrators shall base their determination upon an average of their appraisals of the Timeshare Interest relating to an Assigned Building; and a judgment of specific performance upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed equally against all Owners of the affected Timeshare Interests relating to such Assigned Buildings.

Section 13.04 Taking of Common Area. Awards for the taking of Common Area shall be used to make the remaining portion of the Common Area usable in the manner approved by the Board; *provided*, that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for further improvement of the Common Area. The balance of the awards for the taking of the Common Area, if any, shall be common funds of the Association.

#### **ARTICLE XIV GRANT OF EASEMENTS AND RESERVATION OF EASEMENTS AND RIGHTS**

Section 14.01 Association Rights. The Association, through the Board, may grant and accept utility easements, including easements for cable television, and easements of use, enjoyment, travel, access and ingress, under, through, across, or over the Resort, including any elevators and stairways as may be reasonably necessary to or desirable for the ongoing development and operation of the Resort and the Timeshare Plan. Such right expressly includes the right of the Board to grant and accept easements for recreational amenities as may be made available for Owners.

Section 14.02 Perpetual Non-Exclusive Easement to Public Ways. Developer does hereby reserve a perpetual non-exclusive easement over and across the elevators, stairways, driveways, walks and other rights-of-way existing or to exist in the Resort for ingress and egress from and to the improvements on the Resort to and from publicly dedicated ways and private roads for which Association or the Resort have access easements, which easement shall be exercisable by the Association, the Manager, Developer and its representatives and agents, the Owners and Owner's Guests, and which easement is for the benefit of the Resort.

Section 14.03 Easement for Encroachments. All of the Resort shall be subject to easements for encroachments which now or hereafter exist caused by settlement or movement of any improvements upon the Resort or improvements contiguous thereto or caused by minor inaccuracies in building or rebuilding of such improvements. The above easements shall continue until such encroachments no longer exist.

Section 14.04 Grant to Association. By execution hereof, Developer, on behalf of itself and its successors and assigns in interest does hereby bargain, convey, grant and transfer to the Association an easement for entry, access, ingress and exit over and on the Resort, including the Units and the Common Area, for the purpose of performance of any and all responsibilities given

to the Association with respect to the Resort, including the Units by the terms hereof, the Articles, the Bylaws or by any other written instrument by which the Association assumes responsibility for any activity relating to the Resort, including, but not limited to, maintenance, repair and replacement of facilities, furniture, fixtures, equipment and Common Furnishings located therein. No Owner shall interfere, obstruct or impede in any way whatsoever with the Association's easement hereunder nor shall any Owner have any right to direct or monitor any of the Association's activities or responsibilities performed under this easement. This easement may be exercised by the Association's officers, directors, agents, including Manager, the employees of the Association or Manager and contractors of the Association or Manager.

Section 14.05 Grant of Easements and Cross-Easements Respecting the Resort. By execution hereof, Developer hereby reserves to the benefit of any utility provider an easement or easements on, upon, across, through and under the Resort (which easement may include reasonable rights of access for persons and equipment necessary to accomplish said purposes) to provide utility services, including without limitation, power, electric, light, telephone, television, fire suppression and alarm systems, gas, water, sewage and drainage, and any other utility or service upon or for the benefit of any part of the Resort, and to provide for the repair and maintenance of the equipment required to provide such utility services.

Section 14.06 Grant and Reservation of Easements Respecting Reservation System. Each Unit, Timeshare Interest and Use Period shall be subject to the following easement, which easement, by execution hereof, is reserved by Developer for the benefit of each Owner within the Timeshare Plan, and each participant within the Reservation System: an appurtenant non-exclusive easement, exercisable by each Owner to use, enjoy and occupy a Unit during such Use Periods as may be reserved pursuant to Reservation System. This easement is to the benefit of each Owner and Timeshare Interest so owned, and is also to the benefit of each participant within the Reservation System. This easement shall burden each such Timeshare Interest. By execution hereof, Developer does hereby reserve from the conveyance of each Timeshare Interest the easement set forth herein and does by execution hereof, grant, convey and transfer unto each Owner and to each participant in the Reservation System, the benefits and burdens of the easement set forth in this Section. Each Unit and each Timeshare Interest shall be subject to the terms of this easement, including the benefits and burdens hereby imposed.

Section 14.07 Reservation of Certain Easements. By execution hereof, Developer, on behalf of itself and its successors and assigns, does hereby reserve for the benefit of itself, its representatives, agents, contractors and employees, an exclusive transferable easement over, across and upon the Resort for use of, ingress and egress and travel thereon from and to the Administrative, Sales & Marketing Facilities and any Restaurant and Bar Facilities to the benefit of Developer, for use by Developer and its representatives, agents, Guests, invited Owners, contractors and employees, for administration, sales and marketing purposes as may be determined from time to time by Developer. Developer is authorized and required, pursuant to this reserved easement, to regulate the use and administration of the Administrative, Sales & Marketing Facilities and any Restaurant and Bar Facilities, in all manners to enable by way of example and not intent, the exclusion of Owners (except as invited by Developer, its successor and assigns) from such portions of the Common Area as are designated the Administrative, Sales & Marketing Facilities and any Restaurant and Bar Facilities. Upon termination of this easement, such

Administrative, Sales & Marketing Facilities and any Restaurant and Bar Facilities shall be made usable by Owners as a portion of the Common Area.

Section 14.08 Reservation of Easement for Use of Units and Common Areas. Developer does hereby reserve, on behalf of itself and its successors, assigns and mortgagees, a non-exclusive perpetual easement on, upon, across and over the Resort for the purpose of maintaining and carrying on upon such portion of the Resort as Developer, in its sole discretion determines necessary or incidental for the sale of any Timeshare Interest, travel or vacation product, exchange program, other membership, or timeshare interest by Developer including, without limitation, the operation and maintenance of business offices, signs, sales, models, marketing and information desks or areas, and sales offices. The right to maintain and carry on such facilities and activities shall include, specifically, the right to use Units and other improvements as one (1) or more models and/or sales offices and to authorize sales personnel to travel upon and enter the Resort. Such easement for the access to and operation and maintenance of the sales, marketing and business spaces and offices and the model Units shall include an easement for ingress, egress, travel, access, use and enjoyment for Developer and its lawful successors and assigns and its authorized agents, representatives, employees, licensees and invitees.

Section 14.09 Reservation of Exclusive Easement for Sales and Marketing. Developer does hereby reserve, on behalf of itself and its successors, assigns and mortgagees, exclusive perpetual easements to engage in sales and marketing at the Resort, to erect and post signage at the Resort, establish and use a branded name for the Resort which may be owned by or licensed to Developer, and to engage in commercial activity at the Resort.

Section 14.10 Access Easement. Developer and Association have entered into to that certain access easement (the "Access Easement") to be recorded in Official Records of Douglas County, Nevada, pursuant to which the Developer grants the Association, the Owners and their successors, assigns, and designees a perpetual, non-exclusive easement over, on, and through parking and roadways on Developer's property as well as pedestrian access, ingress, egress and support to the same (collectively, "Developer's Property"). Developer shall retain the obligation to operate, maintain and repair Developer's Property; provided, however the cost of such operation, maintenance, and repair shall be reimbursed by the Association to Developer.

## **ARTICLE XV AMENDMENTS**

Section 15.01 Amendment by Developer. Notwithstanding anything contained in this Declaration, this Declaration may be amended by Developer, unilaterally, without need to have any other party join therein or consent thereto (i) to correct a scrivener's error, (ii) for the purpose of complying with the requirements of any governmental or quasi-governmental entity authorized to fund, purchase or guarantee security deeds on individual Timeshare Interests, as such requirements may exist from time to time, (iii) to comply with the requirements of any applicable governmental (including federal, state, municipality or other governmental authority) law, statute, rule, regulation or ordinance, (iv) to comply with the requirements of any title insurance company, (v) to facilitate the operation and management of the Resort, or (vi) for ministerial matters that do not materially and adversely affect the ownership, voting or occupancy rights of the non-Developer Owners. Further, this Declaration may be amended by Developer, unilaterally, without need to

have any other party join therein or consent thereto (x) to re-designate Buildings with different Building Types from time to time; (y) to alter Unit types, sizes, and configurations, add Units to Buildings, delete Units from Buildings, or add Additional Buildings; and (z) to re-designate the number of Points appurtenant to each Building from time to time; *provided, however*, that for amendments to the Declaration pursuant to the Section 15.01 (x), (y) and (z), Developer shall not be permitted to make such amendment with respect to a Building once the first Owner's Deed reflecting that Building as the Assigned Building for any Owner is recorded in the Official Public Records of Douglas County, Nevada.

