

AGREEMENT FOR SETTLEMENT AND RELEASE OF ALL CLAIMS

This Agreement for Settlement and Release of All Claims (“Settlement Agreement”) is made this 27th day of February, 2025, by and between LAWRENCE ANDERSON as trustee for the LAWRENCE T. ANDERSON AND SUZANNE M. ANDERSON JOINT REVOCABLE LIVING TRUST, ROBERT ERHART, NORA ERHART, and TJARDA CLAGETT, on behalf of themselves, their heirs, assigns, and successors (collectively, “Plaintiffs” or “Class Representatives”), and on behalf of the Settlement Class Members, as defined below, and BOYNE USA, INC., BOYNE PROPERTIES, INC., and SUMMIT HOTEL, LLC (collectively referred to as “Boyne” or “Defendants”).

RECITALS

- A. Boyne USA, Inc., and certain of its subsidiaries (Summit Hotel, LLC and Boyne Properties, Inc.), developed condominium-hotels at Big Sky Resort, a ski resort located in Madison County, Montana. The condominium-hotels are commonly known as the “Shoshone Condominium Hotel,” the “Summit Hotel,” and the “Village Center Condominium” (collectively the “Condo-Hotels” as defined below).
- B. Boyne USA, Inc. operates a rental management program (“Boyne’s Rental Management Program” as defined below) concerning the rental of privately owned condominium units in the Condo-Hotels.
- C. Plaintiffs and Settlement Class Members currently own, or have owned in the past, condominium units in the Condo-Hotels and have been parties to Boyne’s Rental Management Program.
- D. A dispute has arisen between the Parties concerning the validity of aspects of Boyne’s Rental Management Program, including a requirement that condominium unit owners rent exclusively through Boyne.
- E. Plaintiffs filed a putative class action in the U.S. District Court for the District of Montana, Butte Division, on December 30, 2021, captioned as Lawrence Anderson, as trustee for the Lawrence T. Anderson and Suzanne M. Anderson Joint Revocable Living Trust, Robert and Nora Erhart, and Tjarda Clagett v. Boyne USA, Inc., Boyne Properties, Inc. and Summit Hotel, LLC, No. 2:21-cv-000095-BMM. Plaintiffs brought claims seeking monetary remedies (including damages) related to alleged past underpayment of rental revenue, as well as claims for declaratory and injunctive relief regarding Boyne’s Rental Management Program. (Doc. 1 in the above-referenced matter). Plaintiffs later filed an Amended Complaint asserting substantially the same claims (Doc. 26).
- F. On June 28, 2023, the Court issued an Order on Class Certification (Doc. 113) appointing Plaintiffs as Class Representatives, appointing their attorneys as Class



Counsel, and certifying for class treatment claims for monetary relief pursuant to Rule 23(b)(3) and claims for declaratory and injunctive relief pursuant to Rule 23(b)(2) (Doc. 113).

- G. On April 15, 2024, the Court issued an Order on Class Notice, directing the process for providing notice of the certified class action to potential members of the Rule 23(b)(2) and Rule 23(b)(3) classes and giving opportunity to opt out of the Rule 23(b)(3) class (Doc. 225).
- H. The class notice and opt-out process was completed in accordance with the Court's direction. Of the 377 identified class members, 13 opted out of the Rule 23(b)(3) class (Doc. 258).
- I. Trial of this matter is scheduled to begin on March 10, 2025.
- J. The Parties mediated their dispute on February 7, 2025, with Mark Helm and Niki Mendoza of Phillips ADR. Following a full-day mediation, the Parties reached a binding agreement on the material terms of a class-wide settlement of both the Rule 23(b)(3) claims for monetary relief and the Rule 23(b)(2) claims for declaratory and injunctive relief and for submission of the same to the Court for approval.
- K. Defendants have at all times disputed, and continue to dispute, Plaintiffs' allegations and deny any liability for any of the claims that have or could have been raised regarding Boyne's Rental Management Program, but believe that the comprehensive resolution of the issues provided in this Settlement Agreement will avoid the substantial costs and disruptions of continued litigation, is in the best interests of the Settlement Class Members, is in the best interests of Defendants and their employees, and is the most effective and least costly resolution of this lawsuit.
- L. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes the compromise of disputed claims and that it is their mutual desire and intention that the lawsuit be settled and dismissed, and that the Released Claims be finally and fully settled and dismissed, subject to and according to the below terms and conditions.

NOW, THEREFORE, for the covenants and representations contained herein, and for the good and valuable consideration to the Plaintiffs and Settlement Class Members as provided in this Settlement Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 DEFINITIONS

The following definitions shall apply solely for purposes of this Settlement Agreement and any pleadings, motions, or documents used to implement this Settlement Agreement:

1.1 “Action” means the class action lawsuit described above, entitled: *Lawrence Anderson, as trustee for the Lawrence T. Anderson and Suzanne M. Anderson Joint Revocable Living Trust, Robert and Nora Erhart, and Tjarda Clagett v. Boyne USA, Inc., Boyne Properties, Inc. and Summit Hotel, LLC*, No. 2:21-cv-000095-BMM, filed in the United States District Court for the District of Montana, Butte Division.

1.2 “Administrative Costs” means all actual and reasonable administrative costs of printing, mailing, and emailing class notices, producing and mailing settlement checks, producing and mailing appropriate IRS tax forms (e.g. Form 1099), all escrow and accounting fees, and all other costs incurred to provide notice to the Settlement Class Members and to otherwise account for, administer, and distribute the Rule 23(b)(3) Settlement Fund.

1.3 “Application for Attorneys’ Fees, Costs, and Service Awards” means the application made by Plaintiffs and Class Counsel with the Motion for Final Approval for attorneys’ fees and litigations costs for Class Counsel and Service Awards for the Class Representatives.

1.4 “Attorneys’ Fees Claims” means all claims made to recover all litigation costs and reasonable attorneys’ fees incurred to procure: (i) the Rule 23(b)(3) Settlement Fund; (ii) the Rule 23(b)(2) CAPEX Contributions and other nonmonetary relief; and (iii) negotiating and finalizing the Settlement Agreement, including through the Effective Date, but shall not include fees that might be incurred in the future enforcing this Settlement Agreement after the Effective Date.

1.5 “Boyne’s Counsel” means, collectively, all counsel and law firms appearing of record on behalf of Boyne in the Action.

1.6 “Boyne’s Rental Management Program” means the rental management program, challenged in the Action, whereby Boyne acts as rental manager or short-term leasing agent for privately owned condominium units in the Condo-Hotels.

1.7 “Breakfast” or “Packaged Breakfast” means the practice or policy, challenged in the Action, of including breakfast with guest rooms rented through Boyne’s Rental Management Program where breakfast is mandatory and included as part of the advertised lodging rate, as opposed to an optional add-on for an additional fee.

1.8 “CAPEX Attorneys’ Fees” means the attorneys’ fees and reimbursement of litigation expenses awarded to Class Counsel pursuant to their Application for Attorneys’ Fees, Costs, and Service Awards based on the future benefits procured for the Rule 23(b)(2) Settlement Class in the form of Rule 23(b)(2) CAPEX Contributions and other nonmonetary relief.

1.9 “Class Counsel” means, collectively, all counsel and law firms appearing of record on behalf of Plaintiffs and the class members in the Action.

1.10 “Class List” means a list provided by Boyne with the names, addresses, email addresses, and tax identification information for each of the Settlement Class Members.

1.11 “Class Representatives” or “Plaintiffs” means the named plaintiffs in the Action, Lawrence Anderson, as trustee for the Lawrence T. Anderson and Suzanne M. Anderson Joint Revocable Trust, Robert Erhart, Nora Erhart, and Tjarda Clagett.

1.12 “Complaint” means the First Amended Complaint and Jury Demand filed by Plaintiffs on November 3, 2022.

1.13 “Condo-Hotel Declarations” means the Summit Hotel Declarations, the Shoshone Declarations, and the Village Center Declarations.

1.14 “Condo-Hotels” means, collectively, the “Summit Hotel Condominium” created pursuant to the Summit Hotel Declarations and commonly known as “The Summit,” the “Shoshone Condominium Hotel” created pursuant to the Shoshone Declarations and commonly known as the “The Shoshone,” and the “Lone Peak Center Condominium” created pursuant to the Village Center Declarations and commonly known as “The Village Center.” When used in the singular, “Condo-Hotel” refers to any one of The Summit, The Shoshone, or The Village Center.

1.15 “Court” means the United States District Court for the District of Montana and the Judge assigned to the Action.

1.16 “Distribution Check” shall mean a paper check payable to a Settlement Class Member to accomplish distribution of the Settlement Class Member Benefits from the Rule 23(b)(3) Settlement Fund.

1.17 “Distribution Date” shall mean the date the Distribution Checks are mailed to Settlement Class Members.

1.18 “Effective Date” means the day after the entry of the Final Approval Order and entry of the Settlement Order and Judgment, provided there are no objections submitted during the Objection Period. If there are timely objections, then the Effective Date shall be the later of: (a) 30 days after entry of the Final Approval Order and Settlement Order and Judgment if no appeals are taken from the Final Approval Order and Settlement Order and Judgment; or (b) if appeals are taken from the Final Approval Order and Settlement Order and Judgment, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order and Settlement Order and Judgment or 30 days after the entry of a dismissal of the appeal.

1.19 “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

1.20 “Final Approval Hearing” means the means the final hearing, to be held after notice has been provided to the Settlement Class Members in accordance with this

Settlement Agreement to: (1) determine whether to grant final approval, and (2) affirm certification of the Rule 23(b)(2) Settlement Class and the Rule 23(b)(3) Settlement Class; (3) consider any timely objections; (4) decide whether to enter the Final Approval Order; (5) rule on the Application for Attorneys' Fees, Costs, and Service Awards; and (6) decide whether to enter the Settlement Order and Judgment.

1.21 "Final Approval Order" means the final order the Court enters granting final approval of the Settlement Agreement. The proposed Final Approval Order shall be substantially in the form attached as **Exhibit C** and shall be attached as an exhibit to the Motion for Final Approval. The Final Approval Order also includes other orders, which may be entered separately, determining the amount of CAPEX Attorneys' Fees and Settlement Fund Attorneys' Fees awarded to Class Counsel, Service Awards to the Class Representatives, and Administrative Costs.

1.22 "Homeowners' Associations" means, collectively, the Summit Homeowners' Association, the Shoshone Homeowners' Association, and the Village Center Homeowners' Association.

1.23 "Motion for Final Approval" means the motion that Plaintiffs and Class Counsel shall file with the Court seeking final approval of the Settlement Agreement, the Application for Attorneys' Fees, Costs, and Service Awards, entry of the Final Approval Order, and entry of the Settlement Order and Judgment.

1.24 "Motion for Preliminary Approval" means the motion that Plaintiffs and Class Counsel shall file with the Court seeking preliminary approval of the Settlement Agreement, the Notice and Notice Procedure, and entry of the Preliminary Approval Order.

1.25 "Notice" means the notice that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval in the form attached as **Exhibit B**.

1.26 "Notice Procedure" means the methods provided for in this Agreement for giving Notice to the Settlement Class Members and set forth in the Preliminary Approval Order.

1.27 "Objection Period" means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing.

1.28 "Party" means each of Plaintiffs and Defendants, and **"Parties"** means Plaintiffs and Defendants collectively.

1.29 "Preliminary Approval Hearing" means the hearing to be held before the Court to determine (a) whether this Settlement Agreement, including its Exhibits, should be preliminarily approved; (b) whether the Notice should be approved and mailed/mailed to the Settlement Class Members pursuant to the Notice Procedure; and (c) any other matter necessary to effectuate the terms of this Settlement Agreement.

1.30 “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement Agreement and the proposed Notice and Notice Procedure, substantially in the form attached hereto as **Exhibit A**.

1.31 “Released Claims” means all claims released by Plaintiffs and all Settlement Class Members against all Released Parties pursuant to Section 5 of this Settlement Agreement.

1.32 “Released Parties” means Defendants and each entity which is controlled by, controlling, or under common control with Defendants and their past, present, and future direct and indirect heirs, assigns, associates, corporations, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, members, agents, servants, employees, partners, attorneys, insurers, reinsurers, benefit plans, predecessors, successors, managers, administrators, executors, and trustees.

1.33 “Releasing Parties” means Plaintiffs and all Settlement Class Members and their respective past, present, and future heirs, devisees, beneficiaries, conservators, executors, estates, administrators, assigns, trustees, receivers, agents, attorneys, accountants, financial and other advisors, and any other representatives of any of these persons and entities.

1.34 “Resort Fee” (alternatively referred to as a resort services fee, facility fee, destination fee, amenity fee, or similar) means a mandatory fee charged to all guests of the Condo-Hotels for the use of hotel/resort amenities and facilities in addition to the room rate.

1.35 “Rule 23(b)(2) CAPEX Contributions” means the capital expenditure contributions Boyne will pay to the Homeowners’ Associations in accordance with Section 3.

