



92/461 -

**MASTER  
DECLARATION  
FOR  
RIVERFRONT VILLAGE**

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1 IMPOSITION OF COVENANTS .....</b>	1
Section 1.1     Purpose .....	1
Section 1.2     Intention of Declarant .....	1
Section 1.3     Number of Units .....	1
Section 1.4     Declaration .....	1
Section 1.5     Covenants Running With the Land .....	2
<b>ARTICLE 2 DEFINITIONS .....</b>	2
<b>ARTICLE 3 MASTER ASSOCIATION FUNCTIONS AND DUTIES .....</b>	9
Section 3.1     Property Maintenance Function .....	9
Section 3.2     Operation Function .....	10
Section 3.3     Public Health and Safety Function .....	10
Section 3.4     Transportation Function .....	10
Section 3.5     Recreation Function .....	11
Section 3.6     Marketing Function .....	11
Section 3.7     Television Function .....	11
Section 3.8     Telephone and Broadband Function .....	11
Section 3.9     Restrictions on New Functions, Common Area .....	11
Section 3.10    Exterior Maintenance Function .....	11
Section 3.11    Design Review Board Function .....	12
Section 3.12    Regulation of Use and Conduct .....	12
Section 3.13    Taxes .....	14
Section 3.14    Right to Dispose of Common Area; Third Party Rights in Common Area .....	14
Section 3.15    Governmental Successor .....	15
Section 3.16    Records .....	15
Section 3.17    Implied Rights of the Master Association .....	15
Section 3.18    Master Association Documents .....	16
Section 3.19    Owner's Negligence .....	16
Section 3.20    Enforcement of Master Association Documents .....	16
Section 3.21    Cooperation with Entities .....	18
Section 3.22    Cooperation with Project Associations .....	18
Section 3.23 <b>LIMITATION OF LIABILITY OF MASTER ASSOCIATION .....</b>	18
Section 3.24    Payments to Working Capital Account .....	18
Section 3.25    Delegation of Management and Maintenance Duties; Association Termination Rights..	19
<b>ARTICLE 4 MEMBERSHIP AND VOTING IN MASTER ASSOCIATION .....</b>	19
Section 4.1     Master Association Membership .....	19
Section 4.2     Classes of Membership .....	19
Section 4.3     Voting Rights .....	19
Section 4.4     Election of Directors .....	23
Section 4.5     Declarant Control .....	24
Section 4.6     Fairness Standard .....	24
Section 4.7     Owner's and Master Association's Address for Notices .....	24
<b>ARTICLE 5 SHARED EASEMENTS IN HOTEL AND VACATION CLUB .....</b>	25
Section 5.1     Shared Easements .....	25
Section 5.2     Shared Access Easement .....	25
Section 5.3     Shared Parking Easement .....	26

Section 5.4	Club Recreational Facilities Easement.....	28
Section 5.5	Vacation Club Recreational Facilities Easement.....	31
Section 5.6	Hotel Services Easement.....	32
Section 5.7	Put Options .....	33
Section 5.8	Shared Easement Expansions, Dispositions .....	33
Section 5.9	Use and Enjoyment of Shared Easements; Limitations.....	34
Section 5.10	Modifications to Hotel Project .....	38
Section 5.11	Additional Access Limitations .....	38
Section 5.12	Operating Expenses .....	38
Section 5.13	Capital Expenses.....	39
Section 5.14	Vacation Club Access Fees .....	39
Section 5.15	Indemnification.....	40
Section 5.16	Shared Easements Voidable .....	40
Section 5.17	Essential Shared Easements.....	41
Section 5.18	<b>LIMITATION OF LIABILITY OF SHARED EASEMENT OWNERS</b> .....	42
<b>ARTICLE 6 ASSESSMENTS</b>	.....	43
Section 6.1	Covenant of Personal Obligation of Assessments .....	43
Section 6.2	Purpose of Assessments.....	44
Section 6.3	Apportionment of Annual Assessments.....	44
Section 6.4	Amount of Total Annual Assessments .....	45
Section 6.5	Shared Easement Payments .....	45
Section 6.6	Fiscal Year; Annual Budget .....	48
Section 6.7	Special Assessments .....	48
Section 6.8	Due Dates for Assessment Payments; Master Association Obligations.....	49
Section 6.9	Declarant's Obligation to Pay Assessments .....	49
Section 6.10	Default Assessments.....	49
Section 6.11	Lien for Assessments.....	49
Section 6.12	Effect of Nonpayment of Assessments.....	50
Section 6.13	Successor's Liability for Assessments .....	50
Section 6.14	Waiver of Homestead Exemption; Subordination of Master Association's Lien for Assessments.....	50
Section 6.15	Statement of Status of Assessments .....	51
<b>ARTICLE 7 EASEMENTS</b>	.....	52
Section 7.1	Easement of Enjoyment.....	52
Section 7.2	Recorded Easements.....	52
Section 7.3	Easements for Encroachments.....	52
Section 7.4	Reservation of Easements, Exceptions and Exclusions.....	52
Section 7.5	Emergency Access Easement .....	53
Section 7.6	Master Association Easement.....	53
Section 7.7	Easements of Access for Repair, Maintenance and Emergencies .....	53
Section 7.8	Declarant's Rights Incident to Construction and Marketing.....	53
Section 7.9	Governmental Requirements .....	53
Section 7.10	Declarant Easements.....	54
Section 7.11	Right of Declarant and Master Association to Own Units and to Use Common Area.	54
Section 7.12	Maintenance and Remodeling Easement.....	54
Section 7.13	Easements Deemed Created .....	54
<b>ARTICLE 8 RESTRICTIONS ON USE</b>	.....	54
Section 8.1	Land Use Restrictions.....	54
Section 8.2	Maintenance of Property .....	54

Section 8.3	Use of Property During Construction.....	55
Section 8.4	No Noxious or Offensive Activity .....	55
Section 8.5	No Unsightliness .....	55
Section 8.6	Lights, Sounds and Odors.....	56
Section 8.7	Restriction on Animals .....	56
Section 8.8	Restriction on Signs.....	56
Section 8.9	Restrictions on Parking.....	56
Section 8.10	Restriction on Recreational Vehicles .....	56
Section 8.11	Drainage Restriction.....	56
Section 8.12	No Fences .....	56
Section 8.13	General Practices Prohibited .....	56
Section 8.14	Declarant's Exemption.....	57
Section 8.15	Health, Safety and Welfare.....	57
Section 8.16	Compliance with Law.....	57
Section 8.17	Subdivision of Project Lots .....	57
Section 8.18	Violation.....	57
<b>ARTICLE 9 INSURANCE AND FIDELITY BONDS</b>	.....	57
Section 9.1	General Insurance Provisions .....	57
Section 9.2	Cancellation.....	58
Section 9.3	Policy Provisions.....	58
Section 9.4	Insurance Proceeds .....	58
Section 9.5	Master Association Policies.....	59
Section 9.6	Insurer Obligation.....	59
Section 9.7	Common Expenses.....	59
Section 9.8	Fidelity Insurance .....	59
Section 9.9	Workmen's Compensation Insurance .....	59
Section 9.10	Other Insurance .....	59
Section 9.11	Insurance Obtained by Owners or Project Association .....	59
Section 9.12	Insurance on Shared Easements .....	60
<b>ARTICLE 10 MECHANICS' LIENS</b>	.....	61
Section 10.1	Mechanics' Liens .....	61
Section 10.2	Enforcement by the Master Association.....	61
<b>ARTICLE 11 MASTER ASSOCIATION APPOINTMENT</b>	.....	61
Section 11.1	Appointment.....	61
Section 11.2	General Authority .....	61
<b>ARTICLE 12 DAMAGE OR DESTRUCTION</b>	.....	62
Section 12.1	Casualty to Common Area .....	62
Section 12.2	Casualty to Unit or Project .....	62
<b>ARTICLE 13 OBSOLESCENCE</b>	.....	62
<b>ARTICLE 14 CONDEMNATION</b>	.....	63
Section 14.1	Condemnation of Common Area .....	63
Section 14.2	Condemnation of a Unit or Common Area or Common Element of a Project .....	63
Section 14.3	Allocation of Interest After Condemnation .....	63
<b>ARTICLE 15 EXPANSION</b>	.....	63
Section 15.1	Reservation of Expansion Rights .....	63
Section 15.2	Supplemental Declarations and Supplemental Plats.....	64
Section 15.3	Expansion of Definitions .....	64
Section 15.4	Effect of Expansion .....	64
Section 15.5	Termination of Expansion and Development Rights.....	64

