

# **The Canyons Resort Village Association, Inc.**

## **Meeting of the CVMA Board of Trustees**

**June 22, 2021**

The Board of Trustees meeting was held on Tuesday, June 22, 2021, at Westgate Park City Resort & Spa in Park City, Utah. The following trustees were present by phone or in person: Class A Trustees – Harold DeBlanc, Laurel Simpson, Ron Neville, Mary Walter; Class B Trustees – Gordon Cummins, Bob Flaig, Steve Osguthorpe, Brent Tary, Tony Tyler. Additional attendees included: Brian Madacsi, President & CEO of CVMA; Dave March, Director of Marketing & Events of CVMA; John Simmons, Planning & Operations Manager of CVMA. Having determined that a quorum was present, the meeting was called to order.

### **1. Approval of Meeting Minutes**

- 1.1. Neville made a motion to approve the March 3, 2021 meeting minutes. The motion was seconded by Tyler and passed unanimously.

### **2. Closed Session**

### **3. Amendment of Bylaws**

- 3.1. Madacsi provided an overview of the proposed resolution to amend section 8.1 of the current Bylaws, regarding indemnification of Trustees, officers, and employees of the CVMA. After discussion and review of the memorandum provided by Jones Waldo, a motion was made to adopt the proposed resolution by Tyler, seconded by Cummins and passed unanimously.

### **4. Fulfillment of Board of Trustees Secretary**

- 4.1. After discussion, the board voted unanimously for Brent Tary to fill the position.

### **5. General Updates**

- 5.1. Madacsi provided updates on staffing, impacts related to COVID, and the possible replacement of the Sunrise lift. Tary provide an overview of current Westgate projects.

### **6. Resort Update**

- 6.1. Goar provided an update on winter operations, completed and upcoming capital projects as well as anticipated summer business.

## **7. Financials**

- 7.1. Madacsi reviewed financials through May. TOA, RA, and RETA are pacing higher than forecasted. Expenses are under budget. This trend is anticipated to continue as the resort is experiencing greater visitation due to pent-up demand related to COVID-19.

## **8. Marketing and Events**

- 8.1. March provided an update on marketing and events. Anticipated impacts to summer operations related to COVID-19 were discussed. PDF presentation is available.

## **9. Development and Operations**

- 9.1. Simmons provided an update on current and future development as well as the landscape master plan, public art, and scheduled village improvements. A Canyons Village Connect overview and transportation update were also provided. PDF presentation is available.

## **10. Employee Housing**

- 10.1. Madacsi and Tyler provided an update on Employee Housing. The groundbreaking ceremony took place on June 8<sup>th</sup>. Phased opening is anticipated to begin in the fall of 2022, with a final completion date in December of 2023.

## **11. Closing**

- 11.1. Neville made a motion to adjourn the meeting, seconded by Cummins, and passed unanimously.

## CORPORATE RESOLUTIONS

### The Canyons Resort Village Association, Inc.

The undersigned, the Secretary of The Canyons Resort Village Association, Inc., a Utah nonprofit corporation (the "**Corporation**"), hereby certifies that by written consent of at least six members of the Board of Trustees, the following resolution was adopted in accordance with Sections 6.2(c)(ii) and 6.2(h) of the Second Amended and Restated Bylaws of the Corporation (the "**Bylaws**").

A. Section 6.2(c)(ii) of the Bylaws provides that approval of at least six Trustees entitled to vote a duly called meeting of the Board is required to amend the Bylaws.

B. Section 6.2(h) of the Bylaws provides in relevant part that "any action required or permitted to be taken at a meeting of the Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees entitled to vote with respect to the subject matter thereof."

C. The Corporation desires to amend the Bylaws, by written consent of the Trustees, with respect to indemnification of trustees, officers, employees, and agents of the Corporation.

#### RESOLUTIONS:

RESOLVED, that the Second Amendment to the Bylaws attached hereto as Exhibit A is hereby approved and adopted.

FURTHER RESOLVED, that, consistent with the foregoing, the Secretary of the Corporation be, and hereby is, authorized, empowered and directed for, and in the name and on behalf of the Corporation, to execute the Second Amendment to the Bylaws and place a copy of the Second Amendment to the Bylaws in the Corporation's minute book as part of the permanent records of the Corporation.

The undersigned further certifies that the foregoing Resolutions now stand of record in the books of the Corporation, and that they are in full force and effect and have not been modified or revoked in any manner whatsoever.