1.36 “Rule 23(b)(2) Settlement Class” means all persons and entities, other than Defendants, that currently own one or more residential units in the Condo-Hotels, as well as any persons or entities that acquire ownership of one or more residential units in the Condo-Hotels before the Effective Date.

1.37 “Rule 23(b)(2) Settlement Class Member Benefit” means the Rule 23(b)(2) CAPEX Contributions and the Structure and Governance Requirements, described in Sections 3 and 4.

1.38 “Rule 23(b)(2) Structure and Governance Requirements” means the declaratory relief imposed by Section 4 of this Settlement, which shall be incorporated into the Settlement Order and Judgment.

1.39 “Rule 23(b)(3) Settlement Class” means all persons and entities, other than Defendants, that: (i) own or have owned a unit in the Condo-Hotels; (ii) have participated in Boyne’s Rental Management Program on or after December 31, 2013; and

(iii) did not give timely notice of their election to opt out of the Rule 23(b)(3) class during the opt-out period, i.e., on or before September 20, 2024.

1.40 “Rule 23(b)(3) Settlement Class Member Benefit” means the portion of the Settlement Fund paid to a Rule 23(b)(3) Settlement Class Member based on each Rule 23(b)(3) Settlement Class Member’s proportional share of the damages claimed in the Action attributable to Resort Fees and Breakfast, as determined pursuant to the methodology provided in Section 2.

1.41 “Rule 23(b)(3) Settlement Fund” means the non-reversionary \$18,799,417.50 in cash that Boyne is obligated to fund under the terms of the Settlement.

1.42 “Service Award” means the payment the Court may award Plaintiffs for serving as Class Representatives, which is in addition to any Rule 23(b)(3) Settlement Class Member Benefit due to Plaintiffs as Rule 23(b)(3) Settlement Class Members.

1.43 “Settlement” means the Rule 23(b)(2) and Rule 23(b)(3) class settlement effectuated by the terms of this Settlement Agreement and the Court’s orders approving the class settlement.

1.44 “Settlement Agreement” means this Agreement for Settlement and Release of All Claims.

1.45 “Settlement Administrator” means JND Legal Administration, with its primary office located in Seattle, Washington.

1.46 “Settlement Administration Costs” means all costs and fees of the Settlement Administrator incurred effectuating Notice and administration of the Settlement.

1.47 “Settlement Class Members” means, collectively, members of both the Rule 23(b)(2) Settlement Class and Rule 23(b)(3) Settlement Class.

1.48 “Settlement Fund Attorneys’ Fees” means the attorneys’ fees and reimbursement of litigation expenses awarded to Class Counsel pursuant to their Application for Attorneys’ Fees, Costs, and Service Awards based on the Rule 23(b)(3) Settlement Fund benefits procured for the Rule 23(b)(3) Settlement Class.

1.49 “Settlement Order and Judgment” means the order and judgment to be entered upon entry of the Final Approval Order and pursuant to Federal Rule of Civil Procedure 23(d), in substantially the form of **Exhibit D**, finding that: i) the Settlement Class Members are bound by the settlement approved by the Court; ii) finally approving and adopting the terms of the Settlement; and iii) entering judgment as to the Structure and Governance Requirements. The Settlement Order and Judgment entered pursuant to this Settlement shall be a final judgment as defined by Rule 54(b) of the Federal Rules of Civil Procedure. After entry by the Court, the Settlement Order and Judgment will be recorded with the Madison County Clerk and Recorder as to all of the Condo-Hotels.

1.50 “Shoshone Condominium Hotel” means the “Shoshone Condominium Hotel” commonly known as “The Shoshone,” one of the Condo-Hotels developed by Defendants and involved in Boyne’s Rental Management Program.

1.51 “Shoshone Declarations” means the “Declaration for the Shoshone Condominium Hotel” dated November 29, 1989 (Madison County Clerk & Recorder Reference No. Vol. 343, pp. 206–257).

1.52 “Shoshone Homeowners’ Association” means the “Shoshone Condominium Hotel Owners Association, Inc.,” a Montana non-profit mutual benefit corporation comprised of property owners in the Shoshone Condominium Hotel.

1.53 “Summit Declarations” means the Amended & Restated Declaration for the Summit Hotel Condominium dated February 18, 2000 (Madison County Clerk & Recorder Reference No. Book 438, pp. 425–481).

1.54 “Summit Homeowners’ Association” means the “Summit Hotel Condominium Owners Association,” a Montana non-profit mutual benefit corporation comprised of property owners in the Summit Hotel.

1.55 “Summit Hotel” means the “Summit Hotel Condominium” commonly known as “The Summit,” one of the Condo-Hotels developed by Defendants and involved in Boyne’s Rental Management Program.

1.56 “Uncashed Distribution Checks” mean Distribution Checks issued to Settlement Class Members that are not endorsed and presented to the payor bank within 180 days after the Distribution Date.

1.57 “Unit Owner” means any owner of a unit in a Condo-Hotel.

1.58 “Village Center Condominium” means the “Lone Peak Center Condominium” commonly known as “The Village Center,” one of the Condo-Hotels developed by Defendants and involved in Boyne’s Rental Management Program.

1.59 “Village Center Declarations” means the “First Amended and Restated Declaration for the Lone Peak Center Condominium” dated July 28, 2005 (Madison County Clerk & Recorder Reference No. 117644).

1.60 “Village Center Homeowners’ Association” means the “Lone Peak Center Condominium Owners Association,” a Montana non-profit mutual benefit corporation comprised of property owners in the Village Center Condominium.

2 RULE 23(b)(3) SETTLEMENT FUND

2.1 Payment of the Settlement Fund. On or before April 1, 2025, or within thirty (30) days following issuance of the Preliminary Approval Order, whichever occurs last, Boyne shall fund or cause to be funded \$18,799,417.50 in cash to the Escrow Account establishing the Rule 23(b)(3) Settlement Fund. Boyne shall not be responsible

for any other payments to the Rule 23(b)(3) Settlement Fund. The Rule 23(b)(3) Settlement Fund will be used to pay all Administration Costs, Settlement Fund Attorneys' Fees, Service Awards, and all Rule 23(b)(3) Settlement Class Member Benefits.

2.2 Escrow Account. The Rule 23(b)(3) Settlement Funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All interest earned on the Rule 23(b)(3) Settlement Funds shall be for the benefit of the Rule 23(b)(3) Settlement Class Members. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on Boyne, Plaintiffs, or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Boyne, Plaintiffs, Class Counsel, and Boyne's Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Boyne, Plaintiffs, Class Counsel, and Boyne's Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

2.3 Calculation of the Rule 23(b)(3) Settlement Class Member Benefits. Class Counsel will propose, for Defendants' review and approval, a formula for calculating the Rule 23(b)(3) Settlement Class Member Benefit. Generally speaking, that formula will use data and accounting records provided by Boyne, with the portion attributable to each Rule 23(b)(3) Settlement Class Member to be calculated based on the individual Rule 23(b)(3) Settlement Class Member's actual historical transactions divided by the sum total for all Rule 23(b)(3) Settlement Class Members in order to ascertain each Rule 23(b)(3) Settlement Class Member's proportional interest in the Rule 23(b)(3) Settlement Fund, to be expressed as a percentage or decimal. The Rule 23(b)(3) Settlement Class Members' individual percentages will then be provided to the Settlement Administrator who will distribute to each Rule 23(b)(3) Settlement Class Member their proportional share of the Rule 23(b)(3) Settlement Fund (i.e., their percentage of the net Rule 23(b)(3) Settlement Fund available for distribution) after payment of Settlement Fund Attorneys' Fees, Service Awards, and Administrative Costs.

2.4 Permissible Attorneys' Fees, Payment of Administrative Costs, and Payment of Service Awards from Rule 23(b)(3) Settlement Fund. Settlement Fund Attorneys' Fees, Administrative Costs, and Service Awards shall be paid out of the Rule 23(b)(3) Settlement Fund subject to approval by the Court in the Final Approval Order. Plaintiffs and Class Counsel, with the assistance of the Settlement Administrator, are responsible for communicating, coordinating, distributing, and administering any matters pertaining to the Rule 23(b)(3) Settlement Fund among or with Rule 23(b)(3) Settlement Class Members. Boyne shall take no position with respect to the claims for or requested amounts of Administrative Costs. Boyne will not oppose any request for Settlement Fund

Attorneys' Fees up to 33.33% of the Rule 23(b)(3) Settlement Fund or for Service Awards up to \$10,000 per Class Representative.

3 RULE 23(b)(2) CAPEX CONTRIBUTIONS

3.1 Rule 23(b)(2) CAPEX Contributions. Separate from and in addition to the Rule 23(b)(3) Settlement Fund, Boyne shall pay Rule 23(b)(2) CAPEX Contributions. The Rule 23(b)(2) CAPEX Contributions will be made to the Homeowners' Associations' common area reserve accounts to benefit members of the Rule 23(b)(2) Settlement Class for the overall improvement of operations, attractiveness, and functionality of the Condo-Hotels, including to facilitate any business changes arising from the Rule 23(b)(2) Structure and Governance Requirements, among other purposes.

3.2 Allocation and Payment of the Rule 23(b)(2) CAPEX Contributions. As specified below, the Rule 23(b)(2) CAPEX Contributions will be allocated to each of the three Homeowners' Associations pro rata based on the total number of residential condo-hotel units, regardless of ownership, in each Condo-Hotel compared to the total number of residential condo-hotel units in all three Condo-Hotels. Boyne shall pay or cause to be paid to a bank account designated by each of the Homeowners' Associations for its common area reserves the Rule 23(b)(2) CAPEX Contributions in two separate, equal cash payments that together shall total \$6,200,582.50, as capital expenditure contributions to the Homeowners' Associations, and related CAPEX Attorneys' Fees to Class Counsel, as follows:

3.2.1 First Rule 23(b)(2) CAPEX Contribution. On or before April 1, 2026, Boyne shall pay \$3,100,291.25, distributed as follows:

3.2.1.1 \$743,756.82 to the Shoshone Homeowners' Association;

3.2.1.2 \$845,534.07 to the Summit Homeowners' Association;

3.2.1.3 \$477,570.17 to the Village Center Homeowners' Association; and

3.2.1.4 \$1,033,430.20 in CAPEX Attorneys' Fees made payable to the Montana Justice Foundation Goetz Geddes & Gardner PC IOLTA Trust Account and delivered to Class Counsel.

3.2.2 Second Rule 23(b)(2) CAPEX Contribution. On or before April 1, 2027, Boyne shall pay \$3,100,291.25, distributed as follows:

3.2.2.1 \$743,756.82 to the Shoshone Homeowners' Association;

3.2.2.2 \$845,534.07 to the Summit Homeowners' Association;

3.2.2.3 \$477,570.17 to the Village Center Homeowners' Association; and

3.2.2.4 \$1,033,430.20 in CAPEX Attorneys' Fees made payable to the Montana Justice Foundation Goetz Geddes & Gardner PC IOLTA Trust Account and delivered to Class Counsel.

3.3 Use of Rule 23(b)(2) CAPEX Contributions. Each of the Homeowners' Associations may elect to use the allocated Rule 23(b)(2) CAPEX Contributions paid to its common area reserves account for whatever lawful purpose each of the Homeowners' Associations may deem appropriate upon a vote of its members, pursuant to the procedures provided for under their respective organizational documents, relevant provisions of Montana law, and subject to the terms of the Settlement Order and Judgment. The Homeowners' Associations, and not Boyne, shall be responsible for maintaining the Rule 23(b)(2) CAPEX Contributions paid by Boyne and also will be responsible for designating their use.

3.4 Non-participation/Non-interference by Boyne. In connection with the Homeowners' Associations' decisions regarding the use of the Rule 23(b)(2) CAPEX Contributions, Boyne will not participate in any Homeowners' Associations' votes, or in any Homeowners' Association Board of Director votes, related to the expenditure of any Rule 23(b)(2) CAPEX Contributions by the Homeowners' Associations. If, however, Boyne's ownership interests must be voted to satisfy quorum requirements, Boyne agrees to vote its interests with the majority.

3.5 Limited pre-vote participation by Boyne. In connection with the Homeowners' Associations' decisions regarding the use of the Rule 23(b)(2) CAPEX Contributions, this Settlement Agreement does not limit Boyne's right to express its opinion regarding the best or preferred use of any Rule 23(b)(2) CAPEX Contributions prior to any Homeowners' Association votes or prior to any Homeowners' Association Board of Director votes. If Boyne submits a proposal or bid to perform, or to serve as the contractor or vendor that will perform or supervise, the work or project under consideration by a Homeowners' Association that would be paid for by the Rule 23(b)(2) CAPEX Contributions, Boyne will refrain from expressing its opinion beyond commenting on the information provided in Boyne's or other contractors' or vendors' proposals or bids. The limitations on Boyne set forth in this Section 3.5 shall not apply to any work or project under consideration by a Homeowners' Association for which less than fifty percent (50%) of the anticipated project costs are allocated from Rule 23(b)(2) CAPEX Contributions.