<b>ARTICLE 16 ACKNOWLEDGMENTS AND HOTEL BRAND RIGHTS.....</b>	<b>64</b>
Section 16.1     Acknowledgements .....	64
Section 16.2     Hotel Brand Rights.....	66
<b>ARTICLE 17 DURATION OF COVENANTS AND AMENDMENT .....</b>	<b>67</b>
Section 17.1     Term .....	67
Section 17.2     Amendment .....	67
Section 17.3     Recording of Amendments.....	68
<b>ARTICLE 18 DECLARANT'S RIGHTS REGARDING TRANSFER.....</b>	<b>68</b>
<b>ARTICLE 19 SPECIAL DISTRICT.....</b>	<b>68</b>
<b>ARTICLE 20 MISCELLANEOUS .....</b>	<b>68</b>
Section 20.1     Restriction on Declarant Powers .....	68
Section 20.2     Nonwaiver .....	68
Section 20.3     Severability.....	68
Section 20.4     Number and Gender .....	68
Section 20.5     Captions.....	69
Section 20.6     Conflicts in Legal Documents .....	69
Section 20.7     Exhibits.....	69

**MASTER DECLARATION  
FOR  
RIVERFRONT VILLAGE**

This Master Declaration for Riverfront Village (this "Declaration") dated as of November 13<sup>th</sup>, 2006, shall be effective upon recordation and is made by East West Resort Development XIV, L.P., L.L.L.P., a Delaware limited partnership registered as a limited liability limited partnership ("Declarant"). Declarant is the owner of certain real property located in the Town of Avon, County of Eagle, Colorado, more particularly described on Exhibit A attached hereto (the "Property") and on Exhibit B attached hereto (the "Expansion Property"). Declarant hereby subjects the Property to this Declaration makes the following grants, submissions and declarations with respect to the Property:

**ARTICLE 1  
IMPOSITION OF COVENANTS**

Section 1.1 Purpose. The purpose of this Declaration is to create a Planned Community known as Riverfront Village pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to such act are mandatory (the "Act"). All capitalized terms used herein are defined in Article 2 below.

Section 1.2 Intention of Declarant. Declarant intends to develop the Property as a mixed-use community, including residential, commercial and recreational uses for the benefit of all persons residing, visiting or doing business in Riverfront Village. Declarant desires to protect the value and desirability of the Property, to own and operate certain common amenities and properties for the benefit of the owner(s) of the Property and the separate projects which may be formed thereon and to promote and safeguard the health, comfort, safety, convenience, and welfare of the owners in Riverfront Village.

Section 1.3 Number of Units. Declarant contemplates and the PUD Plan in effect as of the date hereof permits the development of four hundred fifty-six (456) Dwelling Units as defined in the PUD Plan (it being acknowledged that one Dwelling Unit may be comprised of up to three (3) Accommodation Units, as also defined in the PUD Plan, each of which would be a separate Residential Unit for purposes of this Declaration) and up to 40,000 GLFA (as defined in the PUD Plan) of Standard Commercial. Accordingly, pursuant to the PUD Plan, Declarant reserves the right to create eight hundred fifty (850) Residential Units (without consideration of any resubdivision of Residential Units into Fractional Ownership Interests), and fifty (50) Commercial Units on the Property, making the total maximum number of Units permitted on the Property as of the date hereof nine hundred (900) (without consideration of any resubdivision of Residential Units into Fractional Ownership Interests). In the event, however, that the Property is expanded by the incorporation into this Declaration of unspecified real property pursuant to Section 38-33.3-222 of the Act, and/or in the event that the PUD Plan is amended in the future, Declarant reserves the right to create one hundred fifty (150) additional Residential Units and fifty (50) additional Commercial Units, for a total maximum of two hundred (200) additional Units. Nothing herein shall be construed as limiting the right to develop on the Property Lodging Support Uses, Incidental Commercial Uses, Public Uses, Temporary Facilities or Special Review Uses as each are defined and permitted under the PUD Plan.

Section 1.4 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations and other provisions of this

Declaration below, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied and improved subject to the provisions of this Declaration.

Section 1.5     Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, the Project Associations and their respective heirs, executors, administrators, personal representatives, successors and assigns.

## ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration or any Supplemental Declaration, shall have the meanings designated below unless the context shall expressly provide otherwise:

Section 2.1     “Act” means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory. In the event that future amendments to the Act are not mandatory, the Executive Board may elect for the Association to be covered by such future amendments.

Section 2.2     “Assessments” means the annual, special and default Assessments levied pursuant to Article 6 below. Assessments are also referred to as a Common Expense Liability under the Act.

Section 2.3     “Building” means any building (including all fixtures and improvements contained within it) located on the Property.

Section 2.4     “Class” shall mean individually the Hotel Residential Members, the Riverfront Residential Members, the Commercial Members, the Vacation Club Members, the Hotel Unit Owner and the Undeveloped Property Owners, and “Classes” shall mean all such classes collectively.

Section 2.5     “Class Director(s)” means the members of the Executive Board elected by the Owners of a particular Class after the expiration of the Declarant Control Period in accordance with the procedures set forth in Article 4 below and in the bylaws of the Master Association.

Section 2.6     “Club” means those areas of the Hotel Project designated on the Hotel Map as the “Club”, together with any LCE-Hotel Unit (as designated on the Hotel Map) containing Club Recreational Facilities.

Section 2.7     “Club Owner” means the Owner of the Club. The Club Owner shall initially be the Hotel Unit Owner unless and until the Club is converted into a separate Commercial Unit pursuant to the terms of the Project Declaration for the Hotel Project, after which the Club Owner shall be the Owner of the Unit labeled as “Club” on the amended Map for the Hotel Project.

Section 2.8     “Club Recreational Facilities” shall mean the swimming pool, exercise area, locker rooms associated with the exercise area, hot tubs, sundeck, ski storage/valet area, and related facilities located as part of the Club, and the bocce ball courts, fly fishing practice area and/or other improvements comprising that area of Riverfront Village depicted as “Recreation Easement” on the Subdivision Plat, together with all furnishings and personal property associated with or serving such areas or its operations. The Club Recreational Facilities may be expanded or reduced as described in Section 5.8 below.