Section 15.02 Amendment by Majority of Owners. Except for amendments adopted pursuant to Sections 15.01 and 15.03 of this Declaration, and except as otherwise specifically provided in this Declaration, this Declaration may be amended by the affirmative vote, written consent, and any combination of the affirmative vote and written consent of a Majority of Owners within the Resort; *provided, however*, that so long as Developer shall own any Timeshare Interests, such amendment shall only be valid if consented to, also, by Developer. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until it is recorded in the Official Public Records of Douglas County, Nevada. Despite the foregoing, no amendment whatsoever, whether it is to this Declaration or to any of the Documents shall alter, change or modify any of the rights of Developer without the written approval of Developer.

Section 15.03 Amendment by the Board. The Board is expressly authorized to amend this Declaration in order to (i) to correct a scrivener's error, (ii) for the purpose of complying with any applicable governmental (including federal, state, municipality or other governmental authority) law, statute, rule, regulation or ordinance, (iii) to comply with the requirements of any title insurance company, (iv) to facilitate the operation and management of the Resort, or (v) for ministerial matters that do not materially and adversely affect the ownership, voting or occupancy rights of Owners; *provided, however*, that so long as Developer shall own any Timeshare Interests, such amendment shall only be valid if consented to, by Developer.

## **ARTICLE XVI TERMINATION**

This Declaration and the Timeshare Plan may be terminated by the affirmative written consent of seventy-five percent (75%) of the Owners and the written consent of all Mortgagees encumbering Timeshare Interests; *provided* that so long as Developer shall own any Timeshare Interests, prior to termination, the written consent of Developer shall be obtained. In the event of termination of this Declaration and the Timeshare Plan, the Resort shall be deemed removed from the provisions of this Declaration and shall be treated as if such was condemned pursuant to Article XIII of this Declaration.

## **ARTICLE XVII MISCELLANEOUS**

Section 17.01 Manager. The Board is hereby empowered to enter into a contract with a Manager to act on behalf of the Association, the Timeshare Plan and the Resort. The Manager shall be empowered as set forth herein and elsewhere in this Declaration, the Bylaws and the

Documents. The Manager shall be and hereby is empowered to perform on behalf of the Owners, the Board, the Association and the Timeshare Plan, all rights, powers and provisions of the Board and the Association as provided in this Declaration, the Bylaws and the Documents, and the Act, unless the contract otherwise provides. Each Owner by acceptance of the Owner's Deed, or any deed of conveyance for a Timeshare Interest from a successor in interest to Developer, does ratify, confirm, accept and consent to the appointment of this Manager.

Section 17.02 Adherence to Law. The Association shall, as a Common Expense, perform such acts and do such things as shall be lawfully and reasonably required by any public body having jurisdiction over the same in order to comply with any and all requirements including sanitary, fire hazard, zoning, setback, drainage, regulatory, and other similar requirements designed to protect the public.

Section 17.03 Limitations. No Owner shall exercise any rights of ownership, use any portion of the Resort, or occupy any Unit or its appurtenances except during his or her reserved Use Period. Each Owner, by acceptance of a conveyance of a Timeshare Interest, and the Association, by recordation hereof does acknowledge the limitations, provisions, covenants and restrictions contained in this Declaration, and agree to the same.

Section 17.04 Covenants on Title. All provisions of this Declaration shall be construed as and are covenants running with the title to the Timeshare Interest and shall be enforceable, equitable servitudes and restrictive covenants and inure to and bind all Owners and their successors, assigns, heirs, executors and administrators in and to the Timeshare Interests and the Resort. The Resort also may be subject to additional restrictions, covenants and easements of record recorded in the Official Public Records of Douglas County, Nevada. In the event any covenant or restriction contained herein or existing of record is ever interpreted or construed to prohibit or restrict the use of the Resort for timeshare purposes, any damages in respect to any such claim asserted by a respective Owner against Developer or the Association shall be limited to the coverage amount of and the funds received under or pursuant to, such Owner's title insurance policy as obtained by such Owner and as insuring title to such Owner's Timeshare Interest or, if such title insurance policy is not procured by such Owner, the amount of the purchase price as has actually been paid by the Owner to Developer for that Owner's Timeshare Interest. Each Owner, by acceptance of an Owner's Deed or any deed of conveyance for a Timeshare Interest from a successor in interest to Developer, does hereby agree to this damage amount as a reasonable estimation of any damages as may be caused by or in the event of the aforesaid and accepts this amount as liquidation of such damages, if any. Notwithstanding anything herein to the contrary, this Article XVII cannot be amended without the written approval of Developer.

Section 17.05 Invalidity. Invalidation of any of one of these covenants or restrictions or any of the terms and conditions herein contained or the reduction and time by reason of any rule against perpetuity shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

Section 17.06 Titles. The articles or paragraph titles at the beginning of each numbered paragraph or article of this Declaration are for convenience only and the words contained therein shall not be considered to expand or modify the interpretation, construction and meaning of this



Declaration. As used herein, the singular shall include the plural and the masculine or neuter gender shall include all other genders.

Section 17.07 Waiver of Partition. No Owner or other person or entity acquiring any right, title or interest of any Timeshare Interest shall seek or obtain, through any legal procedures or judicial procedures, judicial partition of a Unit or Timeshare Interest or sale of a Unit or Timeshare Interest in lieu of partition. If, however, any Timeshare Interest shall be owned by two (2) or more persons as tenants-in-common, joint tenants or co-tenants, nothing herein contained shall prohibit a judicial sale of the Timeshare Interest in lieu of partition and to remove such co-tenant and tenants. All rights of an Owner as a tenant-in-common, joint tenant or co-tenant shall be subordinate to the terms of this Declaration.

Section 17.08 Conveyance. Each Owner of a Timeshare Interest, by acceptance of a conveyance of such Timeshare Interest, hereby agrees that each conveyance of a Timeshare Interest is an individual occurrence relating to that Owner's individual transaction with or on behalf of Developer and any claim, demand or cause of action brought, filed or asserted by an Owner of a Timeshare Interest against Developer may only be brought, filed or asserted by said Owner in the Owner's individual capacity and not as a plaintiff or class member in any purported class action or representative proceeding.

Section 17.09 Service Periods. During the Developer Control Period, it shall be in the sole discretion of Developer which, if any, Use Periods may be set aside as Service Periods for Unit servicing and maintenance. Thereafter, any such determination may be made by the Board. Any such Service Periods shall be set aside for the maintenance and restoration of the Unit in which conveyance of Timeshare Interests have occurred. Developer may convey a Timeshare Interest with a Use Period to the Association as a Service Period and any such Use Period shall then not be available for occupancy by any Owner.

Section 17.10 Common Plan. Developer, the Association and the Owners and their grantees, successors or assigns by acceptance of their instrument of conveyance of a Timeshare Interest all acknowledge that the Resort has been developed under a common plan as set forth in this Declaration. Such parties further acknowledge that the easement rights, use covenants, and obligations to pay Common Expenses are an integral part of the common plan of development and are required for the operation and maintenance of the Resort. Notwithstanding any provision contained in this Declaration to the contrary, neither the offer nor the use of any Unit or Use Period as a part of any timeshare plan, vacation club, travel club or similar arrangement, may occur unless such timeshare plan, vacation club, travel club or similar arrangement is established or consented to by Developer. The Timeshare Plan established and offered by Developer hereunder is a permitted and authorized use of the Units and Use Periods and is consistent with the common plan as set forth herein.

Section 17.11 Alienability Restrictions: Developer's Right of First Refusal to Purchase. Other than as set forth herein, the right of an Owner to sell, transfer, assign or hypothecate ("Transfer") his or her Timeshare Interest shall not be subject to the approval of the Association. In the event an Owner desires to Transfer his or her Timeshare Interest, the Developer shall have the first right of refusal to purchase the Timeshare Interest under the same terms and conditions as are offered to or by a bona fide third party, including financing. Developer's first right of refusal

in relation to Transfers of Timeshare Interests shall extend until such time as Developer has sold all Timeshare Interests in the Resort. Accordingly, each Owner desiring to Transfer his or her Timeshare Interest shall notify the Developer in writing at 9271 S. John Young Parkway, Orlando, Florida 32819, Attn: Deeding Department, no less than thirty (30) days in advance of the proposed closing date of the Transfer, and such notice shall include the terms of the proposed Transfer and a copy of the purchase and sale agreement governing the Transfer. Upon receipt of such written notice, Developer shall determine, prior to the proposed closing date of the Transfer, whether Developer intends to exercise its right to purchase the Timeshare Interest that is the subject of the Transfer. If Developer elects to purchase said Timeshare Interest, Developer shall notify the Owner in writing of such election, and the purchase by Developer shall be closed on or before the originally proposed closing date of the Transfer. If Developer fails to notify the Owner of its election prior to the originally proposed closing date of the Transfer, the Owner may proceed with the closing of the Transfer of the Timeshare Interest to the bona fide third party.