4 RULE 23(b)(2) STRUCTURE AND GOVERNANCE REQUIREMENTS, AND TRANSITION REQUIREMENTS

4.1 Implementation by Separate Judgment. In light of Plaintiffs' claims for declaratory and injunctive relief and allegations that various provisions of the Summit Declarations, Shoshone Declarations, and Village Center Declarations are invalid and unenforceable, the Parties have agreed to certain prospective relief to resolve the declaratory and injunctive relief claims of the Rule 23(b)(2) Settlement Class, some of which require modification of recorded instruments at issue in the Action. To implement this Settlement Agreement, the Parties stipulate to certain changes as follows, to be

judicially confirmed by the Settlement Order and Judgment. A notice of amendments reflecting the provisions of sections 4.2, 4.3, 4.4, and 4.5 below as applicable to each Condo-Hotel Declaration with the Settlement Order and Judgment attached will be recorded in the Madison County public property records by Class Counsel immediately following the Effective Date. The notice for each Condo-Hotel Declaration shall be in a form and substance reasonably satisfactory to Class Counsel and Boyne's Counsel and shall be submitted to the Court with Plaintiffs' Motion for Final Approval.

4.2 Removal of Exclusivity. To address Plaintiffs' allegation that certain provisions of the Condo-Hotel Declarations concerning rental management exclusivity, when imposed by Boyne as declarant of the Condo-Hotels, are unenforceable as written under Montana law as construed by the Court, the Parties stipulate and agree to entry of a judgment amending those provisions as follows:

- 4.2.1 Shoshone Declarations.** Article X, Section 3(b) of the Shoshone Declarations shall be deleted and of no further force or effect.
- 4.2.2 Summit Declarations.** Article X, Section 1 of the Summit Declarations shall be deleted and of no further force or effect
- 4.2.3 Village Center Declarations.** Article VIII, Section 8.2 of the Village Center Declarations shall be deleted and of no further force or effect.

4.3 Removal of Boyne's Veto Over Declaration Amendments. To address Plaintiffs' allegation that certain provisions of the Condo-Hotel Declarations concerning Boyne's reserved veto power over amendment of the Condo-Hotel Declarations are unenforceable as written under Montana law as construed by the Court, the Parties stipulate and agree to entry of a judgment amending those provisions as follows:

- 4.3.1 Shoshone Declarations.** Article VIII, Section 4 of the Shoshone Declarations shall be deleted and of no further force or effect.
- 4.3.2 Summit Declarations.** Article VIII, Section 4 of the Summit Declarations shall be deleted and of no further force or effect.
- 4.3.3 Village Center Declarations.** Article 15, Section 15.5 of the Village Center Declarations shall be deleted and of no further force or effect.

4.4 Removal of Requirement that Boyne be Designated as Hotel Manager. To address Plaintiffs' allegation that certain provisions of the Condo-Hotel Declarations concerning the requirement that the Homeowners' Associations use Boyne as the hotel manager are unenforceable as written under Montana law as construed by the Court, the Parties stipulate and agree to entry of a judgment amending those provisions as follows:

- 4.4.1 Village Center Declarations.** Article VIII, Section 8.1 of the Village Center Declarations shall be amended to read as follows:

“The Association will hire an entity to operate and manage the Residential Units and their appurtenant Limited Common Elements as a resort hotel. The terms and conditions of such management will be set forth in a management agreement between the Association and the retained hotel manager.”

4.4.2 Summit Declarations. Article X, Section 3 (“Hotel Management”) of the Summit Declarations shall be amended to read as follows: “The Association will hire an entity to operate and manage the Residential Units and their appurtenant Limited Common Elements as a resort hotel. The terms and conditions of such management will be set forth in a management agreement between the Association and the retained hotel manager.”

4.5 Homeowners’ Associations. In the Summit Hotel, Boyne will have the right to appoint one board member and otherwise shall be permitted to vote its ownership interests for other residential owners who are not Boyne employees as candidates for the five-member board. All other board members of the Homeowners’ Associations must be elected based on a vote of members of the Homeowners’ Associations, except for Boyne’s appointee to the Village Center Homeowners’ Association who represents Boyne’s interests as a commercial unit owner. If any of Boyne’s employees, agents, or representatives serve on any Homeowners’ Association board, Boyne’s employees, agents, or representatives will abstain from board votes to select a hotel operator, if Boyne has submitted a proposal to serve as the hotel operator. Similarly, Boyne’s employees, agents, and representatives will abstain from voting whether to select, approve, or authorize Boyne as a rental manager.

4.6 No Retaliation. Boyne will not retaliate against any Class Representative for participating in the Action or any Unit Owner for choosing to hire a rental management company other than Boyne for a unit in the Condo-Hotels by banning them from participating in Boyne-sponsored rental management programs at the Condo-Hotels or by prohibiting access to Big Sky Resort facilities or amenities (to the extent owned or controlled by Boyne) that are open to the general public. If a Homeowners’ Association selects Boyne to serve as the hotel operator, Boyne shall provide services to all Unit Owners and guests of Unit Owners subject to the terms of the Homeowners’ Association’s agreement with Boyne. Notwithstanding the foregoing, Boyne reserves the right to enforce its rules and regulations at Big Sky Resort or the Condo-Hotels that are generally applicable to all customers, guests, and/or owners.

4.7 Existing Reservations. All guest reservations booked through Boyne’s Rental Management Program and existing as of the Effective Date at any of the Condo-Hotels, will be honored by the applicable Unit Owner and any successor rental management agent.

4.8 Transitional Rental Management. Any Unit Owner currently renting through Boyne’s Rental Management Program shall remain in Boyne’s Rental Management Program at any of the Condo-Hotels until the Effective Date.

4.9 Transitional Breakfast Requirements. For any Unit Owner participating in Boyne's Rental Management Program at any of the Condo-Hotels after entry of the Final Approval Order, Boyne will discontinue mandatory package breakfast and breakfast will be optional for all new guest bookings, at the guest's choice for an additional fee, until such time that the Unit Owner enters into a new rental management agreement for the Unit Owner's unit(s).

4.10 Transitional Resort Fee Requirements. For reservations booked at any of the Condo-Hotels through Boyne's Rental Management Program after entry of the Final Approval Order and until such time that the Unit Owner enters into a new rental management agreement for the Unit Owner's unit(s), if Boyne chooses to charge a Resort Fee, Boyne shall share 40% of such Resort Fee with the Unit Owner after deduction of state lodging taxes.

4.11 Changes to Hotel Management. Any change to the hotel operator at any of the Condo-Hotels, other than for cause, must be conducted during a shoulder season (meaning, April 15 to June 1 and October 1 to November 15) following the Homeowners' Association's decision to make such a change.

5 RELEASES

5.1 Release. Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties shall be deemed, by operation of the Final Approval Order, to have, fully, finally, and forever released, acquitted, relinquished, and completely discharged the Released Parties from any and all actual, potential, filed or unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands, liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses, costs, indemnities, attorneys' fees, or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, against the Released Parties, or any of them, arising out of or relating to actual or alleged facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the claims made in the Complaint, or arising out of or relating to any terms, requirements, or benefits provided by this Settlement Agreement, including but not limited to the Rule 23(b)(2) Structure and Governance Requirements, except that Releasing Parties reserve the right to enforce this Settlement Agreement and the Settlement Order and Judgment. For the sake of clarity, the 13 persons and entities that timely opted-out of the Rule 23(b)(3) class do not release any claims that were asserted on behalf of the 23(b)(3) class.

5.2 Future or Unknown Harm and Waiver of Statutory Rights. The Releasing Parties hereby expressly, knowingly, and voluntarily, waive any right conferred on him or her by Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Releasing Parties expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code and of all similar laws of other States, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Releasing Parties hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties to the Released Parties shall be and remain in effect as a full and complete general release of all claims arising out of or relating to this Action notwithstanding the discovery of existence of any such additional or different claims or facts.

5.3 Exclusive Remedy. Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive remedy for any and all Released Claims of the Releasing Parties; and (b) the Releasing Parties stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of the Releasing Parties or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

6 APPLICATION FOR APPROVAL OF CLASS SETTLEMENT

6.1 Motion for Preliminary Approval. On or before March 3, 2025, Class Counsel shall file a Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to the motion as an exhibit.

6.2 Contents of Motion for Preliminary Approval. The Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) approve the Notice Procedure set forth herein and approve the form and content of the Notice; (3) approve the procedures for Settlement Class Members to object to the Settlement; (4) stay the Action pending entry of the Final Approval Order; and (5) schedule a Final Approval Hearing for a time and date mutually convenient for the Court and the Parties and which allows sufficient time for the Settlement Administrator to complete the Notice Procedure.

7 SETTLEMENT ADMINISTRATOR

7.1 Selection of Settlement Administrator. The Parties agree that, subject to Court approval, JND Legal Administration shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Settlement Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

7.2 Duties of Settlement Administrator. The Settlement Administrator shall administer various aspects of the Settlement Agreement and perform such other functions as specified for the Settlement Administrator elsewhere in this Settlement Agreement, including, but not limited to, effectuating the Notice Procedure, processing objections, administering and disbursing the Rule 23(b)(3) Settlement Fund, and preparing and issuing any necessary tax reporting forms. The Settlement Administrator's duties include:

- 7.2.1** Effectuating the Notice Procedure and providing the Notice to the Settlement Class Members;
- 7.2.2** Establishing and maintaining the Escrow Account;
- 7.2.3** Responding to Settlement Class Member inquiries or forwarding such inquiries to Class Counsel;
- 7.2.4** Processing and reporting on objections received from Settlement Class Members;
- 7.2.5** In advance of the Final Approval Hearing, preparing a declaration for the Parties confirming the Notice Procedure was followed in accordance with the terms of this Settlement and the Preliminary Approval Order, describing how the Notices were completed, identifying the objections received, and other information as may be necessary to allow the Parties to seek and obtain the Final Approval Order;
- 7.2.6** Issuing Distribution Checks out of the Escrow Account to Settlement Class Members to pay the Rule 23(b)(3) Settlement Class Members Benefits;
- 7.2.7** Issuing appropriate tax reporting forms;
- 7.2.8** Tracking and processing Uncashed Distribution Checks;
- 7.2.9** Paying Court-approved attorneys' fees, costs, and Service Awards, out of the Rule 23(b)(3) Settlement Fund;
- 7.2.10** Paying Administrative Costs out of the Rule 23(b)(3) Settlement Fund following approval by Class Counsel; and

7.2.11 Any other Settlement administration function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Rule 23(b)(3) Settlement Fund has been properly administered, and that Rule 23(b)(3) Settlement Class Member Benefits have been properly distributed.

8 NOTICE TO THE SETTLEMENT CLASS AND OBJECTION PROCEDURES

8.1 Class List. Boyne will prepare the Class List and provide it to Class Counsel and the Settlement Administrator. The information contained in the Class List will include the last, best-known information in Boyne's possession for the Settlement Class Members. The Settlement Administrator may rely on the Class List to accomplish the required Notice and otherwise administer the Settlement.

8.2 Form of Notice. The Notice shall include, among other information: i) a description of the material terms of the Settlement Agreement; ii) the last day of the Objection Period for Settlement Class Members to object to the Settlement or the Application for Attorneys' Fees, Costs, and Service Awards (or both); iii) the Final Approval Hearing date; and iv) a description of the procedure by which Rule 23(b)(3) Settlement Class Members may update their mailing address for delivery of their Distribution Checks. Class Counsel and counsel for Boyne shall insert the correct dates and deadlines in the Notice before the Notice Procedure commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. No additional notice to the Settlement Class Members is required, even if the date or time for the Final Approval Hearing changes.

8.3 No Further Opt-Outs. No further opt-outs are permitted. All Settlement Class Members shall be bound by the terms of this Settlement Agreement if approved by the Court.

8.4 Objection Requirements. A Settlement Class Member may object to the Settlement at any time during the Objection Period. Objections must be filed with the Court, and delivered to Class Counsel, Boyne's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the relevant Settlement Class Member must submit the objection no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label. For an Objection to be considered by the Court, the objection must also set forth:

8.4.1 The objector's full name, mailing address, telephone number, and email address (if any).

- 8.4.2** All grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel.
- 8.4.3** The identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing.
- 8.4.4** A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any).
- 8.4.5** A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing.
- 8.4.6** The objector's signature (an attorney's signature is not sufficient).
- 8.4.7** Class Counsel or Boyne's Counsel, or both, may conduct limited discovery on any objector or objector's counsel.

8.5 Notice Deadline. The Notice Procedure shall be completed no later than 45 days before the date set for the Final Approval Hearing.

9 FINAL APPROVAL ORDER AND FINAL JUDGMENT

9.1 Motion for Final Approval. Plaintiffs and Class Counsel shall file the Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 30 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Awards, provided the objectors submitted timely objections that meet all the requirements listed in this Settlement.

9.2 At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order, and whether to grant the application for Attorneys' Fees, Costs, and Service Awards. Such proposed Final Approval Order shall, among other things:

- 9.2.1** Determine the Settlement is fair, adequate and reasonable.
- 9.2.2** Determine the Notice Procedure satisfies Due Process requirements.
- 9.2.3** Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions.