**Section 2.9     “Commercial Members” shall be all Owners of Commercial Units within Riverfront Village, including Declarant so long as Declarant continues to own an interest in a Commercial Unit.**

**Section 2.10    “Commercial Unit” means any separately subdivided unit located on the Property, whether currently existing or created by subsequent resubdivision, which is designated for Standard Commercial purposes as described in the PUD Plan and which has been granted a temporary or permanent certificate of occupancy or other evidence of the right to occupy the Unit by the Town of Avon, excluding therefrom, however, the Hotel Unit. A Commercial Unit may be converted into a Hotel Residential Unit or Units as provided in the Project Declaration for the Hotel Project, in which event the Commercial Members with respect to such Commercial Unit(s) shall automatically become Hotel Residential Members for all purposes under this Declaration.**

**Section 2.11    “Common Area” means, to the extent of the Master Association's interest in such real estate or improvements, any real property within Riverfront Village (a) that is owned by the Master Association, (b) that is owned by a person or entity other than the Master Association, but in which the Master Association has rights of use or possession pursuant to a lease, license, easement or other agreement, or (c) that the Master Association is otherwise required to operate, manage, maintain or repair, together with any improvements located thereon; provided, however, with respect to items (b) and (c) of this Section 2.11, prior to being considered Common Area, the area must be designated as Common Area by action of the Executive Board, including the affirmative vote of at least one (1) Director from each Class of Directors (although Limited Common Area may be created by as provided in Sections 2.40 and 3.9 below). Without limiting the generality of the foregoing, the Common Areas may include landscaping (including landscaping within dedicated public rights-of-way serving the Property), sidewalks/streetscape (including benches, lighting and trash receptacles both outside and within dedicated public rights-of-way serving the Property), irrigation systems, and recreation facilities, together with any related improvements or amenities associated with any of the foregoing. The term Common Area shall include the Limited Common Area, as defined below, if any. Notwithstanding the foregoing or any contrary provision herein, the Master Association's rights with respect to the Shared Easements and the areas and property subject to the Shared Easements shall in no way be considered Common Areas and such easements and areas are limited to use and enjoyment rights only, as more fully described in Section 5.9.1 below.**

**Section 2.12    “Common Expenses” means (a) all expenses expressly declared to be common expenses by this Declaration or the bylaws of the Master Association; (b) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area; (c) all expenses to be incurred by the Master Association in fulfilling its obligations or permitted Functions under this Declaration; (d) the obligations of the Master Association with respect to Shared Easement Payments; (e) insurance premiums for the insurance carried under Article 9; and (f) all expenses lawfully determined to be common expenses by the Executive Board of the Master Association.**

**Section 2.13    “Declarant” means East West Resort Development XIV, L.P., L.L.L.P., a Delaware limited partnership registered as a limited liability limited partnership, and its specifically designated, successors and assigns. No party other than East West Resort Development XIV, L.P., L.L.L.P. shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real property records of Eagle County, Colorado a written assignment from East West Resort Development XIV, L.P., L.L.L.P. of all or a portion of such rights and privileges.**

**Section 2.14    “Declarant Control Period” shall have the meaning given it in Section 4.4 of this Declaration.**

Section 2.15    "Declaration" means this Master Declaration for Riverfront Village, together with any supplement or amendment to this Declaration, recorded in the Office of the Clerk and Recorder of Eagle County, Colorado.

Section 2.16    "Design Guidelines" means the Design Guidelines and Regulations published and amended and supplemented from time to time by the Design Review Board.

Section 2.17    "Design Review Board" means and refers to the Design Review Board defined in and created pursuant to Design Review Board Covenants.

Section 2.18    "Design Review Board Covenants" means and refers to those certain Restrictive Covenants Establishing Design Review Board for Riverfront Village recorded at Reception No. 200631240 in the Office of the Clerk and Recorder for Eagle County, Colorado.

Section 2.19    "Director" means a member of the Executive Board.

Section 2.20    "District" means, collectively, the Confluence Metropolitan District and the Avon Station Metropolitan District, each a Colorado quasi-municipal corporation.

Section 2.21    "Essential Shared Easements" means the Shared Access Easement, the Hotel Parking Access Improvements Easement and the portion of the Hotel Services Easement consisting of telephone services, as discussed and described in Section 5.17 below.

Section 2.22    "Executive Board" means the governing body of the Master Association, as provided in this Declaration and in the articles of incorporation and bylaws of the Master Association.

Section 2.23    "Expansion Property" means any real property described on Exhibit B hereto which Declarant may subject to this Declaration by one or more duly recorded Supplemental Declarations.

Section 2.24    "First Mortgage" means a mortgage or deed of trust that has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.25    "First Mortgagee" means the mortgagee or beneficiary under a First Mortgage.

Section 2.26    "Fractional Ownership Interest" means an undivided interest in a present estate in fee simple in a Unit together with an exclusive right of possession and occupancy of the Unit as established by the Project Declaration submitting a Project Lot to condominiums or planned community ownership and as contemplated by C.R.S. §38-33-110(8).

Section 2.27    "Function" means any activity, function or service required under this Declaration to be undertaken or performed by the Master Association as well as any activity, function or service otherwise undertaken or performed by the Master Association.

Section 2.28    "Guest" means generally any family member, customer, agent, employee, independent contractor, guest, licensee or invitee of an Owner or Lessee and any person or persons, entity or entities who have any right, title or interest in a Unit or Fractional Ownership Interest which is not the fee simple title to the Unit or Fractional Ownership Interest (including a Lessee), and any family member, customer, agent, employee, independent contractor, guest or invitee of such persons or persons, entity or entities. However, when the term "Guests and Lessees in residence" is used, such term shall mean, with respect to Guests, only those Guests who are in residence within the Owner's Unit or Fractional Ownership

Interest, unless otherwise indicated in any specific case to not include Guests in residence who are also Vacation Club Permitter Users. Further, when the term "Hotel Unit Owner Guest" is used, such term shall mean only those Guests, other than an Owner or the family or invitees of an Owner, who utilize the rental management services of the Hotel Unit Owner and pursuant thereto are in residence within a Hotel Residential Unit.

Section 2.29    "Hotel Map" means the engineering survey or surveys recorded (or to be recorded) in the Office of the Clerk and Recorder of Eagle County, Colorado creating the condominium regime for the Hotel Project developed on Lot 2, as such Lot is depicted on the Subdivision Plat.

Section 2.30    "Hotel Maintenance Standard" means the operation, service, upkeep, repair and restoration necessary to strictly comply with all brand standards, requirements, specifications and programs as established by the hotel brand or chain associated with the Hotel Unit or, if no such association exists, as established with respect to a brand standard equivalent to a "four diamond" hotel as such rating is used by the American Automobile Association ("AAA"), in either instance as the same may be modified from time to time. In the event AAA is no longer in existence or abandons its hotel rating system, the Hotel Maintenance Standard shall be established with respect to a brand standard essentially equivalent to AAA's "four diamond" hotel as rated by a comparable rating agency.

Section 2.31    "Hotel Parking" means the parking spaces and associated drive lanes, entry improvements, security devices, support elements, utility systems and other improvements comprising the underground parking facility portion of the Hotel Unit, as shown (or to be shown) on the Hotel Map.

Section 2.32    "Hotel Parking Access Improvements" shall mean and refer to the entry improvements, gate mechanisms, ramps, guard house (if any), drive lanes and loading dock developed as part of the Hotel Parking, which improvements are generally depicted on Exhibit C hereto, which improvements are to be depicted on the Hotel Map and a non-exclusive easement granted to the Master Association for the benefit of the Vacation Club Members as described in Section 5.3.5 below. Nothing herein or in Exhibit C shall be construed as limiting or in any manner restricting the Hotel Unit Owner's development rights with respect to the Hotel Project and the plans depicted on Exhibit C may be modified from time to time by the Hotel Unit Owner in its sole and absolute discretion, provided the Hotel Parking Access Improvements depicted on the Hotel Map reasonably accomplishes the intent of Section 5.3.5 to provide substantially similar vehicular access to the Vacation Club Members to the separate parking facility located on and serving the Vacation Club Project and vehicular access to other benefited Members to and from the Hotel Parking.

Section 2.33    "Hotel Project" means the condominium regime established by (or to be established by), and all of the property and improvements subject to (or to be subject to), the Hotel Map.

Section 2.34    "Hotel Residential Members" shall be all Owners of Hotel Residential Units, including Declarant so long as Declarant continues to own an interest in any such unit.

Section 2.35    "Hotel Residential Unit(s)" shall mean, individually or collectively, the residential dwelling units located within the Hotel Project.

Section 2.36    "Hotel Services" means those services to be provided to the Master Association as described in Section 5.6 below. The Hotel Services may be expanded or reduced as described in Section 5.6 below.

Section 2.37    "Hotel Unit" means any separately subdivided unit located within the Hotel Project which will be created by the Hotel Map and designated as "Hotel Unit" on the Hotel Map, and which has been

granted a temporary or permanent certificate of occupancy or other evidence of the right to occupy the Hotel Unit by the Town of Avon.