Dated as of: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Secretary of The Canyons Resort Village  
Association, Inc., a Utah nonprofit corporation

EXHIBIT A

[see attached]

**Proposed Language Exhibit A**

**SECOND AMENDMENT TO  
SECOND AMENDED AND RESTATED BYLAWS OF  
THE CANYONS RESORT VILLAGE ASSOCIATION, INC.**

Pursuant to a resolution approved by the written consent of at least six (6) of the Trustees of the Board of Trustees of The Canyons Resort Village Association, Inc. (the “**Association**”), the following amendment to the Second Amended and Restated Bylaws of the Association (the “**Bylaws**”) was duly adopted as of June \_\_, 2021:

1. **AMENDMENT.** Article VIII of the Bylaws is hereby deleted in its entirety and replaced by the following:

8.1. Limitation of Liability.

(a) The members of the Board of Trustees, the officers, and any assistant officers, agents, and employees of the Association (i) shall not be liable to the Members of the Association as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or gross negligence; (ii) shall have no personal liability in contract to a Member of the Association or any other person or entity under any agreement, instrument, or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Member of the Association or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or gross-negligence, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse, or condition of the Resort Village or the Facilities that might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8.2. Indemnification of Trustees and Officers.

(a) *Duty to Indemnify.* Except as otherwise expressly provided in Section 8.2 (c) below, the Association shall indemnify, to the fullest extent allowed by applicable law, any Trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (each, an “**Action**”), by reason of the fact he or she is or was a Trustee or officer of the Association or with respect to an action taken by him or her in his or her capacity as a Trustee or officer, against judgments, fines, amounts paid in settlement and reasonable expenses (including attorneys’ fees and court costs), incurred by such Trustee or officer in connection with such Action.

(b) *Mandatory Indemnification.* To the extent that a Trustee or officer has been successful on the merits in defense of any Action, or in defense of any claim, issue or matter therein, such Trustee or officer shall be indemnified against all expenses (including expert witness fees, attorneys’ fees and costs) actually and reasonably incurred by him or her in connection therewith.

(c) *Exception to Duty to Indemnify.* Notwithstanding the indemnification requirement set forth in Section 8.2(a) above, if a court of competent jurisdiction determines, by a preponderance of evidence, that the actions of such Trustee or officer that are the subject of an Action constituted willful misconduct or gross negligence, then the Association shall not have a duty to indemnify such Trustee or officer in connection with such Action. In connection with such a determination, a Trustee or officer seeking indemnification shall be entitled to a presumption that he or she did not engage in willful misconduct or gross negligence and that he or she is entitled to indemnification. The termination of any Action by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, overcome the presumption in favor of indemnification.

### 8.3 Indemnification of Employees and Agents.

(d) An employee or authorized agent may, at the discretion of the Board of Trustees, be indemnified by the Association to the extent the Association would be required by Section 8.2 above to indemnify such person if he or she were or had been a Trustee or officer of the Association.

(e) If provided in an employment agreement or other written agreement between the Association and an employee or agent who neither was nor is a Trustee or officer of the Association, such employee or agent shall be indemnified by the Association pursuant to Section 8.2 above as if such employee or agent were or had been a Trustee or officer of the Association.

8.4 Advancing Expenses. Expenses (including attorneys' fees and court costs) incurred by a person who is or may be indemnified under the provisions of this Article, in defending a civil or criminal Action, will be paid by the Association in advance of the final disposition of such Action; provided, however, that in the event that it is ultimately determined, in accordance with Section 8.2(c) above, that such person is not entitled to be indemnified by the Association as provided in this Article VIII, such person shall repay to the Association within sixty (60) days after demand all amounts so advanced. The Association may condition the advance of expenses under this Section 8.5 on the receipt by the Association of a written agreement, executed by the person seeking indemnification, to repay all amounts advanced by the Association if such repayment is required pursuant to this Section 8.4.

### 8.5 Procedure for Effecting Indemnification.

(a) When any Trustee, officer, employee, or agent of the Association receives notice of any action referred to above, he or she shall give notice to the President and to the Board of Trustees, stating the nature of the claim, the identity of the claimant, and providing all pertinent information about the claim. If the Trustee, officer, employee, or agent is requesting an advance for payment of expenses (including attorneys' fees and court costs), the notice shall expressly include such a request.

(b) If a claim under this Article is not paid in full by the Association within forty-five (45) days after a written claim has been received by the Association, the claimant may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses (including attorneys' fees and court costs) of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for an advance of expenses (including attorneys' fees and court costs) as provided in Section 8.4 below) that a determination has been made in accordance with Section 8.2(c) above that the claimant engaged in willful misconduct or gross negligence and so is not eligible to be indemnified pursuant to Section 8.2(a) above, but the burden of proving such defense shall be on the Association.

8.6 Scope of Article. Each person who acts as a Trustee, officer, employee, or agent of the Association shall be deemed to be doing so in reliance upon the rights of indemnification provided in this Article VIII. The indemnification and advancement of expenses provided by this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any agreement, vote of disinterested Trustees, by law, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Trustee, officer, employee, or agent of the Association and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.7 Insurance. The Association, whenever so authorized by the Board of Trustees, may purchase and maintain insurance on behalf of any Trustee, officer, employee, or agent of the Association (or a person who is or was serving at the request of the Association as a Trustee, director, officer, employee or agent of another corporation, person, partnership, joint venture, trust or other enterprise) against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would be authorized or required to indemnify him or her pursuant to this Article.

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

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

Secretary of The Canyons Resort Village  
Association, Inc., a Utah nonprofit corporation