9.2.4 Release the Released Parties from the Released Claims.

9.2.5 Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Settlement, including Boyne, Class Representatives, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Settlement in accordance with its terms.

9.2.6 Authorize entry of the Settlement Order and Judgment.

10 SERVICE AWARDS, ATTORNEYS' FEES, AND REIMBURSEMENT OF COSTS

10.1 Service Awards. The Class Representatives may seek Service Awards of up to \$10,000 each, subject to Court approval. The Service Awards shall be payable out of the Rule 23(b)(3) Settlement Fund by the Settlement Administrator to Class Counsel or to the Class Representatives directly, within 14 days of the Effective Date. Class Counsel will provide the Settlement Administrator with instructions for paying Service Awards following the Effective Date.

10.2 Attorneys' Fees and Costs. Class Counsel shall apply to the Court for an award of: (i) Settlement Fund Attorneys' Fees of up to 33.33% of the Rule 23(b)(3) Settlement Fund, plus reimbursement of reasonable litigation costs; and (ii) CAPEX Attorneys' Fees of up to 33.33% of the Rule 23(b)(2) CAPEX Contributions. The Settlement Fund Attorneys' Fees and cost awards approved by the Court shall be paid by the Settlement Administrator out of the Rule 23(b)(3) Settlement Fund by wire transfer to an account designated by Class Counsel within 14 days after the Effective Date. Class Counsel will provide the Settlement Administrator with instructions for paying attorneys' fees and costs following the Effective Date. The CAPEX Attorneys' Fees award approved by the Court shall be paid as provided in Section 3.2.

10.3 Non-Contingency. This Settlement Agreement is not contingent on approval of the Application for Attorneys' Fees, Costs, and Service Awards, and if the Court denies the request or grants amounts less than what was requested by Class Counsel, the remaining provisions of the Settlement Agreement shall remain in force. The provision for attorneys' fees and costs was negotiated after all other material terms of the Settlement Agreement.

11 DISBURSEMENT OF RULE 23(b)(3) SETTLEMENT CLASS MEMBER BENEFITS

11.1 Distribution Deadline. The Settlement Administrator shall distribute Rule 23(b)(3) Settlement Class Member Benefits no later than 30 days after the Effective Date.

11.2 Payment Method. Rule 23(b)(3) Settlement Class Member Benefits to Settlement Class Members will be made by Distribution Checks.

11.3 Disposition of Residual Funds. In the event there are Uncashed Distribution Checks, any residual funds shall be distributed to the Homeowners' Association for the Condo-Hotel where the Rule 23(b)(3) Settlement Class Member who failed to cash a Distribution Check owned a Condo Unit as a *cy pres* payment.

12 TERMINATION OF SETTLEMENT

12.1 Conditions of Settlement. This Settlement Agreement shall be subject to and is expressly conditioned on the occurrence of all the following events:

12.1.1 Court approval of the Settlement Agreement;

12.1.2 The Court has entered the Preliminary Approval Order;

12.1.3 The Court has entered the Final Approval Order and Judgment, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order and Judgment are resolved in favor of Final Approval and Judgment; and

12.1.4 The Effective Date has occurred.

12.2 Termination. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any modification to or condition to approval of the Settlement, then this Settlement Agreement shall be cancelled and terminated.

12.3 Effect of Termination. In the event this Settlement Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Settlement Agreement, and the Parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

12.4 Return of Rule 23(b)(3) Settlement Fund Upon Termination. In the event this Settlement Agreement is terminated or fails to become effective, all funds in the Rule 23(b)(3) Settlement Fund shall be promptly returned to Boyne. However, Boyne shall have no right to seek from Class Representatives, Class Counsel, or the Settlement Administrator the Administrative Costs already paid before termination. After payment of any Administrative Costs that have been incurred and are due to be paid from the Rule 23(b)(3) Settlement Fund, the Settlement Administrator shall return the balance of the Rule 23(b)(3) Settlement Fund to Boyne within 30 days after termination.

12.5 Settlement Communications. In the event the Settlement Agreement is terminated, any discussions, offers, or negotiations associated with this Settlement Agreement shall not be discoverable or offered into evidence or used in the Action or any

other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

13 NO ADMISSION OF LIABILITY

13.1 No Admission of Liability. This Settlement Agreement reflects the Parties' compromise and settlement of disputed claims. This Settlement Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Boyne has denied and continues to deny each of the claims and contentions alleged in the Complaint. Boyne specifically denies that a class could properly be certified in the Action for trial. Boyne does not admit any liability or wrongdoing of any kind, by this Settlement Agreement or otherwise. Boyne has agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

13.2 Class Counsel Investigation. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

13.3 Compromise of Claims. This Settlement Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Settlement Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

13.4 Nonuse of Settlement Agreement. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Class Representatives or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

13.5 Complete Defense. In addition to any other defenses Boyne or the Released Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may

be instituted, prosecuted, or attempted in breach of this Settlement Agreement or the Releases contained herein.

14 MISCELLANEOUS PROVISIONS

14.1 Gender and Plurals. As used in this Settlement Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

14.2 Binding Effect. This Settlement Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

14.3 Cooperation of Parties. The Parties to this Settlement Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Settlement Agreement.

14.4 Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Settlement Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

14.5 Integration and No Reliance. This Settlement Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Settlement Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

14.6 No Conflict Intended. Any inconsistency between the headings used in this Settlement Agreement and the text of the paragraphs of this Settlement Agreement shall be resolved in favor of the text.

14.7 Governing Law. Except as otherwise provided herein, this Settlement Agreement shall be construed in accordance with, and be governed by, the laws of the state of Montana, without regard to the principles thereof regarding choice of law.

14.8 Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of a PDF shall be deemed an original.

14.9 Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this

Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Procedure and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order and Settlement Order and Judgment.

14.10 Notices. All notices provided for herein shall be sent by email with a hard copy sent by overnight mail to:

If to Class Representatives or Class Counsel:

J. Devlan Geddes
GOETZ, GEDDES & GARDNER, P.C.
P.O. Box 6580
Bozeman, MT 59771
devlan@goetzlawfirm.com

Ben Alke
CRIST, KROGH, ALKE & NORD PLLC
209 S. Willson Ave.
Bozeman, MT 59715
balke@cristlaw.com

If to Defendants or Defendants' Counsel:

Ian McIntosh
CROWLEY FLECK PLLP
PO Box 10969
Bozeman, MT 59719-0969
imcintosh@crowleyfleck.com

Michael Williams
WHEELER TRIGG O'DONNELL, LLP
370 Seventeenth, Suite 4500
Denver, CO 80202
williams@wtotrial.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Procedure.

14.11 Modification and Amendment. This Settlement Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Boyne's Counsel and, if the Settlement Agreement has been approved preliminarily by the Court, approved by the Court.

14.12 No Waiver. The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

14.13 Authority. Class Counsel (for the Class Representatives and the Settlement Class Members), and Boyne's Counsel, represent and warrant that the persons signing this Settlement Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Class Representatives and Boyne respectively to all terms of this Settlement Agreement. Any person executing this Settlement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Settlement Agreement to all the terms and provisions of this Settlement Agreement.

14.14 Agreement Mutually Prepared. Neither Class Representatives nor Boyne shall be considered to be the drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement.

14.15 Independent Investigation and Decision to Settle. The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Settlement Agreement, that will not affect or in any respect limit the binding nature of this Settlement Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement Agreement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement Agreement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Settlement Agreement now and thus, in furtherance of their intentions, the Settlement Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Settlement Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

14.16 Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Settlement Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Settlement Agreement and the Releases, and the legal

effects of this Settlement Agreement and the Releases, and fully understands the effect of this Settlement Agreement and the Releases.


14.17 Entire Agreement. This Settlement Agreement and the attached Exhibits set forth the entire agreement among the Parties concerning the Settlement. This Settlement Agreement and the attached Exhibits are intended to be a fully integrated agreement of the Parties, and there are no covenants, promises, agreements, conditions or other understandings either oral or written with respect to the subject matter except as set forth in the Settlement Agreement. All previous covenants, promises, agreements, conditions or other understandings, either oral or written, with respect to the subject matter are deemed superseded by this Settlement Agreement. No subsequent amendments or alterations of the terms of this Settlement Agreement shall be valid unless made in writing and signed by the authorized representative of all the Parties. The following Exhibits referred to herein are incorporated by this reference and are made a part of the Settlement Agreement as though fully stated in the Settlement Agreement:

- | | | |
|-----------|---|-------------------------------|
| Exhibit A | - | Preliminary Approval Order |
| Exhibit B | - | Notice |
| Exhibit C | - | Final Approval Order |
| Exhibit D | - | Settlement Order and Judgment |


Signature Page to Follow

DEFENDANTS: Signed this 27th day of February, 2025.


BOYNE USA, INC.

By: 
Stephen Kircher (Feb 26, 2025 23:48 EST)
Name: Stephen Kircher
Title: Chief Executive Officer

BOYNE PROPERTIES, INC.

By: 
Stephen Kircher (Feb 26, 2025 23:48 EST)
Name: Stephen Kircher
Title: Chief Executive Officer

SUMMIT HOTEL, LLC.

By: 
Stephen Kircher (Feb 26, 2025 23:48 EST)
Name: Stephen Kircher
Title: Chief Executive Officer

Approved as to form:

COUNSEL for BOYNE: Signed this 27th day of February, 2025.

Crowley Fleck PLLP

By: _____
Ian McIntosh

Wheeler Trigg O'Donnell LLP

By: _____
Michael Williams

DEFENDANTS: Signed this 27th day of February, 2025.

BOYNE USA, INC.

By: _____
Name: Stephen Kircher
Title: Chief Executive Officer

BOYNE PROPERTIES, INC.

By: _____
Name: Stephen Kircher
Title: Chief Executive Officer

SUMMIT HOTEL, LLC.

By: _____
Name: Stephen Kircher
Title: Chief Executive Officer

Approved as to form:

COUNSEL for BOYNE: Signed this 27th day of February, 2025.

Crowley Fleck PLLP

By: 
Ian McIntosh (Feb 26, 2025 20:31 MST)
Ivan McIntosh

Wheeler Trigg O'Donnel LLP

By: *Michael Williams*
Michael Williams

PLAINTIFFS: Signed this 27th day of February, 2025.

LAWRENCE ANDERSON, as trustee for the LAWRENCE T. ANDERSON and
SUZANNE M. ANDERSON JOINT REVOCALBE LIVING TRUST

By: *Lawrence Anderson*
Lawrence Anderson (Feb 27, 2025 10:11 EST)
Name: Lawrence Anderson
Title: Trustee

ROBERT ERHART

By: *Robert Erhart*
Robert Erhart (Feb 27, 2025 10:40 EST)
Name: Robert Erhart

NORA ERHART

By: *Nora Erhart*
Name: Nora Erhart

TJARDA CLAGETT

By: *Tjarda Clagett*
Tjarda Clagett (Feb 27, 2025 08:03 MST)
Name: Tjarda Clagett

Approved as to form:

CLASS COUNSEL: Signed this 27th day of February, 2025.

GOETZ, GEDDES & GARDNER, P.C.

By: *J. Devlan Geddes*
J. Devlan Geddes

CRIST, KROGH, ALKE & NORD, PLLC

By: *B. Alke*
Ben Alke

Exhibit A

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MONTANA
BUTTE DIVISION**

LAWRENCE ANDERSON, as trustee
for the LAWRENCE T. ANDERSON
AND SUZANNE M. ANDERSON
JOINT REVOCABLE LIVING
TRUST, ROBERT AND NORA
ERHART, and TJARDA CLAGETT,

Plaintiffs,

vs.

BOYNE USA, INC., BOYNE
PROPERTIES, INC., AND SUMMIT
HOTEL, LLC, et al.,

Defendants.

CV-21-95-BU-BMM

[Proposed]

**PRELIMINARY
APPROVAL ORDER**

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

(“Motion”) came before the Court on February 27, 2025. Plaintiffs were represented by and/or appeared through Ben Alke, J. Devlan Geddes, Jeffrey Tierney, Henry Tesar, and John Crist, and Defendants Boyne USA, Inc., Boyne Properties, Inc., and Summit Hotel LLC (collectively “Boyne”) were represented by and appeared/or through Mike Williams, Ian McIntosh, and Mac Morris. The Court reviewed the materials filed in the matter including the Agreement for Settlement and Release of All Claims between the Plaintiffs and Boyne (“Settlement Agreement”) as part of the Plaintiffs’ Motion.

THE COURT HEREBY FINDS AND IT IS HEREBY ORDERED:

1. Plaintiffs filed a suit against Boyne alleging individual claims and class action claims seeking, among other things, declaratory and injunctive relief, damages and certification of a class under Federal Rules of Civil Procedure 23(b)(2) and (b)(3). Doc. 1.

2. The Court certified a Rule 23(b)(2) class, for potential injunctive and declaratory relief, and a Rule 23(b)(3) class, for potential damages, consisting of all persons and entities, other than Boyne, that (i) own or have owned a unit in the Summit Hotel, the Shoshone Condominium Hotel, or the Village Center Condominium (collectively “Condo-Hotels”) and (ii) participated in Boyne’s Rental Management Program. Doc. 113 at 36-37.