Any Transfer between an Owner and a bona fide third party shall be deemed to contain a provision requiring that any sums due to the Association must be paid in full as a condition of the closing of the Transfer and if such sums are not paid, then the Association may, in its sole discretion, refuse to recognize the attempted Transfer and such attempted Transfer shall be deemed to be invalid. An Owner who Transfers his or her Timeshare Interest to a bona fide third party shall record the appropriate documents in the Official Public Records of Douglas County, Nevada, and shall provide a recorded copy of each of such documents to the Association. Any recorded Transfer of a Timeshare Interest shall not be effective unless and until a recorded copy of the effectuating document(s) is provided to the Association and the Association has received a reasonable fee (as determined by the Association), not to exceed \$200, to process the Transfer documents and update the Association records. Additionally, any and every transferee under a permitted Transfer shall be subject to the provisions of this Declaration and the Rules and Regulations as existing at the time of the Transfer.

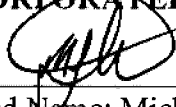
Section 17.12 Douglas County Statement of Policy. Douglas County has declared it a policy to protect and encourage agricultural operations. If your property is located near an agricultural operation, you may at some time be subject to inconvenience or discomfort arising from agricultural operations. If conducted in a manner consistent with proper and accepted standards, these inconveniences and discomforts do not constitute a nuisance for purposes of the Douglas County Code.

[Signatures begin on following page.]

EXECUTED to be effective as of the date this Declaration has been recorded in the Official Public Records of Douglas County, Nevada.

**DEVELOPER**

**HOLIDAY INN CLUB VACATIONS  
INCORPORATED**, a Delaware corporation


By:   
Printed Name: Michael J. Thompson  
Title: Senior Vice President

THE STATE OF FLORIDA §  
COUNTY OF ORANGE §

This instrument was acknowledged before me by means of  physical presence or  online notarization this 8<sup>th</sup> day of January, 2020 by Michael J. Thompson, as Senior Vice President of Holiday Inn Club Vacations Incorporated, a Delaware corporation, on behalf of said corporation. He is personally known to me.

(SEAL)



  
Notary Public Signature

Ashley Holtzclaw  
Notary Print Name  
Notary Public, State of Florida

My Commission Expires: 8/22/23

**EXHIBIT "A"**

Phase I

Parcel O as shown on that Record of Survey for David Walley' s Resort recorded on July 26, 2006 as Document No. 680634 in Book 0706 at Page 9384 in the Office of the Douglas County, Nevada Recorder.

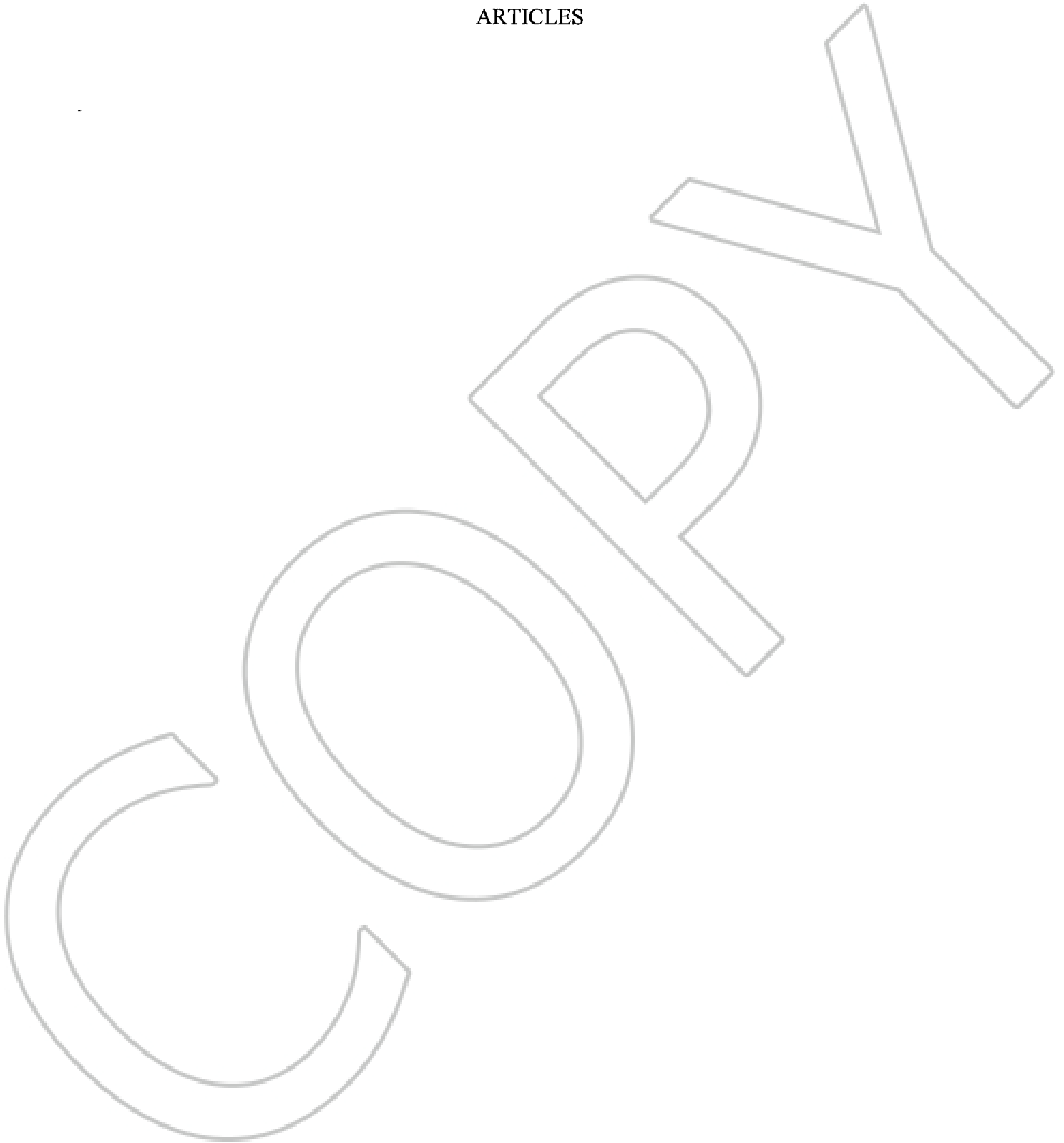
TOGETHER WITH:

Phase II

Parcel p as shown on that Record of Survey for David Walley' s Resort recorded on July 26, 2006 as Document No. 680634 in Book 0706 at Page 9384 in the Office of the Douglas County, Nevada Recorder.

**EXHIBIT "B"**

ARTICLES



## ARTICLES OF INCORPORATION

OF

WALLEY'S PROPERTY OWNERS' ASSOCIATION II, INC.

### ARTICLE I. NAME OF CORPORATION

The name of the non-profit, nonstock cooperative corporation is Walley's Property Owners' Association II, Inc. (the "Association").

### ARTICLE II. PURPOSE

The Association is a non-profit, nonstock cooperative corporation organized under NRS Sections 81.410 to 81.540, inclusive. The purpose of the Association is to engage in any lawful act or activity for which a non-profit cooperative corporation may be organized under such laws. The following specific purposes are included within the foregoing general purpose:

(a) To promote the interest and welfare of the Members (defined below) in accordance with the Declaration of Covenants, Conditions, and Restrictions of David Walley's Resort II recorded or to be recorded in the Office of the Recorder of Clark County, Nevada (the "Declaration"), and to operate and manage the timeshare development located in Douglas County, Nevada, known as David Walley's Resort II.

(b) To undertake the performance of, and carry out the acts and duties incident to, the operation and management of the Association with the terms, provisions, conditions, and authorization contained in these Articles and the Bylaws of Walley's Property Owners' Association II, Inc., as amended from time to time (the "Bylaws").

(c) To contract for the management of the Association and to delegate to such manager or managers all powers and duties of the Association, except those powers and duties that are specifically required to have approval of the Board of Directors (defined below) or the members of the Association.

(d) To have, enjoy and exercise in furtherance of said stated purposes all of the rights, powers and privileges which are now or which may hereafter be conferred upon the Association by the laws of the State of Nevada, including, without limitation, the provisions of NRS Sections 81.410 through 81.540, inclusive, and NRS Chapter 119A.

### ARTICLE III. MEMBERSHIP

Section 1. The Incorporators (as named in Article IV) constitute the sole members of the Association until the establishment of the timeshare plan (the "**Timeshare Plan**") pursuant to the Declaration. Upon the establishment of the Timeshare Plan, Holiday Inn Club Vacations Incorporated, its successors and/or assigns (hereinafter referred to as "**Developer**"), shall hold all timeshare interests in the Timeshare Plan, and thereby all memberships in the Association. Each purchaser of a timeshare interest in the Timeshare Plan (each an "**Interest**") shall become a member of the Association at the time of closing on the purchase of his or her Interest. Ownership

of an Interest shall be a prerequisite to exercising any rights as a member of the Association. Ownership may be held by one or more individuals or by a corporation, partnership, trust or any other appropriate legal entity with the power to hold title to an Interest. The Association may create various classes of membership.