Section 2.38    "Hotel Unit Owner" means the record owner(s) of the fee simple title interest in and to the Hotel Unit, excluding, however, any record owner with an interest therein merely as a mortgagee (unless such mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

Section 2.39    "Lessee" means generally the person or persons, entity or entities who is or are the lessee under a lease or a rental of all or any part of a Unit or Fractional Ownership Interest. The term Lessee shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee, but it shall not include the Master Association or any governmental entity (which term shall include but is not limited to special districts formed pursuant to Colorado law). However, when the term "Guests and Lessees in residence" is used, such term shall mean, with respect to Lessees, only those Lessees who are in residence within the Owner's Hotel Residential Unit, Riverfront Residential Unit, Vacation Club Unit or Fractional Ownership Interest, unless otherwise indicated in any specific case to not include Lessees in residence who are also Vacation Club Permitted Users.

Section 2.40    "Limited Common Area" means a portion of the Common Area exclusively benefiting one or more Classes or one or more, but less than all, Units or Projects, the rights and obligation of such Limited Common Area being allocated to the Class(es) or Owners so benefited. A Class or Classes of Directors of the Executive Board may designate an area as Limited Common Area for the exclusive benefit of such Class(es).

Section 2.41    "Limited Function" means a Function exclusively benefiting one or more Classes or one or more, but less than all, Units or Projects, the rights and obligation of such Limited Function being allocated to the Class(es) or Owners so benefited. A Class or Classes of Directors of the Executive Board may designate a Function as a Limited Function for the exclusive benefit of such Class(es).

Section 2.42    "Management Agreement" means any contract or arrangement with a person or entity that provides management services entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance and management of the Common Area and/or the performance of Functions.

Section 2.43    "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement.

Section 2.44    "Map" or "Maps" means and includes any engineering survey or surveys of a portion of the Property (whether titled as a map, plat or otherwise and whether in two or three dimensions) locating any Project Lot(s) or the Units in the respective Buildings and the Buildings on the Property, and/or depicting the floor plans of the Units, together with other drawings or diagrammatic plans and information regarding any portion of the Property as recorded in the Office of the Clerk and Recorder of the County of Eagle, Colorado and as such Map may be supplemented or amended. The definition of "Map" in this Declaration shall include those documents defined as a "map" and a "plat" under the Act.

Section 2.45    "Master Association" means Riverfront Village Master Association, a Colorado nonprofit corporation, and its successors and assigns. The Master Association acts through its Executive Board unless a vote of the Owners is otherwise specifically required by the Act, this Declaration or the articles of incorporation or bylaws of the Master Association.

**Section 2.46**    "Master Association Documents" means the basic documents governing the Master Association, including, but not limited to, this Declaration, the articles of incorporation and bylaws of the Master Association, and any procedures, rules, regulations or policies relating to the Master Association adopted under such documents by the Master Association or the Executive Board.

**Section 2.47**    "Maximum Rate" shall mean three percentage points greater than that rate of interest charged by a bank designated from time to time by the Executive Board to the best commercial customers of the designated bank for short-term loans and identified as the "prime rate" by such bank as of the date on which such Maximum Rate is imposed with respect to any amount payable under this Declaration, or if less, the maximum rate allowed by law.

**Section 2.48**    "Members" shall mean individually and collectively the members of the Master Association, which members include the six Classes of Members as follows: the Hotel Residential Members, the Vacation Club Members, the Riverfront Residential Members, the Commercial Members, the Hotel Unit Owner and the Undeveloped Property Owners.

**Section 2.49**    "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Unit, Fractional Ownership Interest, Project Lot or the Hotel Unit, excluding, however, any record owner with an interest therein merely as a mortgagee (unless such mortgagee has acquired fee simple title interest in the Unit or Fractional Ownership Interest pursuant to foreclosure or any proceedings in lieu of foreclosure).

**Section 2.50**    "Project" or "Projects" means a Project Lot or portion of a Project Lot on which one or more Buildings are located, which is submitted to condominium or planned community ownership by a Project Declaration and the associated Map but is not designated as expansion property on such Map. The term "Project" is defined to be mutually exclusive of the term "Undeveloped Property".

**Section 2.51**    "Project Association" or "Project Associations" means the association(s), if any, formed for the purpose of representing Owners within a particular Project.

**Section 2.52**    "Project Declaration" or "Project Declarations" means the recorded declaration, if any, creating a Project within the Property.

**Section 2.53**    "Project Lot(s)" shall mean and refer to Lots 1, 2, 3, 4, 5, 6 and 7 as depicted on the Subdivision Plat or any parcel comprising Undeveloped Property otherwise created as a separate development parcel by the resubdivision of any such Lot and not yet subject to a Project Declaration. Some of the above-described lots are part of the Expansion Property as originally set forth under Exhibit B and nothing herein shall be deemed to subject such lots to this Declaration unless and until a Supplement Declaration and, if applicable, a Supplement Map is recorded subjecting such lot(s) to the terms of this Declaration.

**Section 2.54**    "Property" means the real property described on the attached Exhibit A.

**Section 2.55**    "PUD Plan" means those certain documents relating to the planned unit development for Riverfront Village as established by Town of Avon Ordinance No. 06-03, such documents to include, without limitation, the Amended and Restated Development Agreement, the PUD Development Plan, the Subdivision Improvement Agreement and the Subdivision Plat recorded in connection with such zoning approvals.

**Section 2.56**    "Residential Unit" means any separately subdivided unit located on the Property (without consideration of any resubdivision of Residential Units into Fractional Ownership Interests), whether

currently existing or created by subsequent resubdivision, which is designated for residential, lodging or timeshare use and which has been granted a temporary or permanent certificate of occupancy or other evidence of the right to occupy the Unit by the Town of Avon. The Residential Units include the Hotel Residential Units, the Vacation Club Units and the Riverfront Residential Units.

Section 2.57    "Riverfront Residential Members" shall be all Owners of Riverfront Residential Units, including Declarant so long as Declarant continues to own an interest in any such Unit.

Section 2.58    "Riverfront Residential Unit(s)" shall mean, individually or collectively, the Residential Units located within Lots 4, 5, 6 and 7, as such Lots are depicted on the Subdivision Plat. The Riverfront Residential Units expressly exclude the Hotel Residential Units and the Vacation Club Units.

Section 2.59    "Riverfront Village" means the entirety of the Property subject to the terms and provisions of this Declaration.

Section 2.60    "Shared Easements" shall have the meaning set forth in Article 5 below. The Shared Easements include and comprise the Shared Access Easement, the Shared Parking Easement, the Hotel Parking Access Improvements Easement, the Club Recreational Facilities Easement, the Vacation Club Recreational Facilities Easement and the Hotel Services Easement as set forth in Section 5.2 though 5.6, inclusive, below.

Section 2.61    "Shared Easement Owner" shall mean individually the Hotel Unit Owner and the Vacation Club Facilities Operator, each with respect to that portion of the Shared Easement areas owned or operated by such person, as applicable.

Section 2.62    "Shared Easement Payments" means and refers to obligations of the Master Association to pay its percentage of Operating Expenses and Capital Expenses relative to the Shared Easements, as set forth in Section 6.5 below.

Section 2.63    "Subdivision Plat" means and refers to that certain Final Plat, Riverfront Subdivision, recorded June 15, 2006 at Reception No. 200615950 in the real property records of Eagle County, Colorado, as such plat may be amended and supplemented from time to time.

Section 2.64    "Supplemental Declaration" means an instrument which subjects any part of the Expansion Property to this Declaration, as more fully provided in Article 15 below.

Section 2.65    "Supplemental Plat" means a subdivision plat or map which depicts any part of the Expansion Property becoming subject to this Declaration through a Supplemental Declaration, as more fully provided in Article 15 below.