3. Plaintiffs and Boyne participated in a mediation on February 7, 2025, in Bozeman, Montana, with Mark Helm and Niki Mendoza of Phillips ADR Enterprises acting as mediators. As a result of that mediation, the Parties entered an arm’s length agreement to settle this action on the terms now memorialized in the Settlement Agreement, executed by the parties on February 26, 2025. The Settlement Agreement is attached as Exhibit 1 to the Motion and is incorporated fully herein. All capitalized terms used in this Order and not defined herein shall have the meanings set forth in the Settlement Agreement. In the event of any

conflict between the descriptions in these paragraphs and the more detailed terms of the Settlement Agreement, the Settlement Agreement shall govern.

4. The Court has jurisdiction and venue over this suit and the Settlement Class Members. Under Fed. R. Civ. P. 23(e), this Court's approval of any settlement is required.

5. The Released Claims as defined in the Settlement Agreement all arise from the same nucleus of operative facts and form part of the same case or controversy as alleged against Boyne in Plaintiffs' *First Amended Complaint and Jury Demand* (Doc. 26) so that all the claims approved for settlement by this Order were or could have been asserted as class claims in this Action.

6. Boyne has at all times disputed, and continues to dispute, Plaintiffs' allegations, and denies any liability for any of the claims that have or could have been alleged by Plaintiffs or other Settlement Class Members.

7. The Court has considered: (a) its prior order on class certification; (b) allegations, information, arguments, and authorities provided by the Parties in connection with pleadings and motions previously filed by each of them in this case and the Court's prior orders; (c) information, arguments, and authorities provided by Plaintiffs in their Motion; (d) Defendants' conditional withdrawal, for the purpose of the Settlement, of their objections to certification of the settlement classes specified in the Settlement Agreement; (e) the terms of the Settlement

Agreement including, but not limited to, the definition of the settlement classes, the releases to be provided by the Settlement Class Members to Boyne, and the benefits to be provided to the Settlement Class Members; and (f) the Settlement's avoidance of any potential manageability issues, ascertainability issues, or individualized issues of fact and law that could have had a bearing on the certification of any proposed class. Based on those considerations, the Court hereby reaffirms its prior class certification findings and additionally finds as follows with respect to the Settlement:

a. There are approximately 377 Settlement Class Members. The Court reaffirms that this number readily satisfies Rule 23's numerosity requirement.

b. The Court reaffirms there are questions of law and fact common to all members of the Rule 23(b)(2) Settlement Class and all members of the Rule 23(b)(3) Settlement Class.

c. The Court reaffirms Plaintiffs' claims are typical of the Settlement Class Members.

d. The Court reaffirms the Settlement Class Members are ascertainable.

e. Plaintiffs and Class Counsel have fairly, fully, and adequately protected the interests of the Settlement Class Members.

f. Defendants have acted or refused to act on grounds that apply generally to the Settlement Class Members, such that final declaratory relief and corresponding injunctive relief are appropriate with respect to the Rule 23(b)(2) Settlement Class as a whole.

g. The Court reaffirms questions of law and fact common to all members of the Rule 23(b)(3) Settlement Class predominate over any questions affecting only individual members for settlement purposes.

h. For purposes of determining whether the terms of the proposed Settlement are fair, reasonable, and adequate, the Court reaffirms its prior certification for the Rule 23(b)(2) Settlement Class as follows:

All persons and entities, other than Defendants, that currently own one or more residential units in the Condo-Hotels, as well as any persons or entities that acquire ownership of one or more residential units in the Condo-Hotels before the Effective Date.

i. For purposes of determining whether the terms of the proposed Settlement are fair, reasonable, and adequate, the Court hereby reaffirms its prior certification of the Rule 23(b)(3) Settlement Class as follows:

All persons and entities, other than Defendants, that: (i) own or have owned a unit in the Condo-Hotels; (ii) have participated in Boyne's Rental Management Program on or after December 31,

2013; and (iii) did not give timely notice of their election to opt out of the Rule 23(b)(3) class during the opt-out period, i.e., on or before September 20, 2024.

j. The Court reaffirms its appointment of Plaintiffs as Class Representatives of the Rule 23(b)(2) Settlement Class and the Rule 23(b)(3) Settlement Class. The Court reaffirms its appointment of Ben Alke, J. Devlan Geddes, Jeffrey Tierney, Henry Tesar, and John Crist as Class Counsel for the Settlement Class Members.

8. On a preliminary basis, taking into account (1) the defenses asserted by Defendants, (2) the risks to the Settlement Class Members if the case proceeded to trial, and (3) the length of time that would be required for Settlement Class Members to obtain a final judgment through one or more additional trials and appeals, the Settlement Agreement appears fair, reasonable, and adequate. Moreover, the Parties reached the Settlement Agreement after the exchange of voluminous discovery and motion practice, and following arm's-length settlement negotiations with the assistance of a respected mediator. For all these reasons, the Settlement Agreement falls within the appropriate range of possible approval and does not appear in any way to be the product of collusion.

9. Accordingly, the Court finds the proposed Settlement as provided in the Settlement Agreement is fair and reasonable under the circumstances. This

finding and determination is subject to the Court's further review of objections, if any, filed regarding the Settlement according to the terms of the Settlement Agreement.

10. The Court finds that reasonable and adequate notice will be given to Settlement Class Members by providing the Notice attached as Exhibit B to Settlement Agreement and following the Notice Procedure set forth in the following paragraph.

11. The Court finds that reasonable and adequate notice of the Settlement will be given to Settlement Class Members if the Notice is sent by U.S. mail and email to each Settlement Class Member's last known mailing address and via email notice to each Settlement Class Member's last known email address as reflected within the records of Boyne or as may be known to the Settlement Administrator.

12. A hearing to consider objections, if any, and to finally determine if the Settlement Agreement is fair and equitable shall be heard at the Paul G. Hatfield Federal Courthouse on **[date on or after June 2]**, 2025, in Helena, Montana commencing at _____.M. ("Final Settlement Hearing").

13. Any objections to the Settlement Agreement shall be filed with this Court on or before May 2, 2025, and shall be served on counsel as provided in the Notice. Failure to file a timely objection to the Settlement will be treated as a vote

in favor of amending the recorded documents as provided in Sections 4.2, 4.3, 4.4, and 4.5 of the Settlement Agreement. Any objector who wants to be heard at the Final Fairness Hearing shall file, and serve on counsel for the parties, a Notice of Intent to Appear at the Final Fairness Hearing with this Court on or before May 19, 2025.

14. On or before April 1, 2025, or within thirty (30) days following issuance of this Preliminary Approval Order, whichever occurs last, Boyne shall fund or cause to be funded \$18,799,417.50 in cash to the Escrow Account establishing the Rule 23(b)(3) Settlement Fund.

15. The trial scheduled in this matter to begin on March 10, 2025, and all related deadlines are vacated.

16. If for any reason the Settlement Agreement ultimately does not become effective, the Settlement Agreement and the Rule 23(b)(2) Settlement Class and Rule 23(b)(3) Settlement Class shall be null and void in their entirety; this Order shall be vacated; the Parties shall return to their respective positions as they existed immediately before the Parties executed the Settlement Agreement; and nothing stated in the Settlement Agreement or in this Order shall be deemed an admission or waiver of any kind by any of the Parties or used as evidence against, or over the objection of, any of the Parties for any purpose in this action or in any other action or proceeding of any kind.

DATED this _____ day of _____, 2025.

Brian Morris, Chief District Judge
United States District Court

Exhibit B

NOTICE OF CLASS ACTION SETTLEMENT

If you (i) own or have owned a unit in the Summit Hotel, the Shoshone Condominium Hotel, or the Village Center Condominium (together, the “Condo-Hotels”) and (ii) have participated in the Boyne rental management program on or after December 31, 2013, your rights are affected by this class action settlement if you did not previously exclude yourself from the class (opt out).

If you are a current owner in the Condo-Hotels, your rights are further affected by this class action settlement.

*A federal court authorized this Notice.
This is not a solicitation from a lawyer. Please read carefully.*

This notice is to inform you of your legal rights and options in a proposed settlement in the case called *Lawrence Anderson, et al. vs. Boyne USA, Inc., et al.* (Cause No. 2:21-cv-00095-BMM),¹ pending in the United States District Court for the District of Montana, Butte Division.

As explained in more detail in the Agreement for Settlement and Release of All Claims (“Settlement Agreement”), which is available at www.condohotelsettlement.com, the case involves two separate classes:

a. Federal Rule of Civil Procedure 23(b)(3) class (current and past owners who participated in Boyne’s rental management program).

The lawsuit sought money damages for claims related to Boyne’s operation of the rental management program in the Condo-Hotels. Rule 23(b)(3) class members—those who did not previously opt out—will receive a share of settlement money based on how much Boyne charged guests in their units for breakfast and resort fees as explained in Section 6 below.

b. Federal Rule of Civil Procedure 23(b)(2) class (current owners).

The lawsuit also asked the Court to declare legal rights under the Condominium Declarations and Boyne USA, Inc.’s (“Boyne”) rental management agreements. The request for declaratory relief does not involve potential monetary

¹ For the purposes of this notice, all defendants are referred to as “Boyne” or “Defendants.”

damages. For these claims, opting out was not permitted. If you are a current owner in any of the Condo-Hotels, you are a Rule 23(b)(2) class member.

YOUR LEGAL RIGHTS AND OPTIONS	
Do Nothing	<p>If you are a Rule 23(b)(3) class member, you will receive a share of money under the settlement and be bound by the settlement and its release of claims.</p> <ul style="list-style-type: none">• Payments will be made via check and mailed to you at the address where this notice was mailed.• To update your address, you must visit www.condohotelsettlement.com and follow the instructions to notify the Settlement Administrator by June 20, 2025. <p>If you are a Rule 23(b)(2) class member (i.e., a current owner), you will be bound by the settlement of the declaratory relief claims.</p>
Object	<p>If you are a member of either the 23(b)(2) or 23(b)(3) class (or both) and you do not believe the settlement is fair and reasonable, you may write the Court to tell it why. Written objections must be submitted to the Court by May 2, 2025. If the Court rejects your objection and approves the settlement, you will be bound by the terms of the settlement.</p>

BASIC INFORMATION

1. What is the purpose of this notice?

This notice is to inform you that the Court has preliminarily approved a proposed settlement of the case and to give you information about your legal rights under the settlement. You have been identified as a class member in this case and may receive money from a settlement if you are a Rule 23(b)(3) class member.

The Court has scheduled a hearing on whether to finally approve the settlement on [REDACTED], 2025 at [REDACTED] .m. in Courtroom [REDACTED], [REDACTED] Courthouse, U.S. District Court for the District of Montana, [REDACTED], [REDACTED], MT [REDACTED]. The date of the hearing may change without further notice to the class, so check the Court's Public Access to Court Electronic Records ("PACER") website or www.condohotelsettlement.com to confirm the date and whether the date of the hearing has changed.

2. What is this lawsuit about?

In this lawsuit, several current unit owners in the Condo-Hotels (the “Plaintiffs”) sued Boyne claiming that the requirement contained in Condo-Hotel Declarations that unit owners wishing to rent their units must hire Boyne as their exclusive rental manager is illegal and unenforceable. Plaintiffs also alleged that Boyne has operated the rental management program in violation of the law, has misappropriated rental revenue belonging to class members, and has improperly used its control over the rental management program to financially benefit itself at the expense of unit owners in various ways.

Boyne denies the allegations asserted against it and denies any wrongdoing. The parties have agreed to settle the case to avoid the uncertainty and costs of trial and any potential post-trial appeal.

The judge in this case is the Honorable Brian Morris, Chief Judge of the U.S. District Court for the District of Montana.

3. What is a class action?

In a class action lawsuit, one or more people or businesses called class representatives (i.e., the Plaintiffs) sue on behalf of others who have similar claims, all of whom together are a “class.” Individual class members do not have to file a lawsuit to participate in the class action or to be bound by the judgment in the class action. One court resolves the issues for everyone in the class, except for those who exclude themselves from the class.

There are several types of Rule 23 class actions, two of which are relevant here. Rule 23(b)(2) classes involve claims for injunctive or declaratory relief. Rule 23(b)(3) classes involve claims for money damages.

4. Who is in the settlement classes in this case?

This case involves both Rule 23(b)(2) and Rule 23(b)(3) classes defined as follows:

- Rule 23(b)(2) class: All persons and entities, other than Defendants, that currently own one or more residential units in the Condo-Hotels, as well as any persons or entities that acquire ownership of one or more residential units

in the Condo-Hotels before the Effective Date (“Effective Date” is explained in Section 6 below).

- Rule 23(b)(3) class: All persons and entities, other than Defendants, that (i) own or have owned a unit in the Condo-Hotels; (ii) have participated in Boyne’s rental management program on or after December 31, 2013; and (iii) who did not give timely notice of their election to opt out of the Rule 23(b)(3) class during the opt-out period, i.e., on or before September 20, 2024.