Section 2. Each Owner's membership in the Association shall terminate upon the termination of the Trust or upon transfer of ownership of all of an Owner's Interests, provided such transfer is permitted under the provisions of the Declaration and the Bylaws. The transferor's membership shall automatically transfer and be vested in the new Owner succeeding to the Interest, subject to a lien thereon for all unpaid assessments, charges and expenses. The Association may rely upon evidence of a recorded deed or other instruments of conveyance as evidence of the transfer of ownership and thereupon terminate the transferor's membership in the Association and recognize the membership of the transferee.

Section 3. Each Owner shall have the number of votes as set forth in the Bylaws.

Section 4. The share of an Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Owner's Interest.

#### ARTICLE IV. INCORPORATORS

The names and addresses of the Incorporators of the Association are as follows (the "**Incorporators**"):

<u>Name</u>	<u>Address</u>
Michael J. Thompson	9271 S. John Young Pkwy., Orlando, FL 32819

#### ARTICLE V. BOARD OF DIRECTORS

The affairs of the Association shall be managed and conducted by a Board of Directors (hereinafter, the "**Board**"). The number, terms of office and provisions regarding election, removal and filling of vacancies on the Board shall be as set forth in the Bylaws of the Association. The following persons shall serve as directors until their successors are elected or appointed as provided in the Bylaws:

Brian T. Lower  
9271 S. John Young Pkwy.  
Orlando, Florida 32819

Michael J. Thompson  
9271 S. John Young Pkwy.  
Orlando, Florida 32819

Lori A. Howell

9271 S. John Young Pkwy.  
Orlando, Florida 32819

#### ARTICLE VI. OFFICERS

The officers of the Association shall consist of a President, a Vice President, a Secretary/Treasurer, and such other officers as the Board may from time to time deem appropriate. The officers of the Association shall be elected by the Board at each annual meeting of the Board, and shall hold office at the pleasure of the Board. Any officer may be removed at any meeting of the Board by the affirmative vote of a majority of the members of the Board, with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof. The names and addresses of the officers who shall serve until their successors are designated by the Board are as follows:

<u>Title</u>	<u>Name</u>	<u>Address</u>
President	Brian T. Lower	9271 S. John Young Pkwy. Orlando, Florida 32819
Vice President	Michael J. Thompson	9271 S. John Young Pkwy. Orlando, Florida 32819
Secretary/Treasurer	Lori A. Howell	9271 S. John Young Pkwy. Orlando, Florida 32819

#### ARTICLE VII. BYLAWS

The Bylaws of the Association are to be made or approved by the initial Board and thereafter may be amended, altered, modified or rescinded as set forth in the Bylaws and as permitted by law.

#### ARTICLE VIII. NATURE OF CORPORATION

This corporation does not contemplate pecuniary gain or profit to the members thereof and is organized solely for nonprofit purposes. In no event shall the net earnings, income or assets of this corporation be distributed to or inure to the benefit of any member, director, or officer of this corporation or other private individual, either directly or indirectly, except upon winding up and dissolution. Upon the winding up and dissolution of this corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed as provided in the plan of dissolution adopted by the Board.

#### ARTICLE IX. AMENDMENTS TO THE ARTICLES OF INCORPORATION

Section 1. Amendments to these Articles shall be proposed and adopted in the following manner:



(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(b) Until the first election of a majority of directors by members other than Developer, proposal of an amendment and approval thereof shall require the affirmative action of a majority of the entire membership of the Board, and no meeting of the members of the Association nor any approval thereof is required, unless such meeting or approval is required by the Declaration or Florida law.

(c) After the first election of a majority of directors by members other than Developer, a resolution approving a proposed amendment may be proposed by either the Board or by the members of the Association, and after being proposed and approved by one of such bodies, requires the approval of the other body. Except as otherwise provided herein, such approvals must be by not less than a majority of all the directors and by not less than a majority vote of all of the voting interests of the Association. Any number of amendments may be submitted to the members of the Association and voted upon by them at one meeting.

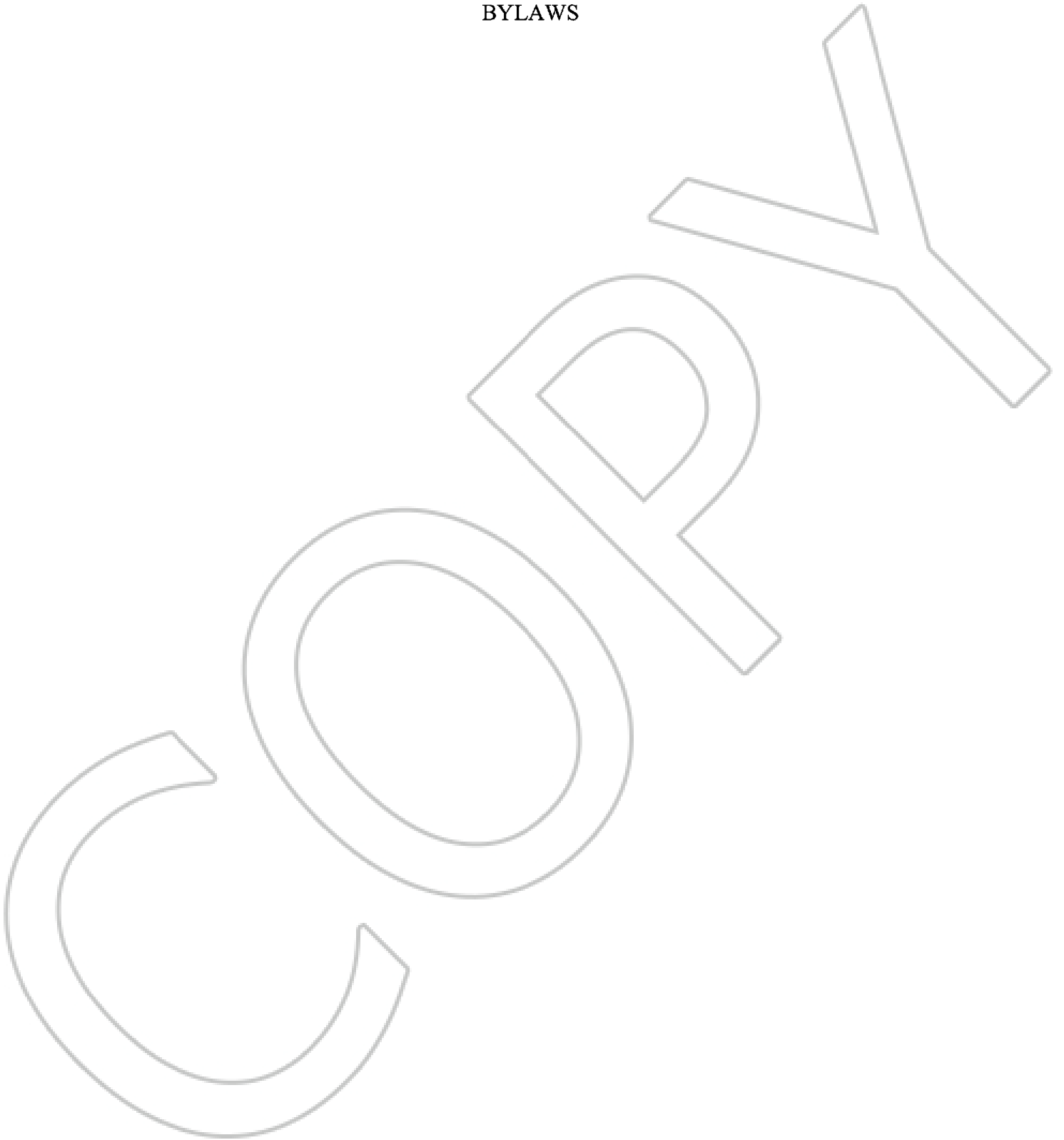
(d) An amendment when adopted shall be effective when filed with the Secretary of State of the State of Nevada.

(e) Notwithstanding the provisions of this Article VIII, these Articles may be amended by Developer (without the consent or approval of the Board or Association members) as may be required by any governmental entity; as may be necessary to conform these Articles to any governmental statutes; as may be in the best interests of the Association; or as Developer may deem appropriate, in its sole discretion, to carry out the purposes of or to expand or enhance the Timeshare Plan.