Section 2.66    "Undeveloped Property" means any Project Lot or portion of a Project Lot which (i) has not been subdivided into separate parcels of real property by a Project Declaration and associated Map, or (ii) is designated as expansion property on a Map recorded against a Project Lot. The term "Undeveloped Property" is defined to be mutually exclusive of the term "Project", although a Project Lot can be partially a Project and partially Undeveloped Property if the Map associated with a Project Lot designates a portion of the Map as expansion property. It is contemplated that Undeveloped Property is to be conveyed by Declarant to certain third parties and that Undeveloped Property is to be held by a variety of Owners other than Declarant.

Section 2.67    "Undeveloped Property Owners" means all Owners of Undeveloped Property, including Declarant so long as Declarant continues to own an interest in any such Undeveloped Property

Section 2.68    "Unit" means any Residential Unit, Commercial Unit or Hotel Unit, regardless of whether or not developed and existing as part of a Project, specifically excluding, however, any Fractional Ownership Interest in a Unit. Notwithstanding the foregoing, references to a "Unit" in Sections 6.11 through 6.16, inclusive, below shall be deemed to include applicable Fractional Ownership Interests.

Section 2.69    "Vacation Club Access Fees" means the access fees payable to the Hotel Unit Owner by the Vacation Club Members as described in Section 5.14 below.

Section 2.70    "Vacation Club Developer" shall mean the declarant under the Project Declaration establishing the Vacation Club Project.

Section 2.71    "Vacation Club Members" shall be all Owners of Vacation Club Units and the Fractional Ownership Interests developed in connection therewith.

Section 2.72    "Vacation Club Facilities Operator" shall mean the Vacation Club Developer during the declarant control period (established under the Act) with respect to the Project Association for the Vacation Club Project, and during any period that the Vacation Club Recreational Facilities are owned by the Vacation Club Developer. If the Vacation Club Recreational Facilities are common elements of the Vacation Club Project, then after the period of such declarant control, the Vacation Club Facilities Operator shall mean the Project Association for the Vacation Club Project.

Section 2.73    "Vacation Club Permitted Users" shall have the meaning as defined in Section 5.9.5 of this Declaration below.

Section 2.74    "Vacation Club Project" means the Project contemplated to be developed on Lots 1 and/or 3, as such Lots are depicted on the Subdivision Plat, within which the individual Units are divided into Fractional Ownership Interests pursuant to applicable provisions of Colorado law.

Section 2.75    "Vacation Club Recreational Facilities" means the pool, hot tubs and restrooms associated with the pool constituting a portion of the Vacation Club Project and as shown (or to be shown) on the Map creating the Vacation Club Project, as more fully described in Section 5.5 below.

Section 2.76    "Vacation Club Unit(s)" shall mean, individually and collectively, the Residential Units located within the Vacation Club Project.

Section 2.77    "Voting/Assessment Percentage" means the percentage apportionment of Assessments for which a Unit is responsible and the percentage apportionment of voting rights of an Owner, each as calculated pursuant to Section 4.3 below.

Each capitalized term not otherwise defined in this Declaration shall have the same meanings specified or used in the Act.

### **ARTICLE 3 MASTER ASSOCIATION FUNCTIONS AND DUTIES**

Section 3.1    Property Maintenance Function. Subject to Section 3.9 below, the Master Association shall provide for the care, operation, management, maintenance, improvement, repair and replacement of all Common Area. Moreover, the Master Association may provide for the care and maintenance of other areas of the Property if the Master Association is charged with such responsibility pursuant to an agreement as described in Section 3.21 or 3.22 below, or otherwise. Such function may include, without limitation, removal of snow from and application of sand and salt to parking areas and

private roads, walks, drives, malls, stairs and other similar Common Area as necessary for their customary use and enjoyment; maintenance and care of open space or unimproved areas included in the Common Area and of plants, trees and shrubs in such open space or unimproved areas; and maintenance of lighting provided for parking areas and private roads, walks, drives, malls, stairs and other similar Common Area. The Executive Board shall be the sole judge as to the appropriate maintenance, operation and management of the Common Area and other areas of the Property consistent with intent of this Declaration.

**Section 3.2     Operation Function.** The Master Association may do all things that are within the power of the District and which are not being adequately performed by the District which may be reasonably necessary or desirable to keep and maintain Riverfront Village as a secure, attractive and desirable community.

**Section 3.3     Public Health and Safety Function.** The Master Association may provide public health and safety services within Riverfront Village, including but not limited to, providing health care services and facilities, security personnel, security systems, fire protection facilities and a fire water system which may include periodic fire prevention inspections and equipment certifications. NEITHER THE MASTER ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN RIVERFRONT VILLAGE. NEITHER THE MASTER ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR FOR THE INEFFECTIVENESS OF ANY SECURITY MEASURE UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT OR FRACTIONAL OWNERSHIP INTEREST, AND ALL GUESTS, LESSEES AND VACATION CLUB PERMITTED USERS OF ANY OWNER, ACKNOWLEDGE THAT THE MASTER ASSOCIATION AND ITS EXECUTIVE BOARD, DECLARANT AND ANY SUCCESSOR DECLARANT, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY UNIT OR FRACTIONAL OWNERSHIP INTEREST AND ALL GUESTS, LESSESS AND VACATION CLUB PERMITTED USERS OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT THE MASTER ASSOCIATION, ITS EXECUTIVE BOARD AND COMMITTEES, DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LESSEE OR VACATION CLUB PERMITTED USER OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN RIVERFRONT VILLAGE.

**Section 3.4     Transportation Function.** The Master Association may provide for the operation, maintenance and repair of one or more transportation systems within Riverfront Village. The Master Association, as it deems necessary, may extend such transportation systems to areas outside of Riverfront Village to provide transportation to and from Riverfront Village. Such transportation systems may include, but are not limited to, bus, automobile, ski lift, gondola or rail systems and any other facilities deemed necessary or appropriate for the proper operation and maintenance of such systems.

**Section 3.5      Recreation Function.** The Master Association may provide a year-round recreational program of suitable variety and such miscellaneous equipment as may be necessary therefor, including but not limited to, informing visitors of recreation available and stimulating their participation therein; conducting, operating, managing and maintaining programs for children, including but not limited to, daycare facilities and schools, and such facilities and equipment as may be appropriate for use in connection therewith; constructing, caring for, operating, managing, maintaining, improving, repairing and replacing within Riverfront Village such entertainment, recreational or club amenities and such equipment as may be desirable or appropriate.

**Section 3.6      Marketing Function.** The Master Association may provide suitable and continuing programs to promote Riverfront Village including but not limited to, stimulating and coordinating major events, advertising and placing articles in news and other media, establishing uniform standards for promotional programs of individual members, involvement in lecture tours, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers for the accommodations of Guests and visitors.

**Section 3.7      Television Function.** The Master Association may, to the extent not provided by the Hotel Unit Owner, provide for, and enter into contracts and licenses with others for, the installation, operation, maintenance, improvement, repair and replacement of community satellite dishes, cable television equipment and related facilities.

**Section 3.8      Telephone and Broadband Function.** The Master Association may, to the extent not provided by the Hotel Unit Owner, provide for, and enter into contracts and licenses with others for, the installation, operation, maintenance, improvement, repair and replacement of telephone or other communication lines, a central telephone switchboard system, broadband facilities and systems, and related equipment and facilities.

**Section 3.9      Restrictions on New Functions, Common Area.** Notwithstanding the provisions of Section 3.1 through 3.8, inclusive, above, none of the Functions described in such Sections, and no acquisition, disposition or material modification of Common Area, may be undertaken without the affirmative approval of a majority of the Directors of the Executive Board, including at least one (1) Director from each Class of Directors (in addition to any required vote of Owners as set forth in this Declaration, the Bylaws of the Master Association or the Act (e.g., conveyance of Common Area). In the event Directors from one or more, but less than all, Classes desire to approve a Function or acquire Common Area, such Class Directors may designate such area as Limited Common Area or Function as a Limited Function benefiting exclusively such Class or Classes. Shared Easements are not Common Area and expansions, if any, to Shared Easements are discussed separately in Section 5.8 below.