You are a member of one or both classes. You do not need to take any action to remain a class member if you meet any of the definitions above. We have identified the persons in the 23(b)(2) and 23(b)(3) classes from Boyne’s records. Members of the 23(b)(2) class and 23(b)(3) class will be bound by any judgment or settlement entered in this case.

5. Who represents the classes?

The Court appointed the law firms of Crist, Krogh, Alke & Nord, PLLC and Goetz, Geddes & Gardner, P.C. as Class Counsel to represent class members. Contact information for the lead attorneys working on the case is listed below:

Ben Alke
Crist, Krogh, Alke & Nord, PLLC
209 S. Willson Ave.
Bozeman, MT 59715
(406) 255-0400
balke@crislaw.com

J. Devlan Geddes
Goetz, Geddes & Gardner, P.C.
P.O. Box 6580
Bozeman, MT 59771
(406) 587-0618
devlan@goetzlawfirm.com

If you want to be represented by your own lawyer, you are free to hire one at your own expense.

THE SETTLEMENT BENEFITS

6. What are the benefits under the proposed settlement?

A summary of the 23(b)(3) class and 23(b)(2) class benefits the proposed settlement provides to the class members follows.

Rule 23(b)(3) Class

Defendants have agreed to pay a total of \$18,799,417.50 to settle the 23(b)(3) claims (the “maximum settlement amount”). The maximum settlement amount will be placed into an interest bearing escrow account pending distribution to create the “settlement fund”. If you are a member of the 23(b)(3) class, you will receive a share of the settlement fund based on the amount Boyne charged guests in your unit(s) for breakfast and resort fees, after deductions discussed below. Each 23(b)(3) class member’s “settlement payment” will be determined as summarized below.

First, a forensic accountant will deduct the following amounts from the settlement fund: (i) any court-awarded attorneys’ fees (which will be no more than 33.33% of the settlement fund) and litigation costs; (ii) any court-awarded incentive awards for the class representatives (which will not exceed \$40,000 combined); and (iii) the fees and expenses for settlement administration (estimated to be approximately \$40,000).

The amount remaining after these deductions will be the “net settlement fund.” Each class member’s settlement payment will consist of a proportional share of the net settlement fund.

To calculate each class member’s proportional share, the forensic accountant will use Boyne’s records to (i) determine the amount Boyne charged guests in each 23(b)(3) class member’s unit(s) for breakfast and resort fees during the class period, and (ii) the total amount Boyne charged for breakfast and resort fees in all 23(b)(3) class members’ units during the class period. Each 23(b)(3) class member will then be assigned a decimal indicating the percentage of the total (i.e., the class member’s specific figure (i) divided by figure (ii)). Each 23(b)(3) class member’s decimal will then be multiplied by the net settlement fund to calculate each class member’s individual settlement payment amount.

Be aware that your settlement payment is taxable, and you will receive an IRS Form 1099 relating to your payment. We are not tax advisors. If you have any

questions regarding any issues relating to taxes, please check with your tax professional.

Rule 23(b)(2) Class

In addition to the monetary benefits, the settlement provides important benefits to current owners.

A. Structure and governance benefits.

In light of Plaintiffs' claims for declaratory and injunctive relief and allegations that various provisions of the Summit Declarations, Shoshone Declarations, and Village Center Declarations are invalid and unenforceable, the Parties have agreed to certain prospective relief to resolve the declaratory and injunctive relief claims of the Rule 23(b)(2) Settlement Class, some of which require modification of recorded instruments at issue in the Action. To implement this Settlement Agreement, the Parties stipulate to certain changes as follows, to be confirmed by the Court. Specifically:

- The Condo-Hotel Declarations will be amended to remove Boyne's right as exclusive rental manager. In particular, the following provisions will be deleted: Shoshone Declaration Art. X, Section (3)(b); Summit Declaration Art. X, Section 1; and Village Center Declaration Art. VIII, Section 8.2.
- The Condo-Hotel Declarations will also be amended to remove Boyne's right to veto amendments to the Declarations. In particular, the following provisions will be deleted: Shoshone Declaration Art. VIII, Section 4; Summit Declaration Art. VIII, Section 4; and Village Center Article XV, Section 15.5.
- The homeowners' associations ("Associations") of the Condo-Hotels are not required to use Boyne as hotel manager and are free to hire the hotel manager of their choosing, subject to certain agreed terms. Article VIII, Section 8.1 of the Village Center Declarations and Article X, Section 3 of the Summit Hotel's Declarations will be amended accordingly.
- In the Summit Hotel, Boyne will have the right to appoint one board member and otherwise shall be permitted to vote its ownership interests for other residential owners who are not Boyne employees as candidates for the five-member board. All other board members of the Associations must be elected based on a vote of the members of the Associations, except Boyne's one

appointee to the Village Center Association's board who represents Boyne's interests as a commercial owner. Further, Boyne's employees, agents, or representatives serving on any Association board will abstain from votes related to selecting a hotel operator if Boyne has submitted a proposal to serve in that role, as well as from board votes on whether to select, approve, or authorize Boyne as a rental manager. Additionally, Boyne will not participate in the Associations' votes related to expenditures of any CAPEX Contributions (as defined below), unless Boyne's ownership interests must be voted to satisfy quorum requirements, in which case Boyne will vote its interests with the majority of other unit owners. The limitations on Boyne shall not apply to any work or project under consideration by a Homeowners' Association for which less than fifty percent (50%) of the anticipated project costs are allocated from the CAPEX Contributions.

- Section 8.1 of the Village Center Declaration and Section 3 of the Summit Declaration will be amended to clarify that there is no requirement that the hotel manager and rental manager be the same entity.
- Failure to file a timely objection to the settlement will be treated as a vote in favor of amending the recorded documents as provided in this Section and as further described in Sections 4.2, 4.3, 4.4, and 4.5 of the Settlement Agreement.
- Boyne will not retaliate against any unit owners for participating in the Action or choosing to hire a rental company other than Boyne for a unit in the Condo-Hotels by banning the owners from participating in the Boyne-sponsored rental management program at the Condo-Hotels or by prohibiting access to Big Sky Resort facilities or amenities (to the extent owned or controlled by Boyne) that are open to the general public. Boyne reserves the right to enforce its rules and regulations that are generally applicable to all customers, guests, and owners at the resort.

B. Transition period.

Any unit owners currently renting through Boyne will remain in Boyne's rental management program until the "Effective Date" of the settlement, which means the day after final Court approval of the settlement and the entry of final judgment, provided there are no objections submitted to the settlement. If any class members file objections to the settlement, the Effective Date will be the later of: (a)

30 days after final Court approval of the settlement and the entry of final judgment if no appeals are filed; or (b) if one or more appeals are filed, then the earlier of 30 days after the last appellate court ruling affirming the Court's approval of the settlement or 30 days after the entry of a dismissal of the appeal.

For every unit owner participating in Boyne's rental management program after the Court grants final approval of the settlement and until such time that the unit owner enters into a new rental management agreement, Boyne will discontinue mandatory package breakfast and breakfast will be optional for all new guest bookings, at the guest's choice for an additional fee. For reservations booked through Boyne's rental management program after the Court grants final approval of the settlement and until such time that the unit owner enters into a new rental management agreement, if Boyne chooses to charge a resort fee, Boyne shall share 40% of such resort fee after the deduction of state lodging taxes with the unit owner.

Any change to the hotel operator, other than for cause, must be conducted during a shoulder season (meaning, April 15 to June 1 and October 1 to November 15) following the Association's decision to make such a change.

Any unit owner who is presently in a rental management agreement with Boyne may terminate that rental management agreement as of the Effective Date by notifying Boyne in writing. In the event of such termination, all existing reservations booked through Boyne's rental management program and existing as of the Effective Date will be honored by the applicable unit owner and that owner's successor rental management agent (if any).

C. Boyne's CAPEX Contributions to the Associations.

Boyne will pay a total of \$6,200,582.50 (less attorneys' fees addressed below) in capital expenditure contributions to the Associations over the next two years (the "CAPEX Contributions"). The CAPEX Contributions will be made to the Homeowners' Associations to benefit members of the Rule 23(b)(2) Settlement Class for the overall improvement of operations, attractiveness, and functionality of the Condo-Hotels, including to facilitate any business changes arising from the Rule 23(b)(2) structure and governance benefits (described above), among other purposes. Such payments shall be made to the Associations by April 1, 2026, and April 1, 2027, respectively. The CAPEX Contributions will be allocated to each of the three Associations pro rata based on the total number of residential units in each Condo-Hotel compared to the total number of all residential units in the three Condo-Hotels. The CAPEX Contributions for 2026 and 2027, respectively, will be

\$3,100,291.25 each, less attorneys' fees, which Boyne will pay directly to Class Counsel.

7. What am I giving up in return for receiving the settlement benefits.

Rule 23(b)(3) and Rule 23(b)(2) class members fully release the Defendants, their insurers, and their affiliates from any and all claims seeking any form of relief, whether monetary, legal, or equitable in nature, arising out of or in any way related to the claims asserted in this class action lawsuit, or arising out of or relating to any terms, requirements, or benefits provided by the settlement, including but not limited to the Rule 23(b)(2) structure and governance requirements, as of the date the Court grants final approval to the class settlement. For the sake of clarity, any person or entity that timely opted-out of the Rule 23(b)(3) class does not release any claims that were asserted on behalf of the 23(b)(3) class.

8. How will Class Counsel be paid?

Class Counsel will request an award of attorneys' fees of up to 33.33% of the Rule 23(b)(3) settlement fund and reimbursement of their litigation costs from the Rule 23(b)(3) settlement fund. These costs consist primarily of the amounts paid for deposition transcripts, travel for depositions, expert witness fees, Plaintiffs' portion of the mediator's fees and costs, and the costs of the prior rounds of notices sent to the classes certified for litigation. Class Counsel will also request an award of attorneys' fees up to 33.33% of the CAPEX Contributions. Class Counsel's motion for an award of fees and costs will include the final amount of fees and costs requested and the supporting law and facts. The motion will be filed with the Court by April 18, 2025, and will be available on PACER and the Settlement Administrator's website (www.condohotelsettlement.com). The Court will determine the actual amounts to award Class Counsel for fees and costs after the final approval hearing once it has ensured the amounts are reasonable.

The Settlement Administrator will pay any court-awarded attorneys' fees and costs from the Rule 23(b)(3) settlement fund. Defendants will pay any court-awarded attorneys' fees from the CAPEX Contributions at the time those contributions are paid.

9. Why are the class representatives asking for incentive awards?

In addition to the amounts they are entitled to receive by participating in the settlement, the four class representatives who brought this lawsuit will ask the Court

to approve “incentive awards” for them. Incentive awards are amounts given to individuals who bring a class action to recognize the risk they took in bringing the lawsuit and the effort they put into advancing the interests of the class by doing things like answering written discovery and sitting for depositions. The four class representatives will request incentive awards of up to \$10,000 each. The motion for incentive awards will be filed with the Court by April 18, 2025 and will be available on PACER and at www.condohotelsettlement.com. The Court will decide the actual amount, if any, of the incentive award to be given to each class representative after the final approval hearing.

YOUR RIGHTS AND OPTIONS

10. How will I receive my share of the settlement?

If you are Rule 23(b)(3) class member, once the settlement approval process and settlement administration is finalized, you will be sent a check for your pro rata portion of the net settlement fund to the address where this notice was mailed. To update your mailing address, you must visit www.condohotelsettlement.com and follow the instructions to notify the Settlement Administrator by June 20, 2025.

Payments will be made after the Effective Date.

If you do not cash your settlement check within 180 days after issuance, the Settlement Administrator will consider your share “unclaimed.” The Settlement Administrator will use any funds unclaimed after 180 days to make additional payments to the Associations.

If the Court grants final approval of the settlement and the settlement becomes effective, no amount of money will be returned to Boyne under any circumstances.

11. Can I object to the settlement?

You may object to the settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be made, no CAPEX Contributions will be made, no structure and governance changes will be made, and the lawsuit will continue. If that is what you want to happen, you must object.

Failure to file a timely objection to the settlement will be treated as a vote in favor of amending the recorded documents as provided above and as further described in Sections 4.2, 4.3, 4.4, and 4.5 of the Settlement Agreement.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the final approval hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must: (a) comply with the objection requirements of Section 8.4 of the Settlement Agreement; (b) clearly identify the case name and number (*Lawrence Anderson, et al. vs. Boyne USA, Inc., et al.*, No. 2:21-cv-00095-BMM); (c) be submitted to the Court either by mailing them to Mike Mansfield Federal Courthouse 400 North Main Street, Room 263, Butte, Montana 59701 or by filing them in person at any location of the United States District Court for the District of Montana; (d) be submitted to Class Counsel, Defendants' counsel, and the Settlement Administrator; and (e) be filed or postmarked on or before May 2, 2025.

EVEN IF YOU OBJECT, YOU WILL RECEIVE YOUR SHARE OF THE SETTLEMENT FUND AND BE BOUND BY THE RELEASE OF CLAIMS IF THE COURT APPROVES THE SETTLEMENT OVER YOUR OR ANY OTHER OBJECTION.