Section 2. Notwithstanding anything herein to the contrary, no amendment shall make any change in the qualifications for membership without approval in writing of all of the members and the consent of all record holders of mortgages upon any Interests or upon property held by the Association to the extent that such amendments adversely affect the priority of the Mortgagees' liens or the Mortgagees' rights to foreclose the Mortgagees' liens or that otherwise materially affect the rights and interests of the Mortgagees. No amendment shall be made that is in conflict NRS Chapter 119A, or the Declaration. No amendment that affects the rights and privileges provided to Developer in NRS Chapter 119A, or the Timeshare Plan Documents shall be effective without the written consent of Developer.

**EXHIBIT "C"**

**BYLAWS**



IN WITNESS WHEREOF, the subscribing Incorporators have hereunto set their hands and caused these Articles of Incorporation to be executed this 9<sup>th</sup> day of January, 2020.

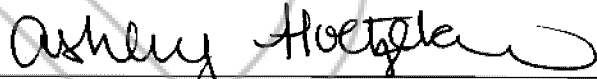


\_\_\_\_\_  
Michael J. Thompson, Incorporator

STATE OF FLORIDA

COUNTY OF ORANGE

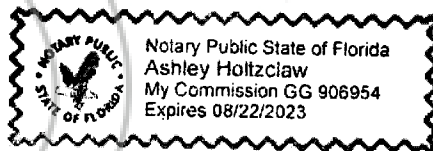
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 9<sup>th</sup> day of January, 2020, by Michael J. Thompson, as Incorporator of Walley's Property Owners' Association II, Inc. He/she is personally known to me.



\_\_\_\_\_  
(Signature of Notary Public)

Ashley Holtzclaw

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)



**BYLAWS  
OF  
WALLEY'S PROPERTY OWNERS' ASSOCIATION II, INC.**

**ARTICLE I  
IDENTITY**

These are the Bylaws of Walley's Property Owners' Association II, Inc., a corporation not-for-profit under the laws of the state of Nevada, (the "Association") and under the Articles of Incorporation (the "Articles") which have shall be filed in the office of the Secretary of State of Nevada.

**1.1 Purpose.** The Association has been organized for the purpose of managing, operating, and maintaining a vacation ownership plan (the "Timeshare Plan") created pursuant to the Declaration of Covenants, Conditions, and Restrictions for David Walley's Resort II, as the same may be amended or otherwise modified from time to time (the "Declaration"), in accordance with Chapter 119A, Nevada Revised Statutes.

**1.2 Office.** The office of the Association shall be at 2001 Foothill Road, Genoa, Nevada 89411.

**1.3 Fiscal Year.** The fiscal year of the Association shall be the calendar year.

**1.4 Seal.** The seal of the corporation shall be the name of the corporation, the word "Nevada," the words "Corporation Not-for-Profit," and the year of incorporation.

**1.5 Definitions.** All capitalized terms used in these Bylaws, but not defined herein shall have the same meaning as ascribed to them in the Declaration, unless context requires otherwise.

**ARTICLE II  
MEMBERSHIP AND VOTING PROVISIONS**

**2.1 Membership.** Membership in the Association shall be limited to Owners of Timeshare Interests in the Timeshare Plan. Transfer of ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If ownership is vested in a corporation, said corporation may designate an individual officer or employee of the corporation as its "Voting Member" (as defined below).

**2.2 Voting.** Owners shall be entitled to vote in the Association equal to his or her Pro Rata Share.

**2.3 Quorum.** Unless otherwise provided herein, the presence in person or by proxy of members representing ten percent (10%) of the total Timeshare Interests within the Timeshare Plan that are eligible to vote shall constitute a quorum, and decisions shall be made by the vote of

a majority of the Timeshare Interests present in person or by proxy at a meeting at which quorum is present.

**2.4 Proxies.** Votes may be cast in person or by general proxy in accordance with controlling law. To the extent permitted by law, votes may also be cast digitally, whether via the internet, e-mail, or otherwise electronically, or by any other means in accordance with procedures established by the Board. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5 of this Article).

Any proxy given shall be valid for any time period set forth in such proxy or, in the absence of any specified time period, until the later of, the expiration of such proxy in accordance with applicable law or such time as revoked in writing by the Owner giving such proxy.

Each proxy shall specifically set forth the name of the Owner voting by proxy, the date the proxy was given, and, if given for a specific meeting, the date, time, and place of the meeting for which the proxy was given. Each proxy must be executed by the Owner of the Interest for which the proxy is given, or, with respect to Interests owned by other than a natural person, the Voting Member with respect to such Interest.

If a proxy expressly provides, any proxy holder may appoint a substitute to act in the proxy holder's place. If such provision is not made, a substitution is not authorized.

A proxy may only be revoked by a written instrument executed by the Owner granting such proxy.

Proxies may be received electronically, whether via the internet, email, or otherwise electronically, shall have legal effect, and may be utilized for Association votes, provided that the electronic signature is authenticated through use of a password, cryptography software, or other reasonable means approved by the Board, and that proof of such authentication is made available to the Board.

**2.5 Designation of Voting Member.** Each Owner's right to cast the votes allocated to the Owner's Interest shall be established by the recorded title to such Interest. If a voting certificate is not on file with the Secretary/Treasurer of the Association for an Interest owned by more than one (1) Owner, the primary and secondary Owners for such Interest, as designated in the Association's records, shall be deemed the joint Voting Members with respect to such Interest and the votes allocated to such Interest may be cast or a proxy may be executed by either of the joint Voting Members without evidence of concurrence of the absent joint Voting Member. Notwithstanding the foregoing, in the event both joint Voting Members cast votes or execute proxies with respect to an Interest, the votes of such Interest shall not be considered for purposes of establishing a quorum, nor for any purpose requiring the approval of the Interest's Voting Member.

If an Interest is owned by other than a natural person (*e.g.*, a corporation, partnership or other legal entity) or the Developer, the officer, partner, member, employee, or other authorized representative thereof entitled to cast the votes of the Interest for such legal entity shall be designated in a voting certificate for this purpose, the form of which shall be promulgated by the

Association, signed by the President or Vice-President of the entity and attested to by the Secretary or Assistant Secretary of the entity, in the case of a corporation, or a general partner in the case of a general or limited partnership, or such other person entitled to represent an entity as deemed acceptable to the Board, and filed with the Secretary/Treasurer of the Association. The person designated in such voting certificate who is entitled to cast the vote for an Interest shall be known as the “**Voting Member**.” Such voting certificates shall be valid until revoked in writing or superseded by a subsequent written voting certificate, or until a change in the ownership of the Interest concerned. If a voting certificate is not on file with the Secretary/Treasurer of the Association for an Interest owned by other than a natural person, the votes of the Interest concerned may be cast by any person providing satisfactory evidence to the Secretary/Treasurer that such person is an authorized representative to cast such votes on behalf of such legal entity; provided, however, in the event multiple persons attempt to cast such votes or multiple proxies are given with respect to such votes, the votes of the applicable Interest shall not be considered for purposes of establishing a quorum, nor for any purpose requiring the approval of the Interest’s Voting Member.

### **ARTICLE III** **OWNERS’ MEETINGS**

**3.1 Time, Place, and Date.** All meeting of the Owners shall be held at such time as shall be designated by the Board and stated in the notice of the meeting and shall be open to all Owners.

**3.2 Notice.** It shall be the duty of the Secretary of the Association to mail, hand deliver, or electronically transmit a notice of each annual or special meeting, including an agenda for such meeting, stating the time and place thereof, to each Owner of record not less than fourteen (14) calendar days prior to such meeting. Notice of any special meeting shall state the purpose thereof. All notices shall be mailed to or served at the address of each Owner as it appears on the books of the Association, or, at the option of the Manager, via electronic transmission if an Owner first consents electronically to the use of electronic transmission for notice purposes in a manner that reasonably demonstrates that such Owner has the ability to access the notice by the means of electronic transmission and the Owner designates an electronic mail address or similar information necessary for electronic transmission of correspondence. The consent to receive notice by electronic transmission is effective until revoked in writing by such Owner. Notices of a meeting sent by electronic transmission are effective when sent by the Association, regardless of when the notice is actually received by the Owner, if directed to the correct address, location or number, or if posted on a web site or Internet location to which the Owner has consented. An Owner, by consenting to notice via electronic transmission, accepts the risk of not receiving electronic notice so long as the Association correctly directed the transmission to the address, location or number provided by the Owner. When notice provided by electronic transmission is returned to the Association undelivered, the Association shall take reasonable steps to attempt redelivery using the information in the Association’s files. Notwithstanding Manager’s option to deliver notices electronically as described in these Bylaws, nothing herein shall be deemed to obligate the Association or Manager to maintain Owners’ electronic mail addresses or similar electronic delivery information as part of the books and records of the Association.

An officer of the Association or the Manager or other person providing notice of an Association meeting shall provide an affidavit, United States Postal Service Certificate of Mailing, or similar evidence of delivery, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed, hand delivered, or electronically transmitted as described above.