**Section 3.10      Exterior Maintenance Function.**

**3.10.1**      All Owners are expected to maintain the exterior of their Units and all Project Associations or Owners, as is applicable, are expected to maintain the exteriors of their Projects in a first class manner consistent with the high standards of quality typical within Riverfront Village, and the Master Association does not intend to provide any exterior maintenance and repair of such property. If any Owner fails to maintain the exteriors of its Unit or any Project Association or Owner fails to maintain the exteriors of its Project or related improvements or property or fails to perform any acts of maintenance or repair required under this Declaration, the Master Association may provide, by the affirmative vote of a majority of the members of the Executive Board present at any meeting thereof, exterior maintenance and repair upon such property after thirty (30) days' notice of such failure to the Owner of such Unit or Project or the applicable Project Association. In addition, the Master Association may, after notice reasonable under the circumstances

but which circumstances may require that no notice be provided, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any other property. The cost of such exterior maintenance and repairs of a Unit, together with an administrative fee in the amount of ten percent (10%) of total direct costs, including costs of personnel, equipment and other amounts, expended by the Master Association in furtherance of this Section, shall be assessed against the Owner of such Unit (or with respect to a Unit in a Fractional Project, to the Project Association of such Fractional Project) and shall be a lien and obligation of the Owner pursuant to Section 6.11 herein. The cost of such maintenance or repairs of a Project, together with an administrative fee in the amount of ten percent (10%) of total direct costs, including costs of personnel, equipment and other amounts, expended by the Master Association in furtherance of this Section, shall be assessed against all Owners of Units within such Project and shall be a lien and obligation of such Owners pursuant to Section 6.11 herein. In the alternative, the Master Association may directly assess the Project Association responsible for such exterior maintenance and repair with such cost being a lien and obligation of all Owners of Units within the applicable Project pursuant to Section 6.11 herein. For the purpose of performing the exterior maintenance authorized by this Section 3.10.1, the Master Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner or Project Association, to enter upon such Unit or Project during reasonable hours on any day. The Master Association or its designee is hereby granted an irrevocable license over all property in Riverfront Village to inspect (in a reasonable manner) property within Riverfront Village (but specifically excluding the interior of any Unit) in order to determine whether any maintenance or repair is necessary under this Section 3.10.1.

3.10.2 Neither Declarant, the Master Association, nor any of their respective directors, members, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any Unit or Project or improvements or portion thereof or to repair or maintain the same (except to the extent required as an Owner of a Unit). Declarant, the Master Association or any member of the general public, firm or corporation undertaking such repairs or maintenance shall not be liable for any incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Unit or Project or improvements or portion thereof.

Section 3.11 Design Review Board Function. The Master Association shall have the power, subject to the primary power of the Design Review Board, to fully enforce the covenants and restrictions contained in the Design Review Board Covenants and the Design Guidelines if requested by the Design Review Board or as otherwise permitted under the Design Review Board Covenants. Expenses of the Design Review Board not covered by fees charged by the Design Review Board will be paid by the Master Association in accordance with the Design Review Board Covenants and will constitute a Common Expense hereunder. It is the intent of the Design Review Board to charge fees to applicants generally in amounts designed to cover the costs of the Design Review Board with respect to each application.

Section 3.12 Regulation of Use and Conduct. The Master Association Documents establish a framework of affirmative and negative covenants, easements, and restrictions that govern Riverfront Village. Within that framework, the Executive Board and the Owners must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology. Therefore, this Section establishes procedures for modifying and expanding the initial rules and regulations for the Master Association. This Section is not intended to apply to rules and regulations relating to use and operation of the Common Areas, which the Executive Board may adopt by resolution, nor to administrative policies, which the Executive Board may adopt by resolution to interpret, define or implement the rules and regulations. Examples of such rules and regulations or administrative policies not governed by this Section include rules establishing the hours of operation of a recreational facility and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. At the request of any Owner, the Master Association will provide, without cost, a copy of the then current rules and regulations.

3.12.1 The Master Association shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable within Riverfront Village and to implement the provisions of this Declaration, including but not limited to, rules and regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals to the extent animals are restricted in Section 8.7 below; to protect wildlife; to regulate signs; to regulate weed and pest control on property within Riverfront Village; to regulate use of any and all Common Area to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within Riverfront Village; and to protect and preserve property and property rights. All rules and regulations shall comply with the Master Association Documents.

3.12.2 Subject to the terms of this Section 3.12 and the Executive Board's duty to exercise business judgment and reasonableness on behalf of the Master Association and the Owners, the Executive Board may modify, amend, cancel, limit, create exceptions to, or expand the rules and regulations of the Master Association. The Executive Board shall send notice to all Owners and all Project Associations concerning any proposed action at least fifteen (15) days prior to an Executive Board meeting at which such action is to be considered. The notice shall include the text of the new rule or an explanation of any changes to be made to the rules and regulations. Owners and representatives of Project Associations shall have a reasonable opportunity to be heard at an Executive Board meeting prior to such action being taken. Such action by the Executive Board shall be deemed effective upon the affirmative vote of a majority of the Executive Board, including the affirmative vote of at least one (1) Director from each Class of Directors.

3.12.3 Owners may cancel changes to the rules and regulations approved by the Executive Board or may modify, cancel, limit, create exceptions to, or expand any other rules and regulations, upon the affirmative vote of Owners representing more than sixty percent (60%) of the total votes of each Class in the Master Association, at a special meeting of the Owners called for that purpose. If the Executive Board receives a petition, signed by the number of Owners necessary to call a special meeting, for the purpose of voting on changes to the rules and regulations proposed by the Executive Board, the proposed changes will be ineffective until after such meeting is held and will be subject to the outcome of such meeting.

3.12.4 Except as may be set forth in this Declaration (either initially or by amendment) or in the initial rules and regulations of the Master Association, all rules and regulations shall comply with the following provisions:

3.12.4.1 The rules and regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Units, Projects, Owners, Lessees, Guests or members of the general public.

3.12.4.2 To the extent protected under the Act, the rights of Owners to display religious, political and holiday signs, symbols, and decorations on or inside their Units shall not be abridged. No rules shall regulate the content of political or religious signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria) to the extent permitted under the Act.

3.12.4.3 No rule shall interfere with the Owners freedom to determine the composition of their households.

3.12.4.4 No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner except as permitted pursuant to this Declaration. Nothing in this provision shall prevent the Master Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area or from denying use privileges to individual Owners and their Guests and Lessees who are delinquent in paying Assessments, abuse the Common Area, or violate the Master Association Documents. This provision does not affect the right to

increase the amount of Assessments as provided in Article 5. This provision is not violated by the change in ownership percentage and the allocation of financial responsibility for Assessments that occurs when property is added to or removed from this Declaration pursuant to Article 16.

3.12.4.5 No rule shall prohibit or restrict short-term or nightly rentals of Units, or the leasing or transfer of any Unit, or require the consent of the Master Association or Executive Board for leasing or transferring any Unit.

3.12.4.6 No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

3.12.4.7 No rule or action by the Master Association shall unreasonably impede Declarant's right to develop Riverfront Village or the right of others to develop within Riverfront Village in compliance with the PUD Plan.

3.12.4.8 No rule or action by the Master Association shall unreasonably impact the activities or operations of the Hotel Project or the Vacation Club Project.

The limitations in Sections 3.12.4.1 through 3.12.4.8 shall only limit rulemaking authority exercised under this Section 3.12 and shall not apply to amendments to this Declaration adopted in accordance with Article 17. In the event of any conflict between any provision of Sections 3.12.4.7 and/or 3.12.4.8 and provisions elsewhere in this Section 3.12, the provisions of Sections 3.12.4.7 and/or 3.12.4.8 shall control.