12. What happens if I previously excluded myself from the 23(b)(3) class?

If you previously submitted a valid request for exclusion, your previous request remains in effect, and you will not be subject to the release of claims related to the Rule 23(b)(3) class or receive any money from the settlement. If you are a current owner, you will still be bound by the settlement related to the 23(b)(2) class and the release of claims related to the Rule 23(b)(2) class upon approval of this settlement by the Court.

THE FINAL APPROVAL HEARING

13. When and where will the Court decide whether to approve the settlement.

The Court will hold a final approval hearing at [REDACTED] .m. on [REDACTED], 2025 at the U.S. District Court for the District of Montana, [REDACTED], MT [REDACTED], in Courtroom [REDACTED] on the [REDACTED] floor. At the hearing, the Court will listen to

anyone who wishes to speak in support or in opposition of the settlement and will consider whether the settlement is fair, reasonable, and adequate. The Court will also consider class counsel's request for attorneys' fees and costs and the request for the class representatives' incentive awards. The Court may reschedule the final approval hearing without further notice to the classes. Please check the Court's PACER system to verify the date has not changed.

WHILE YOU ARE WELCOME TO ATTEND THE FINAL APPROVAL HEARING EITHER PERSONALLY OR BY COUNSEL HIRED AT YOUR OWN EXPENSE, YOU DO NOT NEED TO APPEAR. CLASS COUNSEL WILL APPEAR AT THE HEARING ON BEHALF OF THE SETTLEMENT CLASS, INCLUDING YOU.

GETTING MORE INFORMATION

This notice only summarizes the proposed settlement. You can find the settlement agreement by accessing the Court docket or visiting www.condohotelsettlement.com. You may access the Court docket and any other publicly filed documents in this case, for a fee, through the Court's PACER system at <https://pacer.gov>, or by visiting the office of the Clerk of Court for the United States District Court for the District of Montana between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

If you have questions about the settlement process, please contact Class Counsel (contact information in Section 5, above) or the court-appointed Settlement Administrator, JND Legal Administration:

Email: [insert]

Phone: [insert]

Mailing Address: [insert]

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

LAWRENCE ANDERSON, as trustee
for the LAWRENCE T. ANDERSON
AND SUZANNE M. ANDERSON
JOINT REVOCABLE LIVING
TRUST, ROBERT AND NORA
ERHART, and TJARDA CLAGETT,

Plaintiffs,

vs.

BOYNE USA, INC., BOYNE
PROPERTIES, INC., AND SUMMIT
HOTEL, LLC, et al.,

Defendants.

Cause No. 2:21-cv-00095-BMM

[Proposed]

**FINAL APPROVAL
ORDER**

Pursuant to the Court’s Preliminary Approval Order and the Notice of Class Action Settlement (“Notice”) sent to each Settlement Class Member (as defined in the Settlement Agreement), a final hearing on the reasonableness and fairness of the Settlement was held on _____, in the U. S. District Court for the District of Montana, Butte Division. Plaintiffs were represented by and/or appeared through Ben Alke, J. Devlan Geddes, Jeffrey Tierney, Henry Tesar and John Crist and Defendants Boyne USA, Inc., Boyne Properties, Inc., and Summit Hotel LLC (collectively “Boyne”) were represented by and/or appeared through Mike Williams, Ian McIntosh, and Mac Morris.

The Court has reviewed the materials filed in the matter including the Plaintiffs' Motion for Final Approval and Class Counsel's Application for Attorney's Fees, Costs, and Service Awards, and considered the comments offered at the hearing.

THE COURT FINDS AND IT IS HEREBY ORDERED:

1. Plaintiffs filed a suit against Boyne alleging individual claims and class action claims seeking, among other things, declaratory and injunctive relief, damages and certification of a class under Federal Rules of Civil Procedure 23(b)(2) and (b)(3). Doc. 1.

2. The Court certified a Rule 23(b)(2) class, for potential injunctive and declaratory relief, and a Rule 23(b)(3) class, for potential damages, consisting of all persons or entities, other than Defendants, that: (i) own or have owned a unit in the Summit Hotel Condominium, the Shoshone Condominium Hotel, or the Lone Peak Center Condominium also known as the "Village Center" (collectively "the Condo-Hotels"); and (ii) participated in Boyne's Rental Management Program. Doc. 113.

3. Plaintiffs and Boyne participated in a mediation on February 7, 2025, in Bozeman, Montana, with Mark Helm and Niki Mendoza of Phillips ADR Enterprises acting as mediators. As a result of that mediation, the parties entered an arm's length agreement to settle this action on the terms now memorialized in the

Settlement Agreement, executed by the parties on February 26, 2025 (captioned “Agreement for Settlement and Release of all Claims”). The Settlement Agreement was attached as Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval and is incorporated fully herein. All capitalized terms used in this Order and not defined herein shall have the meanings set forth in the Settlement Agreement. In the event of any conflict between the descriptions in these paragraphs and the more detailed terms of the Settlement Agreement, the Settlement Agreement shall govern.

4. The Court has jurisdiction over this suit and the Settlement Class Members and venue is proper. Under Fed. R. Civ. P. 23(e), this Court’s approval of any settlement is required.

5. The Released Claims as defined in the Settlement Agreement all arise from the same nucleus of operative facts and form part of the same case or controversy as alleged against Boyne in Plaintiffs’ *First Amended Complaint and Jury Demand* (Doc. 26) so that all the claims approved for settlement by this Order were or could have been asserted as class claims in this Action.

Notice of Proposed Settlement and Hearing

6. Pursuant to the Preliminary Approval Order, Class Counsel, through the Settlement Administrator, provided the Notice to all Settlement Class Members listed on the Class List.

7. According to the Class Counsel's Report filed on ____, the Notice was sent via U.S. mail to all Settlement Class Members listed on the Class List. Class Counsel's Report confirms that _____ objection(s) was filed to the Settlement.

8. Reasonable and adequate notice of the settlement of claims of the Settlement Class Members was given through sending of the Notice as approved in the Preliminary Approval Order.

9. The Court finds that the Notice and Notice Procedure satisfied Due Process requirements.

Approval of the Settlement Agreement

10. The Settlement Agreement was negotiated at arms' length and in good faith.

11. The Settlement Agreement constitutes a fair, adequate, and reasonable settlement of all Released Claims.

12. This court finds both the Rule 23(b)(3) Settlement Fund, the Rule 23(b)(2) CAPEX Contributions, the Rule 23(b)(2) Structure and Governance Requirements, and other relief secured by the Settlement Agreement to be of significant value to the Settlement Class Members.

13. Having considered all submissions timely filed with the Court pursuant to the Preliminary Approval Order, the Court now finds and concludes that the provisional findings and conclusions in the Preliminary Approval Order

should be, and hereby are, confirmed in all respects as a final class certification order under Federal Rule of Civil Procedure 23 for the purposes of implementing the Settlement provided for in the Settlement Agreement and entering final judgment in this action.

14. This Court further finds that the Class Representatives adequately represented the interests of Settlement Class Members, including current owners who are members of the Rule 23(b)(2) Settlement Class.

15. This Court further finds after considering all the circumstances that the Settlement Agreement is fair, reasonable, equitable and in the best interest of the Settlement Class Members and hereby adopts and incorporates the terms of the Settlement Agreement for purposes of this Order.

Reasonableness of Attorneys' Fees and Costs

16. No Settlement Class Members appeared at the time of the final hearing to object to Class Counsel's Application for Attorney's Fees, Costs, and Service Awards. Further, counsel for Defendants stated that Defendants had no objection to Class Counsel's Application for Attorney's Fees, Costs, and Service Awards.

17. This court finds that Class Counsel achieved an excellent result for the Settlement Class Members.

18. This Court finds that this case required significant outlays of time and resources for Class Counsel and was vigorously litigated by both sides.

19. This Court finds that many of the legal issues in this case were issues of first impression in Montana and the overall level of complexity was high.

20. This Court finds that the Settlement Class Members faced a significant risk of no recovery, much of the cost of which would have been borne by Class Counsel such that they took on significant financial risk on behalf of the Settlement Class Members.

21. This Court finds that Class Counsel's performance generated substantial benefits to the Settlement Class Members beyond the Rule 23(b)(3) Settlement Fund. While the value of the negotiated prospective Rule 23(b)(2) Settlement Class Member Benefits, in settlement of the claims for declaratory and injunctive relief, is not readily quantifiable such that it is not included in the Rule 23(b)(3) Settlement Fund for purposes of calculating an appropriate fee, the Court finds that it is nonetheless a substantial benefit with real economic and noneconomic value which justifies the requested fee percentage. *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (the value of injunctive relief can rarely be included in the value of the common fund but "[t]he fact that counsel obtained injunctive relief in addition to monetary relief for their clients is, however, a relevant circumstance to consider in determining what percentage of the fund is

reasonable as fees.”); *see also, e.g., Senne v. Kan. City Royals Baseball Corp.*, No. 14-cv-00608 JCS, 2023 U.S. Dist. LEXIS 54274, at *62-63 (N.D. Cal. Mar. 29, 2023) (fees in this range approved in a class action settlement involving substantial monetary recovery and meaningful injunctive relief).

22. Where the underlying claims are principally rooted in state law, as here, state law generally also governs or may inform the award of fees including the appropriate fee calculation methodology. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). In Montana, a one-third fee on contingency cases is customary and has been recently approved as an appropriate standard for fixing attorney’s fees based on a common fund recovery and in the setting of a complex class action where counsel secured both a significant monetary recovery and meaningful prospective equitable relief. *Tafelski v. Johnson*, 2024 MT 143, ¶ 27, 417 Mont. 160, 552 P.3d 40 (Mont. 2024).

23. This Court finds the one-third contingency fee agreement between the Class Representatives and Class Counsel to be reasonable.

24. This Court considered alternative measures for attorneys’ fees, including the Lodestar method, and finds the contingency fee to be reasonable.

Reasonableness of Service Awards

25. The Court finds that incentive awards of \$10,000.00 each for the Class Representatives is fair and reasonable in light of, *inter alia*: (i) the substantial

time and effort of the Class Representatives devoted to this class action and the over 3-year duration of this litigation; (ii) the significant financial and reputational risks faced by the Class Representatives through their participation in this action, including their exposure to a significant costs order; (iii) the amount of the service awards when compared to the settlement share Settlement Class Members will receive when compared to the gross and net settlement amount; (iv) the excellent results achieved by the Class Representatives on behalf of the Settlement Class Members; and (v) the loss of rental revenues the Class Representatives faced during the course of this litigation.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

A. As of the Effective Date, each of the Releasing Parties as defined in the Settlement Agreement shall become fully bound by all the releases and other obligations and conditions as set forth herein and in the Settlement Agreement and shall be deemed to have released the Released Claims against the Released Parties as provided in the Settlement Agreement.

B. Except as necessary to enforce this Order and the Settlement Agreement, Plaintiffs, Settlement Class Members, and their heirs, personal representatives, assigns, and successors are barred from bringing claims against any of the Released Parties for any Released Claims as specifically defined in the Settlement Agreement.

C. Defendants have escrowed with the Settlement Administrator in an Escrow Account the sum of \$18,799,417.50 (“Rule 23(b)(3) Settlement Fund”) in accordance with the Settlement Agreement.

D. The Rule 23(b)(3) Settlement Fund, less approved Settlement Fund Attorney’s Fees, Service Awards, and Administrative Costs, shall be distributed to the Rule 23(b)(3) Settlement Class Members in accordance with the Settlement Agreement. This Court approves the payment schedule for the Rule 23(b)(3) Settlement Class Member Benefits attached hereto as Exhibit 1.

E. All interest accrued from the Escrow Account through the date of distribution shall become part of the Rule 23(b)(3) Settlement Fund.

F. The reasonable attorneys’ fees of Class Counsel are and shall be one-third of the Rule 23(b)(3) Settlement Fund (“Settlement Fund Attorneys’ Fees”) (i.e., \$6,265,845.85, plus interest), plus the CAPEX Attorney’s Fees as defined in the Settlement Agreement (i.e., \$2,066,860.40). Class Counsel’s reasonable litigation costs (“Litigation Costs”) are and shall be awarded in the amount of \$ _____. The reasonable Administration Costs are estimated to be in the amount of \$ _____. The Class Counsel’s Settlement Fund Attorneys’ Fees, Litigation Costs, and Administration Costs shall be paid by the Settlement Administrator from the Escrow Account to Class Counsel and the remaining amount of the Rule 23(b)(3) Settlement Fund shall be paid to the Rule

23(b)(3) Settlement Class Members on the pro-rated basis set forth in Exhibit 1 to this Order.

G. Within seven (7) days of the Effective Date, as that term is defined in the Settlement Agreement, Defendants and Class Counsel shall instruct the Settlement Administrator to release from the Escrow Account all funds to be paid according to the Settlement Agreement and this Order. This amount will be released per the Settlement Agreement to pay the amounts to be distributed to Rule 23(b)(3) Settlement Class Members, Class Counsel's Settlement Fund Attorneys' Fees, Litigation Costs and Administration Costs. Class Counsel's Settlement Fund Attorneys' Fees, Litigation Costs and Administration Costs will be released by the Settlement Administrator as directed by Class Counsel.