**3.3 Annual Meeting.** A meeting shall be held annually for the purpose of electing directors and transacting any other business authorized to be transacted by the Owners. The Board may determine the date and time of the annual meeting so long as the required notice provisions in these Bylaws, or as otherwise required by applicable law, are met. At the annual meeting, the Owners shall elect, by plurality vote (cumulative voting is prohibited), a Board, and shall transact such other business as may properly be brought before the meeting.

**3.4 Special Meeting.** Special meetings of the Association may be for any purpose(s). Unless otherwise prescribed by statute, such special meeting may be called by the President of the Association, and shall be called by the President or Secretary/Treasurer of the Association at the request, in writing, of a majority of the Board, or at the request, in writing, of Owners representing twenty-five percent (25%) of the total votes of the Association (except for special meetings to recall non-Developer appointed members of the Board, which only require the request, in writing, of ten percent (10%) of the total votes), which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice thereof.

**3.5 Waiver and Consent.** Whenever the vote of Owners at a meeting is required or permitted by any provision of these Bylaws to be taken in connection with any action of the Association, no meeting and vote of Owners is required if a majority of the Owners, who would have been entitled to vote upon the action if a meeting were held, consent in writing to such action being taken. Notice of such action shall be given to all Owners.

**3.6 Adjourned Meeting.** If any meeting of Owners cannot be organized because a quorum is not present, either in person or by proxy, the meeting may be adjourned until such time as a quorum is present.

**3.7 Approval or Disapproval.** Subject to the provisions of Article II, Section 2.5, approval or disapproval of Owners upon any matter, whether or not the subject of an Association meeting, shall be by the Voting Members.

**3.8 The Manager.** The Manager shall be entitled to notice of all Association meetings, and shall be entitled to attend the Association's meetings, and it may designate such person(s) as it desires to attend such meetings on its behalf.

**3.9 Minutes of Meetings.** The minutes of all meetings of the Association and the Board shall be kept in a book located in the office(s) of the Association, available for inspection by Owners (or an Owner's authorized representatives) and Board members at any reasonable time. The Association shall retain these minutes for a period to be determined by the Board; provided, however, said period shall not be less than seven (7) years, unless a lesser period of retention is allowed by law.

**3.10 Order of Business.** The order of business at annual Owners' meetings shall be as indicated by the Board in the notice of the meeting.

**3.11 Developer Approval.** For so long as Developer owns any Timeshare Interests in the Timeshare Plan, none of the following actions may be taken without approval in writing by Developer:

Assessment of Developer by the Association, as an Owner, for capital improvements; or

Any action by the Association that would be, in Developer's reasonable opinion, detrimental to the sale of Timeshare Interests by Developer.

#### **ARTICLE IV** **DIRECTORS**

**4.1 Number, Term, and Qualifications.** The affairs of the Association shall be governed by a Board composed of not less than three (3) nor more than five (5) persons, as is determined from time to time by the Owners; provided, however, that the Board shall always be composed of an odd number of persons. Directors must be members of the Association, excepting that directors appointed by the Developer to fill Developer seats on the Board need not be members of the Association. All officers or directors of a corporate Owner, all general partners of a general or limited partnership, or other such representatives of any other legal entity, shall be deemed to be members of the Association so as to qualify as a director under these Bylaws. The term of each director's service shall extend until such director's successor is duly elected and qualified, or until the director is removed in the manner provided in Section 4.3 of this Article.

**4.2 First Board and Election of Directors.** The first Board shall consist of three (3) directors as designated by Developer. The initial directors (or any successors thereof appointed in accordance with Section 4.14 of this Article) shall serve until replaced by Developer or until Owners other than Developer are entitled to elect directors as set forth in Section 4.18 of this Article.

The organizational meeting of a newly elected Board shall be held within thirty (30) calendar days of their election, at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary, provided a quorum shall be present.

Directors (other than the initial directors appointed by Developer or any successors thereof appointed in accordance with Section 4.14 of this Article) shall be elected at the annual meeting of the Owners by a majority of the votes cast either in person or by proxy (to the extent allowed by law) once Owners are entitled to elect directors as provided in Section 4.18 of this Article. There shall be no cumulative voting.

Members of the Board who are elected by Owners other than the Developer at the annual meeting of Owners shall serve for one (1) year until the next annual meeting of the Owners and thereafter,



unless and until his or her successor is duly elected or qualified, or until the director is removed in the manner provided in Section 4.3 of this Article.

**4.3 Removal of Directors.** Any director appointed by Developer may only be removed by Developer and may be so removed at Developer's discretion at any time. Upon such removal or upon the resignation of a director appointed by Developer, Developer shall appoint a replacement director in accordance with Section 4.14 of this Article. At any duly convened regular or special meeting of the Owners, any one or more of the non-Developer appointed directors may be removed, with or without cause, by the vote or agreement in writing of a majority of all the Voting Interests.

A special meeting of the Owners to recall a non-Developer appointed Board member(s) may be called by ten percent (10%) of all possible votes in the Association by giving notice of the meeting as required for a meeting of Owners, which notice shall state the purpose of the meeting. A vote to recall must be made by a majority of the votes of the Association present in person or by proxy at the meeting to be effective. Any director(s) so recalled shall deliver to the Board any and all records of the Association in the director's possession within five (5) full business days of the effective date of the recall.

**4.4 Vacancies of Directors.** Except as set forth in Section 4.14 of this Article, if the office of any director or directors becomes vacant before the expiration of such director's term, by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, or the sole remaining director, at any regular or special meeting of the Board, shall choose a successor or successors who shall hold office for the balance of the unexpired term.

**4.5 Disqualification and Resignation of Directors.** Any director may resign at any time by sending a written notice of such resignation to the Secretary/Treasurer of the Association. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary/Treasurer. Commencing with those directors elected by the Owners in accordance with Section 4.18 of this Article, the transfer of title of all Interests owned by a director (other than those directors selected by Developer) shall automatically constitute a resignation, effective upon the earlier of acceptance of such resignation by the Board or the transfer of title of all of the Owner's Interests. After notice and ten (10) calendar days to cure the delinquency, no Owner shall continue to serve on the Board should the Owner be more than thirty (30) calendar days delinquent in the payment of any Assessment or other outstanding obligation to the Association, including any special Assessment, late fees or interest, if a majority of directors then in office vote for the removal of such director.

**4.6 Regular Meetings.** The Board may establish a schedule of regular meetings to be held at such time and place as the Board may designate. Except in an emergency, or except as otherwise permitted by law, notice of regular meetings of the Board shall be given to each director personally or by mail, telephone, facsimile transmission, or via electronic mail, at least three (3) calendar days prior to the day named for such meeting. All meetings of the Board, including special meetings in accordance with Section 4.7 of this Article, shall be open to all Owners. Notwithstanding anything in these Bylaws to the contrary, the requirement that Board meetings

(regular meetings or special meetings) and committee meetings be open to the Owners is inapplicable to: (i) meetings or closed sessions between the Board (or a committee) and the Association's attorney relating to matters subject to applicable legal privilege; (ii) Board (or committee) meetings dealing with personnel matters; (iii) matters related to specific Owners who have failed to pay Assessments; (iv) matters, the disclosure of which would constitute an unwarranted invasion of individual privacy; or (v) matters otherwise subject to closed session pursuant to applicable law. The nature of any and all business to be considered in closed sessions shall first be announced in open session.

**4.7 Special Meetings.** Special meetings of the Board may be called by the President of the Association, and in the President's absence, by the Vice-President of the Association, or by a majority of the members of the Board, by giving at least three (3) calendar days' notice, in writing, to all of the members of the Board of the time and place of said meeting. All notices of special meetings shall state the purpose of the meeting.

**4.8 Directors' Waiver of Notice; Meetings by Telephone or Written Consent.** Before or at any meeting of the Board, any director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a director at any meeting of the Board shall be a waiver of Notice by such director of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Provided that all requirements of notice as provided in these Bylaws have been complied with (or that the same have been waived as provided in these Bylaws), the Board may conduct business by means of any communication permitted by law by which all directors participating may hear each other simultaneously during the meeting (*e.g.*, teleconference) or by unanimous written consent in lieu of an actual meeting.

**4.9 Quorum.** At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present, shall be the acts of the Board. If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. Upon reconvening a previously adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice.

**4.10 Joinder by Written Concurrence.** A member of the Board may join by written concurrence in any action taken at a meeting of the Board by signing and concurring in the minutes of that meeting, but such concurrence may not be used for the purpose of creating a quorum.

**4.11 Electronic Conferences.** When a telephone, internet, or similar electronic conference method is used, equipment shall be utilized so that the discussion may be heard by the Board members and by any Owners present in an open meeting. Board members utilizing electronic conferences may be counted toward obtaining a quorum and may vote over the electronic equipment.