**Section 3.13 Taxes.** The Master Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with any Common Area or Functions. Notwithstanding the foregoing, it is contemplated that all taxes, assessments and other charges by the State or any governmental or political subdivision or any special improvement district or any other taxing agent or assessing authority shall be assessed against and collected on each Unit or Project Lot, as is applicable, each of which shall be carried on the tax records as a separate and distinct parcel for that purpose. For the purpose of such assessment, valuation of the Common Area shall be apportioned among the separately subdivided Units and Project Lots. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Units and Project Lots as provided pursuant to Colorado Revised Statutes Subsection 38-33.3-105(2).

**Section 3.14 Right to Dispose of Common Area; Third Party Rights in Common Area.** Subject to the provisions of Sections 3.17.8 below, the Master Association shall have the full power and authority to sell, lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Area; provided, however, that no such action shall have a material adverse effect on a particular Class without the affirmative vote of at least one (1) Director representing such affected Class. Upon action of the Executive Board, including the affirmative vote of at least one (1) Director from each Class, the Master Association shall be entitled to contract with third parties, including, without limitation, other residential or recreational associations or individuals, allowing such persons the use and enjoyment of all or a portion of the Common Area under such terms and for such charges as may be acceptable to the Executive Board of the Master Association. It is acknowledged and agreed that neither the Shared Easements nor the areas and property subject to the Shared Easements are Common Area and that the Master Association holds none of the rights of this Section 3.14 with respect to such easements and areas.

**Section 3.15    Governmental Successor.** Subject to applicable provisions of the Act and upon action of the Executive Board, including the affirmative vote of at least one (1) Director from each affected Class, any Common Area and any Function may be turned over to a quasi-governmental or governmental entity including any special district or metropolitan district which is willing to accept and assume the same upon such terms and conditions as the Master Association shall deem to be appropriate.

**Section 3.16    Records.** The Master Association shall keep financial records sufficiently detailed to enable the Master Association to comply with Section 38-33.3-316(8) of the Act concerning statements of unpaid assessments. All financial and other records shall be made available for examination by any Owner or such Owner's authorized agents during normal business hours and under other reasonable circumstances. The Master Association may charge a reasonable fee for copying such materials.

**Section 3.17    Implied Rights of the Master Association.** The Master Association shall give and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

3.17.1       adopt and amend the bylaws and rules and regulations of the Master Association, subject to applicable restrictions contained in this Declaration and in the Act;

3.17.2       adopt and amend budgets for revenues, expenditures and reserves and collect Assessments, including without limitation Assessments for Common Expenses, from Owners;

3.17.3       hire and terminate Managing Agents and other employees, agents and independent contractors;

3.17.4       institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Riverfront Village;

3.17.5       make contracts and incur liabilities;

3.17.6       regulate the use, maintenance, repair, replacement and modification of the Common Area;

3.17.7       cause additional improvements to be made as part of the Common Area, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Owners, Lessees, Guests and members of the general public;

3.17.8       acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; provided, however, that the fee interest of a Common Area may not be conveyed or subjected to a security interest unless (a) such action receives approval of the Executive Board as described in Section 3.14 above and of Owners holding sixty seven percent (67%) of the total voting interest in the Master Association or, with respect to Limited Common Area, in the applicable Class(es) of the Master Association, or any greater level of approval if required by the Act; (b) such action is evidenced by a written agreement, or a written ratification of an agreement, executed in the same manner as a deed by the required number of Owners; and (c) such action does not result in a material adverse effect on any Unit's rights of ingress, egress and support. The foregoing does not prohibit a Shared Easement Owner from conveying any property subject to a Shared Easement, which a Shared Easement Owner may convey within its sole and exclusive discretion but no such conveyance shall be deemed to in any manner affect the applicable Shared Easement to which such property remains subject;

3.17.9 impose and receive any payments, fees or charges for the use, rental or operation of Common Area which is reasonable, customary and related to the costs of such Common Area;

3.17.10 impose and receive charges for late payments of Assessments, recover reasonable attorney's fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Master Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Master Association Documents;

3.17.11 impose and receive reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

3.17.12 provide for the indemnification of the Master Association's officers and directors and maintain directors' and officers' liability insurance;

3.17.13 assign its right to future income, including without limitation, its right to receive Assessments, upon action of the Executive Board, including the affirmative vote of at least one (1) Director from each Class;

3.17.14 obtain and pay for legal, accounting and other professional services;

3.17.15 perform any Function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable; and

3.17.16 enjoy and exercise any other power or authority which similar associations may now or hereafter enjoy or exercise in the state of Colorado.

**Section 3.18 Master Association Documents.** Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Master Association Documents. The obligations, burdens and benefits of membership in the Master Association touch and concern the Property and are, and shall be, covenants running with each Unit and Fractional Ownership Interest for the benefit of all other Units, Fractional Ownership Interests and the Common Area.

**Section 3.19 Owner's Negligence.** In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Area or Shared Easement areas is caused through or by the negligent or willful act or omission of an Owner or an Owner's Guest, Lessee or Vacation Club Permitted User, or by any Project Association, then the expenses incurred by the Master Association or Shared Easement Owner for such maintenance, repair, or replacement shall be a personal obligation of such Owner or, in the case of a negligent or willful act or omission of a Project Association, then of all Owners of Units within that Project, in either instance, however, only to the extent not covered by insurance proceeds; and, if an Owner fails to repay the expenses incurred by the Master Association or Shared Easement Owner within fifteen (15) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses shall automatically become a default Assessment determined and levied against such Owner's Unit, enforceable by the Master Association in accordance with Sections 6.10, 6.11 and 6.12 below.

### **Section 3.20 Enforcement of Master Association Documents.**

3.20.1 This Declaration and the Bylaws constitute a general scheme benefiting each Unit and the Property as a whole and may be enforced by Declarant, the Master Association, a Project Association, a Shared Easement Owner or an aggrieved Owner. A violation of any of the provisions of this

Declaration causes irreparable damage to the Property. Therefore, subject to the terms and conditions of this Section 3.20 and except as otherwise expressly provided elsewhere in this Declaration, Declarant, the Master Association, a Project Association, a Shared Easement Owner and any aggrieved Owner may prosecute a proceeding at law or in equity against anyone violating or attempting to violate the provisions of this Declaration, including, without limitation, an action for a temporary restraining order, preliminary injunction and permanent injunction. Without limiting the generality of the foregoing, in the event of any nonpayment of Shared Easement Payments and/or Vacation Club Access Fees, a Shared Easement Owner may pursue any or all of the following remedies: (a) a Shared Easement Owner may prosecute a proceeding at law or in equity against the Master Association, any Project Association whose Owners are delinquent in such payments and/or any delinquent Owner for the collection of outstanding Shared Easement Payments and/or Vacation Club Access Fees; provided, however, that any such payments made by the Master Association or Project Association on behalf of a delinquent Owner, together with all costs, expenses, late fees, interest or other charges related thereto, shall be fully allocated to the delinquent Owner and any judgment lien filed in connection with such legal action by a Shared Easement Owner shall attach solely to the Unit(s) of the delinquent Owner, (b) a Shared Easement Owner shall be entitled to the remedy of specific performance to require that the Master Association and/or applicable Project Association vigorously pursue all remedies against any delinquent Owner(s) and/or Project Association(s), including the remedy of foreclosure of Assessment liens against delinquent Owner(s), it being acknowledged and agreed that such right to specific performance is appropriate and just in these circumstances, (c) a Shared Easement Owner shall have the right and power to temporarily suspend the right of use and enjoyment of the Shared Easements (except Essential Shared Easements) by individual delinquent Owners and their respective Guests, Lessees and Vacation Club Permitted Users, (d) a Shared Easement Owner may impose late charges against the Master Association as described in Section 6.5.6 and collection costs relating to delinquent payments of the Shared Easement Payments and/or Vacation Club Access Fees, which charges and costs, if any, shall be fully allocated to the delinquent Owner, and (e) a Shared Easement Owner may impose any other measures and/or pursue any other remedies otherwise available to such Shared Easement Owner.