H. The CAPEX Attorneys' Fees award shall be paid as provided in Section 3.2 of the Settlement Agreement.

I. All Distribution Checks must be cashed by Settlement Class Members within 180 days of the Distribution Date. Residual funds remaining in the Escrow Account resulting from Uncashed Distribution Checks shall be distributed to the Homeowners' Association for the Condo-Hotel from which the Settlement Class Member who failed to cash an Uncashed Distribution Check was a member as a *cy pres* payment.

J. No funds will remain in the Escrow Account after the release of the funds as required by the Settlement Agreement and by this Order.

K. Certain elements of the negotiated declaratory and injunctive relief, including stipulated revisions to the Condo-Hotel declarations regarding rental management and hotel management exclusivity and Homeowners' Association governance as provided in Sections 4.2, 4.3, 4.4, and 4.5 of the Settlement Agreement, shall be set forth in a separate judgment suitable for recording.

L. Any Settlement Class Member who did not file a timely objection to the Settlement is hereby deemed to have voted in favor of amending the recorded documents as provided in Sections 4.2, 4.3, 4.4, and 4.5 of the Settlement Agreement.

M. Upon entry of this Order and upon the Effective Date, as that term is defined in the Settlement Agreement, Class Counsel and Defendants' counsel shall file a stipulated motion of dismissal with prejudice of all Released Claims. The order of dismissal with prejudice of the Released Claims shall be entered by the Court and shall be considered a final order, subject to appeal under Rule 54.

DONE IN OPEN COURT this [REDACTED] day of [REDACTED], 2025.

Brian Morris, Chief District Judge
United States District Court

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

LAWRENCE ANDERSON, as trustee
for the LAWRENCE T. ANDERSON
AND SUZANNE M. ANDERSON
JOINT REVOCABLE LIVING
TRUST, ROBERT AND NORA
ERHART, and TJARDA CLAGETT,

Plaintiffs,

vs.

BOYNE USA, INC., BOYNE
PROPERTIES, INC., AND SUMMIT
HOTEL, LLC, et al.,

Defendants.

Cause No. 2:21-cv-00095-BMM

[Proposed]

**SETTLEMENT ORDER
AND JUDGMENT**

Pursuant to this Court's Final Approval Order for settlement of the above-captioned matter, in consideration of the Parties' Agreement for Settlement and Release of All Claims and the terms and stipulations set forth therein, all of the written submissions and argument offered by interested parties, and good cause otherwise appearing, it is hereby **ORDERED, ADJUDGED AND DECREED:**

1. On June 28, 2023 (Doc. 113), this Court certified this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of:

All persons and entities, other than Boyne, that:

- (i) own or have owned a unit in the Summit Hotel Condominium, the Shoshone Condominium Hotel, or the Lone Peak Center Condominium also known as the “Village Center” (collectively “the Condo-Hotels”); and
- (ii) have participated in Boyne’s Rental Management Program.¹

2. Plaintiffs brought legal claims for monetary relief related to past operation of Boyne’s Rental Management Program which the Court certified for class treatment pursuant to Federal Rule of Civil Procedure 23(b)(3). Plaintiffs also brought claims seeking prospective declaratory and injunctive relief concerning the validity and operation of Boyne’s Rental Management Program going forward, which the Court certified for class treatment pursuant to Federal Rule of Civil Procedure 23(b)(2).

3. Following class certification, adequate class notice was provided in accordance with Federal Rule of Civil Procedure 23(c), giving putative class members the opportunity to exclude themselves (“opt out”) from Plaintiffs’ Rule 23(b)(3) claims. Thirteen putative class members filed a timely opt-out request and are excluded from the class with respect to these claims. All other persons and entities encompassed by the class definition, set forth in Paragraph 1 above, are part of the class with respect to Plaintiffs’ Rule 23(b)(3) claims.

¹ The class definition is restated here, for clarity, using the official names of the Condo-Hotels and terminology employed in the other settlement documents.

4. The Court previously determined and hereby reaffirms that Plaintiffs' Rule 23(b)(2) claims are not elective and class members may not opt out. All persons and entities encompassed by the class definition, set forth in Paragraph 1 above, are part of the class with respect to Plaintiffs' Rule 23(b)(2) claims for declaratory and injunctive relief.

5. Plaintiffs and Boyne participated in a mediation on February 7, 2025, in Bozeman, Montana, with Mark Helm and Niki Mendoza of Phillips ADR Enterprises acting as mediators. As a result of that mediation, the Parties entered an arm's-length agreement to settle this action on the terms now memorialized in the Settlement Agreement, executed by the parties on February 26, 2025. The Settlement Agreement is attached as Exhibit 1 to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. All capitalized terms used in this Order and not defined herein shall have the meanings set forth in the Settlement Agreement.

6. The Court has reviewed and approved the Settlement Agreement (captioned "Agreement for Settlement") as set forth in the Court's Final Approval Order. Except as otherwise expressly set forth herein, the named parties and all class members, inclusive of their respective, agents, assigns, heirs and successors-in-interest, are bound by the approved Settlement Agreement and by this Order and Judgment.

7. As part of their claims for injunctive and declaratory relief, Plaintiffs have alleged that various provisions of the Condo-Hotel Declarations are unenforceable. In light of these allegations, and as set forth in the Settlement Agreement, Plaintiffs and Defendants have stipulated to entry of judgment adopting certain prospective relief to resolve Plaintiffs' Rule 23(b)(2) claims for declaratory and injunctive relief that requires modification of the Condo-Hotel Declarations.

8. The Court hereby approves the Parties' stipulations concerning the modifications to the structure and operation of Boyne's Rental Management Program and the governance of the Condo-Hotels, and related transition provisions to facilitate implementation of the same, entered in settlement of Plaintiffs' Rule 23(b)(2) claims for declaratory and injunctive relief and following the non-objections of the Rule 23(b)(2) class members pursuant to the Court's Notice plan, and orders the following:

A. **Removal of Exclusivity.** To address Plaintiffs' allegation that certain provisions of the Condo-Hotel Declarations concerning rental management exclusivity, when imposed by Boyne as declarant of the Condo-Hotels, are unenforceable as written under Montana law, the following provisions of the Condo-Hotel Declarations shall be deleted and be of no further force or effect:

- i. Article X, Section 3(b) of the Shoshone Declarations
("Declaration for the Shoshone Condominium Hotel,"
Madison County Clerk & Recorder Reference No. Vol. 343,
pp. 206–257).
- ii. Article X, Section 1 of the Summit Declarations ("Amended
& Restated Declaration for the Summit Hotel
Condominium," Madison County Clerk & Recorder
Reference No. Book 438, pp. 425–481).
- iii. Article VIII, Section 8.2 of the Village Center Declarations
("First Amended and Restate Declaration for the Lone Peak
Center Condominium," Madison County Clerk & Recorder
Reference No. 117644).

B. Removal of Boyne's Veto Over Declaration

Amendments. To address Plaintiffs' allegation that certain provisions of the Condo-Hotel Declarations concerning Boyne's reserved veto power over amendment of the Condo-Hotel Declarations are unenforceable as written under Montana law, the following provisions of the Condo-Hotel Declarations shall be deleted and be of no further force or effect:

- i. Article VIII, Section 4 of the Shoshone Declarations.

- ii. Article VIII, Section 4 of the Summit Declarations.
- iii. Article 15, Section 15.5 of the Village Center Declarations.

C. **Removal of Requirement that Boyne Be Designated as Hotel Manager.** To address Plaintiffs' allegation that certain provisions of the Condo-Hotel Declarations concerning the requirement that the Homeowners' Associations use Boyne as the hotel manager are unenforceable as written under Montana law, the Village Center Declarations and Summit Declarations shall be amended as follows.

- i. **Village Center Declarations.** Article VIII, Section 8.1 of the Village Center Declarations shall be amended to read as follows: "The Association will hire an entity to operate and manage the Residential Units and their appurtenant Limited Common Elements as a resort hotel. The terms and conditions of such management will be set forth in a management agreement between the Association and the retained hotel manager."
- ii. **Summit Declarations.** Article X, Section 3 ("Hotel Management") of the Summit Declarations shall be amended to read as follows: "The Association will hire an

entity to operate and manage the Residential Units and their appurtenant Limited Common Elements as a resort hotel. The terms and conditions of such management will be set forth in a management agreement between the Association and the retained hotel manager.”

D. **Homeowner Associations.** To address Plaintiffs’ allegation that Boyne holds impermissible control over Association Boards in the Condo-Hotels, the Association Bylaws will be amended as follows:

- i. In the Summit Hotel, Boyne will have the right to appoint one board member and otherwise shall be permitted to vote its ownership interests for other residential owners who are not Boyne employees as candidates for the five-member board.
- ii. All other board members of the Homeowners’ Associations must be elected based on a vote of members of the Homeowners’ Associations, except for Boyne’s appointee to the Village Center Homeowners’ Association who represents Boyne’s interests as a commercial unit owner.

iii. If any of Boyne's employees, agents, or representatives serve on any Homeowner's Association board, Boyne's employees, agents, or representatives will abstain from board votes to select a hotel operator, if Boyne has submitted a proposal to serve as the hotel operator. Similarly, Boyne's employees, agents, and representatives will abstain from voting whether to select, approve, or authorize Boyne as a rental manager.

E. **No Retaliation.** Boyne will not retaliate against any Unit Owner for choosing to hire a rental management company other than Boyne for a unit in the Condo-Hotels by banning them from participating in Boyne-sponsored rental management programs at the Condo-Hotels or by prohibiting access to Big Sky Resort facilities or amenities (to the extent owned or controlled by Boyne) that are open to the general public. If a Homeowners' Association selects Boyne to serve as the hotel operator, Boyne shall provide services to all Unit Owners and guests of Unit Owners subject to the terms of the Homeowners' Association's agreement with Boyne. Notwithstanding the foregoing, Boyne reserves the right to enforce its rules and

regulations at Big Sky Resort or the Condo-Hotels that are generally applicable to all customers, guests, and/or owners.

F. **Existing Reservations.** All guest reservations booked through Boyne's Rental Management Program and existing as of the Effective Date, at any of the Condo-Hotels, will be honored by the applicable Unit Owner and any successor rental management agent.

G. **Transitional Rental Management.** Any Unit Owner currently renting through Boyne's Rental Management Program shall remain in Boyne's Rental Management Program at any of the Condo-Hotels until the Effective Date.

H. **Transitional Breakfast Requirements.** For any Unit Owner participating in Boyne's Rental Management Program at any of the Condo-Hotels upon entry of the Final Approval Order and until such time that the Unit Owner enters into a new rental management agreement for the Unit Owner's unit(s), Boyne will discontinue mandatory package breakfast and breakfast will be optional for all new guest bookings, at the guest's choice for an additional fee.

I. **Transitional Resort Fee Requirements.** For reservations booked at any of the Condo-Hotels through Boyne's Rental Management Program after entry of the Final Approval Order

and until such time that the Unit Owner enters into a new rental management agreement for the Unit Owner's unit(s), if Boyne chooses to charge a Resort Fee, Boyne shall share 40% of such Resort Fee with the Unit Owner after deduction of state lodging taxes.

J. **Changes to Hotel Management.** Any change to the hotel operator at any of the Condo-Hotels, other than for cause, must be conducted during a shoulder season (meaning, April 15 to June 1 and October 1 to November 15) following the Homeowner Association's decision to make such change.

9. Any person or entity who filed a timely opt-out request (whether or not they are a class member with respect to Plaintiffs' Rule 23(b)(2) claims for declaratory and injunctive relief) by September 20, 2024 (*see* Doc. 258 at 2-3), is excluded from the Rule 23(b)(3) Settlement Class and from operation of the approved Settlement Agreement with respect to Plaintiff's Rule 23(b)(3) claims for monetary relief related to past operation of Boyne's Rental Management Program. The approved Settlement Agreement and this Order and Judgment shall have no preclusive effect as to such claims for these persons and entities only.

10. All Settlement Class Members are otherwise hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit, arbitration, or

other legal proceeding in any court or tribunal based on the Plaintiffs' claims that are released by the approved Settlement Agreement.

11. The Court retains jurisdiction as to all matters related to the administration, consummation, enforcement, and interpretation of the approved Settlement Agreement and this Order and Judgment.

12. All Parties shall bear their own fees and costs except as otherwise ordered including in the Court's separate Final Approval Order.

13. Plaintiffs' counsel are directed to record a copy of this Order and Judgment in the public property record in the offices of the Madison County Clerk and Recorder in order to ensure the legal effect and to give proper notice of Paragraph 8 above which shall supersede and control over any contrary provision in any of the Condo-Hotel Declarations, the bylaws of the Homeowners' Associations, or other instruments or agreements.

DATED this ____ day of _____, 2025.

Hon. Brian M. Morris, Chief District Judge