**4.12 Minutes of Meetings.** The minutes of all meetings of the Board shall be kept as set forth under Article III, Section 4.9 in a book available for inspection by Owners (or their authorized representatives) and Board members at any reasonable time. The Association shall retain these minutes for a period to be determined by the Board; provided, however, that such period shall not be less than seven (7) years, unless a lesser period of retention is allowed by law. Owners and their authorized representatives shall have the right to make written notations from the minutes so maintained.

**4.13 Compensation.** There shall be no compensation to the Board. Each member of the Board shall receive reimbursement for reasonable transportation, meals, and lodging expenses for attendance at any meeting of the Board or the Association and for other actual expenses reasonably incurred in connection with the performance of duties as a member of the Board.

**4.14 Developer's Selection of Directors.** Subject to the provisions of Section 4.18 of this Article, Developer shall have the right to designate the directors, who need not be Owners, and said directors may not be removed by the Owners, as elsewhere provided in these Bylaws, but may be removed by Developer in its sole discretion, at any time, with or without cause. Where a vacancy occurs in any director position appointed by Developer, for any reason whatsoever, the vacancy shall be filled by the person designated by Developer.

**4.15 Manager.** The Manager, as long as Manager remains the managing entity of the Timeshare Plan, is entitled to notice of all Board meetings and is entitled to attend the Board meetings, and it may designate such person(s) as it desires to attend such meetings on its behalf.

**4.16 Powers and Duties.** All of the powers and duties of the Association provided in the Declaration, the Articles, and the Bylaws shall be exercised by the Board, including those existing under the common law, statutes, and the Declaration, Articles, and the Bylaws. Such powers and duties of the directors shall be exercised in accordance with the provisions of the Declaration, the Articles, and the Bylaws.

**4.17 Order of Business.** The order of business at meetings of the Board shall be as indicated in the notice of meeting or agenda.

**4.18 Election of Directors by Owners other than Developer.**

(a) Transfer of Control. Owners other than Developer are entitled to elect members of the Board at such times as are prescribed by this Section 4.18. Developer will designate the initial members of the Board. Developer will continue to designate from time to time all positions on the Board until such time as Developer transfers control of the Board to Owners other than Developer as described in this Section 4.18. In the first Association year following one in which periods have endured where Developer has ceased to offer Timeshare Interests for sale in the ordinary course of business, under either the Timeshare Plan itself or another timeshare plan in which the Timeshare Interests are included, Owners other than Developer will be entitled to elect a number of Board members equal to fifty percent (50%) of the total Board seats plus one (1) additional Board seat. Notwithstanding the foregoing, Developer shall be entitled to elect at least one (1) member of the Board as long as Developer retains any Timeshare Interest in the Timeshare Plan.

(b) Election. Within seventy-five (75) calendar days after the Owners other than Developer are entitled to elect a member or members of the Board, the Association shall call a meeting of the Owners to elect the member or members of the Board and give not less than fourteen (14) calendar days' notice of such meeting. The meeting may be called and the notice given by any Owner, if the Association fails to do so.

(c) Relinquishment of Control. Not more than ninety (90) calendar days after the date that Owners other than Developer elect a majority of the members of the Board, Developer appointed directors shall relinquish control of the Association and the directors elected by the Owners shall accept control. Simultaneously (or within the time periods allowed by law), Developer shall deliver to the Association, at Developer's expense, all Association Property held or controlled by Developer, including those items required by law.

(d) Early Transfer. Nothing contained in this Section 4.18 shall be deemed to prevent Developer, in Developer's sole discretion, from transferring control of the Association to Owners other than Developer before the occurrence of the events described in this Section 4.18.

(e) Developer Votes. In all cases and for all Board seats, Developer is entitled to cast the votes allocated to the Interests owned or controlled by Developer.

## **ARTICLE V** **OFFICERS**

**5.1 Elective Officers.** The principal officers of the Association shall be a President, a Vice-President, and a Secretary/Treasurer, all of whom shall be elected by the Board. One person may not hold more than one of the aforementioned offices. Officers must be members of the Board.

**5.2 Election.** Unless otherwise appointed by Developer, the officers of the Association designated in Section 5.1 above shall be elected annually by the Board at the organizational meeting of each new Board following the meeting of the Owners.

**5.3 Appointive Officers.** The Board may appoint one or more Assistant Secretary/Treasurers, and such other officers as the Board deems necessary.

**5.4 Term.** The officers of the Association shall hold office until their successors are chosen and qualified in their stead or such officer is removed by the Board pursuant to these Bylaws. Any officer elected or appointed by the Board may be removed at any time, with or without cause, by the Board, provided however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board (*e.g.*, if the Board is composed of three (3) persons, then two (2) of said directors must vote for removal). If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board. The provisions of this Section 5.4 shall be applicable to any officers appointed by the Developer, which officers may be removed only by the Developer in Developer's sole and absolute discretion.

**5.5 The President.** The President shall preside at all meetings of the Association and of the Board; shall have executive powers and general supervision over the affairs of the Association and other officers.

**5.6 The Vice President.** The Vice President shall perform all of the duties of the President in the President's absence, and such other duties as may be assigned to the Vice President from time to time by the Board or President.

**5.7 The Secretary/Treasurer.** The Secretary/Treasurer shall keep the minutes of the proceedings of the directors and the Owners. He or she shall attend to the giving and serving of all notices required by law. He or she shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He or she shall have custody of all property of the Association, including financial records, assessment rolls, accounts of the Owners, funds, securities and evidences of indebtedness. He or she shall perform all other duties incident to the office of secretary/treasurer of the Association and as may be required by the directors or the president. The assistant secretary/treasurer shall perform the duties of the secretary/treasurer when the secretary/treasurer is absent, and such other duties assigned by the secretary/treasurer.

**5.8 Compensation.** There shall be no compensation to the officers. Each officer shall receive reimbursement for reasonable transportation, meals, and lodging expenses for attendance at any meeting of the officers, the Board, or the Association and for other actual expenses reasonably incurred in connection with the performance of duties as an officer.

## **ARTICLE VI**

### **FISCAL MANAGEMENT**

The provisions for fiscal management of the Association set forth in the Declaration and the Articles shall be supplemented by the following provisions:

#### **6.1 Assessments.**

- a. Unless otherwise provided by the Board, regular Assessments shall be levied and collected in the following manner: (1) Assessments for Timeshare Interests for a budget year shall be due on the first (1<sup>st</sup>) day of January of the budget year; (2) all payments shall be considered delinquent and shall bear interest at the highest rate permitted by law from the date when due until paid if payment has not been received on or before the thirty-first (31<sup>st</sup>) of January of the budget year; (3) a late charge equal to the great of \$25.00, five percent (5%) of the delinquent payment, or such other greater amount permitted by Nevada law, but in no event greater than the amount permitted by Nevada law, shall be due on the delinquent accounts; (4) Owners who purchase a Timeshare Interest after January 1<sup>st</sup> of the budget year and who are scheduled for occupancy in that budget year, will be assessed for the regular assessment for the year of purchase at any time during the budget year. All payments on accounts shall be first applied to any interest that has accrued, then to any late charge, then to any costs and reasonable attorneys' fees incurred in collection, and then to the assessment payment first due. The Board shall have the

discretion to increase or decrease the amount of the late charge and/or the interest rate within the limits imposed by law; provided, however, that such increase or decrease shall be made effective by amending the Rules and Regulations and notifying the Owners of same. Special Assessments, should such be required by the Board, shall be levied in the same manner as provided for regular Assessments, and shall be payable in the manner determined by the Board. If an Owner shall be in default in the payment of any assessments or taxes due on his or her Timeshare Interest, the Association shall have all collection rights available to it under Nevada law. If the lien for any unpaid share of Common Expenses or Assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments shall be Common Expenses collectible from all the Owners, except to the extent required under Nevada law.

- b. Unless the Board determines otherwise, each Owner of a Timeshare Interest shall pay his or her Pro Rata Share of the Assessments. The personal liability of an Owner for Assessments shall survive the termination of such Owner's membership in the Association.
- c. After the Developer Control Period, notice of any meeting, whether a meeting of the Board or of the Owners, at which Assessments against Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of such Assessments.

**6.2 Budgets.** The Board shall adopt an annual operating budget that includes: (i) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment, (ii) the projected common expenses liability, if any, by category of expenditure for the Timeshare Plan, and (iii) the assumptions on which the budget is based. The Association may grant to the Board the power to delete specific line item reserve amounts for the purpose of avoiding adverse tax consequences, unless otherwise provided by law. Reserve accounts may be waived by the Board. The budget shall include, but not be limited to, those items required by applicable law.

## **ARTICLE VII** **PARLIAMENTARY RULES**

Robert's Rules of Order (latest edition) shall govern the conduct of the Association proceedings when not in conflict with the Articles and the Bylaws, or with the statutes of the State of Nevada.

## **ARTICLE VIII** **AMENDMENTS**

**8.1 Notice.** Notice of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

**8.2 Proposal.** An amendment may be proposed by the Board. No Bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing Bylaws shall contain the full text of the Bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through hyphens. However, if the proposed change is so extensive that this procedure would hinder rather than assist the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language “Substantial rewording of Bylaw. See Bylaw . . . for present text.” Nonmaterial errors or omissions in the Bylaw amendment process shall not invalidate an otherwise properly promulgated amendment.

**8.3 Approval.** Except as otherwise provided herein, a resolution adopting a proposed amendment must receive approval of not less than two-thirds (2/3) of all the directors until the first election of a majority of directors by owners other than the Developer. Thereafter, the Bylaws may be amended by not less than two-thirds (2/3) of all the directors and by not less than two-thirds (2/3) of the votes cast or a majority vote of voting interests present in person or by proxy at a duly called meeting of the Association, whichever is less.

**8.4 Adoption.** An amendment shall become effective when adopted, unless otherwise specified in the amendment.

**8.5 Amendment by Developer.** These Bylaws shall be amended by the Developer, if necessary, to make the same consistent with the provisions of the Declaration, to meet the requirements of any governmental entity, statute, or rule and as may be in the best interests of the Association.

## **ARTICLE IX**

### **SEVERABILITY AND CONFORMITY TO STATE LAW**

These Bylaws are to be governed by and construed according to the laws of the State of Nevada. If it should appear that any of the provisions hereof are in conflict with the Declaration or any rule of law or statutory of the State of Nevada, then such provisions of these Bylaws shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be deemed modified to conform to the Declaration or such rule of law.

## **ARTICLE X**

### **MANDATORY NON-BINDING ARBITRATION**

Internal disputes arising from the operation of the Resort among the Developer, the Association, the Owners, their respective agents and assigns, or any or all of them, must be submitted first for resolution through non-binding arbitration if required by Nevada law.

**ARTICLE XI**  
**CERTIFICATE OF COMPLIANCE**

A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Buildings to fire or other safety codes applicable to Douglas County, Nevada.

**ARTICLE XII**  
**CONSTRUCTION**


Whenever the context permits or requires, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all genders.

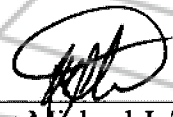
*[Signatures on following page]*

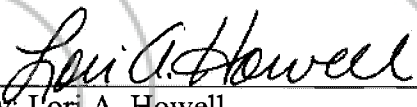


The foregoing was adopted as the Bylaws of **Walley's Property Owners' Association II, Inc.**

Dated this 9<sup>th</sup> day of January, 2020.

  
\_\_\_\_\_  
By: Brian T. Lower  
President

  
\_\_\_\_\_  
By: Michael J. Thompson  
Vice President

  
\_\_\_\_\_  
By: Lori A. Howell  
Secretary/Treasurer



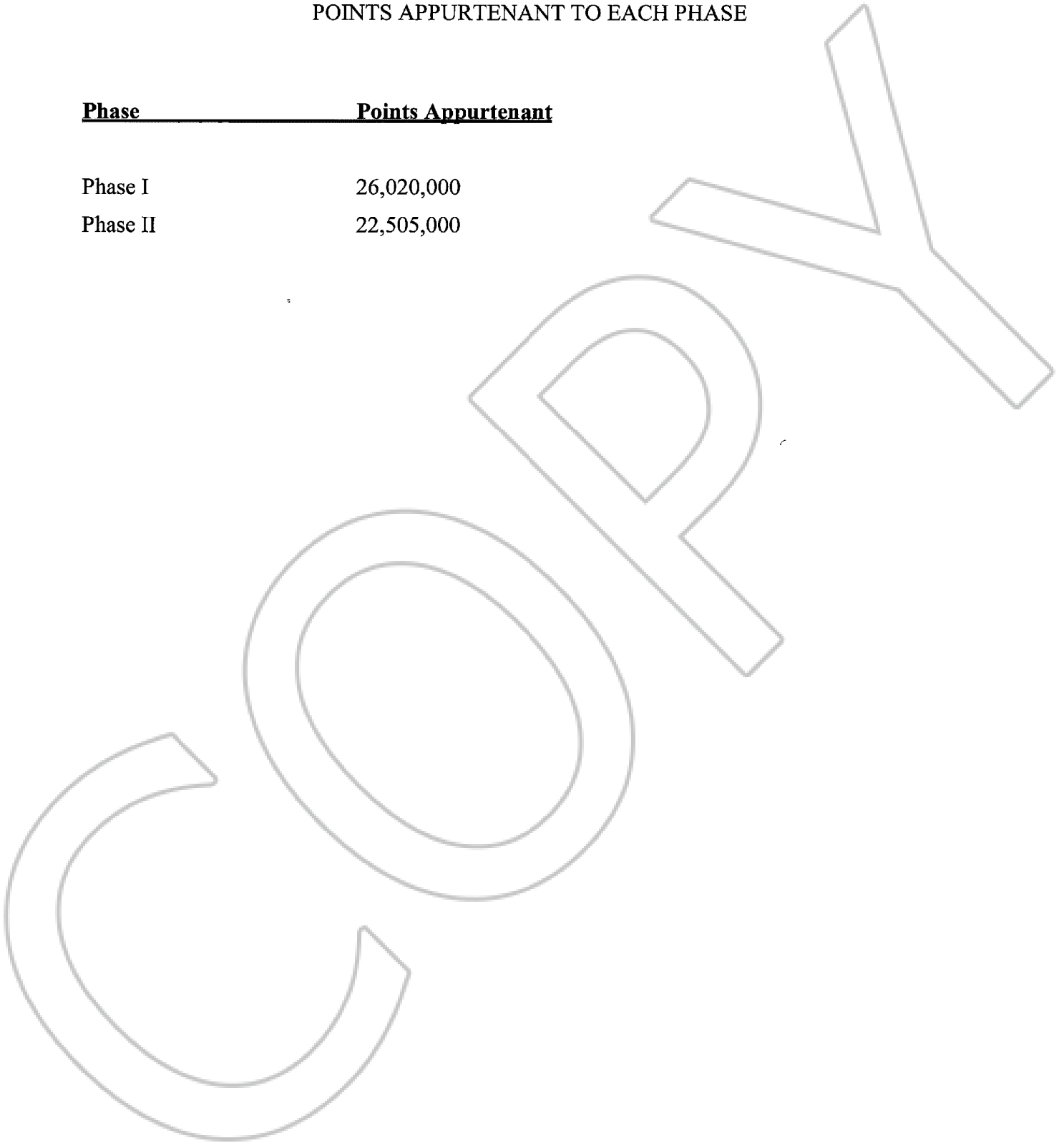
**EXHIBIT "D"**

**POINTS APPURTENANT TO EACH PHASE**

**Phase                      Points Appurtenant**

Phase I                      26,020,000

Phase II                     22,505,000



**EXHIBIT "E"**

**POINTS FOR EACH 7 DAY USE PERIOD**

<b>Weeks</b>	<b>2BD-CT</b>	<b>3BD-CT</b>
1	85,000	115,000
2	85,000	115,000
3	85,000	115,000
4	85,000	115,000
5	120,000	165,000
6	165,000	225,000
7	215,000	295,000
8	165,000	225,000
9	165,000	225,000
10	165,000	225,000
11	165,000	225,000
12	165,000	225,000
13	165,000	225,000
14	165,000	225,000
15	165,000	225,000
16	165,000	225,000
17	165,000	225,000
18	165,000	225,000
19	165,000	225,000

20	165,000	225,000
21	165,000	225,000
22	215,000	295,000
23	215,000	295,000
24	265,000	365,000
25	265,000	365,000
26	265,000	365,000
27	265,000	365,000
28	265,000	365,000
29	265,000	365,000
30	265,000	365,000
31	265,000	365,000
32	215,000	295,000
33	215,000	295,000
34	215,000	295,000
35	215,000	295,000
36	215,000	295,000
37	215,000	295,000
38	215,000	295,000
39	215,000	295,000
40	215,000	295,000
41	215,000	295,000
42	165,000	225,000

43	165,000	225,000
44	120,000	165,000
45	120,000	165,000
46	120,000	165,000
47	165,000	225,000
48	128,000	165,000
49	128,000	165,000
50	128,000	165,000
51	165,000	225,000
52	256,000	365,000

Note: The Board, with the consent of Developer, may reallocate the number of Points needed to reserve the use of any particular Use Period; *provided, however*, the total number of Points appurtenant to a Building shall be equal to the number of Points required to reserve all of the seven (7) day Use Periods in such Building.