**3.20.2** The Master Association, Declarant, a Project Association, a Shared Easement Owner or an aggrieved Owner may recover from anyone violating or attempting to violate any provision of this Declaration reasonable attorneys' fees and other legal costs incurred by such party in successfully enforcing the provision, regardless of whether suit is initiated. If such person is an Owner and the successful party is the Master Association, the amount of the fees and costs constitute a lien against the Owner's Unit which may be foreclosed in accordance with Section 6.11. In addition, if any Owner fails to comply with this Declaration, the Bylaws or the rules and regulations of the Master Association promulgated pursuant to Section 3.12, the Master Association may (i) temporarily suspend the Owner's right to use or enjoy the Common Area, and (ii) impose other appropriate measures; provided, however, that before imposing any of those measures (other than late charges, interest and reasonable collection costs relating to delinquent payments), the Executive Board will promulgate rules and regulations relating to those measures including provisions affording a defaulting Owner notice of the claimed default and an opportunity to be heard by the Executive Board prior to the imposition of the disciplinary measure.

**3.20.3** Before a Project Association or an aggrieved Owner may prosecute any proceeding at law or in equity enforcing the provisions of this Declaration or seeking other relief relating to a violation or attempted violation of the provisions of this Declaration, the Project Association or Owner will first give written notice to the Executive Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the person alleged to have violated or attempted to violate the provisions of this Declaration. The Executive Board may initiate a proceeding in law or in equity to enforce the provisions of this Declaration, to prevent a violation or to obtain damages for damage to the Common Area resulting from the violation, or may otherwise enforce the provisions of this Declaration. The Project Association or aggrieved Owner may exercise any of its rights under Section 3.20.1 if (i) the violation or attempted violation results or would result

in direct and immediate physical damage to the Project, on the one hand, or the Owner's Unit, on the other, or (ii) the Master Association fails to initiate enforcement action with respect to the violated provisions of this Declaration within 60 days after the Executive Board receives the Project Association's or Owner's notice.

**Section 3.21 Cooperation with Entities.** The Master Association may contract or cooperate with the Project Associations, the District, the Hotel Unit Owner or with other homeowners' associations or entities as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Master Association or such other organizations, for the benefit of Owners and their Lessees and Guests.

**Section 3.22 Cooperation with Project Associations.** The Executive Board shall assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations and other documents governing the applicable Project, and the Master Association shall cooperate with each Project Association so that each of those entities may most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time the Master Association and the various Projects Associations may use the services each of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Master Association for the Owners of Units in the particular Project or by an item in the Project Association's budget which shall be collected through the Assessments of such Project Association and remitted to the Master Association. If a Project Association fails, neglects or is unable to perform a duty or obligation required by its Project Declaration or other Project documents, then the Master Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Master Association may charge the Project Association a reasonable fee for the performance of such functions.

**Section 3.23 LIMITATION OF LIABILITY OF MASTER ASSOCIATION.** NOTWITHSTANDING THE DUTY OF THE MASTER ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA, AND EXCEPT TO THE EXTENT COVERED BY MASTER ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 9, THE MASTER ASSOCIATION SHALL NOT BE LIABLE TO OWNERS OR THE PROJECT ASSOCIATIONS FOR INJURY OR DAMAGE CAUSED BY ANY LATENT CONDITION OF THE COMMON AREA TO BE MAINTAINED AND REPAIRED BY THE MASTER ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS OR THE PROJECT ASSOCIATIONS.

**Section 3.24 Payments to Working Capital Account.** In order to provide the Master Association with adequate working capital funds, (a) the Master Association shall collect at the time of the sale of each Unit an amount equal to three (3) months' installments of annual Assessments at the rate in effect at the time of the sale, and (b) the Master Association shall collect at the time of the initial sale of each Fractional Ownership Interest an amount equal to \$40.00 per Fractional Ownership Interest or the equivalent of same in the event the Vacation Club Unit is other than a two-bedroom/two-bathroom Unit or the Fractional Ownership Interest is other than an annually recurring interest, as described in the paragraph immediately below. Such payments to this fund shall not be considered advance payments of annual Assessments. With respect to Units, the working capital deposit shall be returned to each Owner upon the resale of the Unit, provided that the new purchaser of the Unit has deposited the then-current required working capital deposit with the Master Association. With respect to Fractional Ownership Interests, no working capital deposit shall be required upon the subsequent resale of the Fractional Ownership Interest, and the original purchaser of the Fractional Ownership Interest shall not be entitled to any reimbursement of the working capital deposit from the Master Association or otherwise. Sales of Undeveloped Property shall not be subject to the requirement of a working capital deposit.

The foregoing \$40.00 per Fractional Ownership Interest working capital deposit applies to any Fractional Ownership Interest in a Vacation Club Unit that contains two bedrooms and two bathrooms, which may also be known in the Vacation Club Project Declaration as a Two-Bedroom Lock-Off Unit, and for which the Owner is entitled to use a Vacation Club Unit on a recurring basis every year. In the event that a Fractional Ownership Interest contains one bedroom and one bathroom, the working capital deposit shall be adjusted to \$20.00, so that the amount payable for the working capital deposit is proportionally adjusted based on the number of bedrooms and associated bathrooms in the applicable Vacation Club Unit. Further, in the event the applicable Fractional Ownership Interest allows for use and occupancy of a Vacation Unit on a recurring basis every other year, which may also be known in the Vacation Club Project Declaration as a Biennial Vacation Ownership Interest, the amount of the working capital deposit for any applicable Fractional Ownership Interest shall be one-half of the amount that would be payable if the Fractional Ownership Interest allowed for use of a Vacation Club Unit on an annual basis.

**Section 3.25 Delegation of Management and Maintenance Duties; Association Termination Rights.** The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration and no such delegation shall modify specific requirements in the Master Association Documents for approval of certain actions by the Executive Board or members of the Master Association. Notwithstanding any provisions contained in this Declaration to the contrary, the Association shall have the right to terminate the Management Agreement pursuant to Section 38-33.3-305 of the Act, and/or any other agreement, lease or contract subject to termination pursuant to such Section of the Act, only and exclusively upon the vote of a majority of the members of the Executive Board and a vote of the Owners representing an aggregate voting interest of eighty-five (85%) or more of the Voting/Assessment Percentages in the Master Association, it being acknowledged and agreed that Owners purchasing within Riverfront Village are relying on the quality of maintenance and service expected within Riverfront Village and that continuity of management is critical to maintaining such quality and protecting such standards and expectations on behalf of all Owners. The Executive Board shall not be liable for any omission or improper exercise by a Managing Agent of any duty, power or function so delegated by written instrument executed by or on behalf of the Executive Board.

## **ARTICLE 4** **MEMBERSHIP AND VOTING IN MASTER ASSOCIATION**

**Section 4.1 Master Association Membership.** Every Owner shall be a member of the Master Association. The Owners of the Project Lots shall be members until such time as a Project Lot is further subdivided in accordance with a Project Declaration and associated Map, at which time each Owner of such subdivided Units within the Project shall be a member for the period of the Owner's ownership of the Unit. No Owner, whether one or more persons, shall have more than one membership per Unit and/or Fractional Ownership Interest owned, as applicable. Membership in the Master Association shall be appurtenant to, and may not be separated from, ownership of a Unit, Fractional Ownership Interest or Project Lot.

**Section 4.2 Classes of Membership.** There shall be six (6) classes of membership in the Master Association as follows: the Hotel Residential Members, the Vacation Club Members, the Riverfront Residential Members, the Commercial Members, the Hotel Unit Owner and the Undeveloped Property Owners.

**Section 4.3 Voting Rights.** Each Unit and Fractional Ownership Interest shall be allocated a "Voting/Assessment Percentage" of votes for the purpose of matters relating to Master Association issues as set forth below. All members of the Master Association shall be entitled to vote on all matters affecting Riverfront Village which are required by this Declaration or the Act to be submitted to the vote of the Owners; provided, however, certain issues relating to the operation and maintenance of Riverfront Village do

and may affect only the valid interest of one or more, but less than all, of the Classes, such as the operation and maintenance of certain Shared Easements benefiting some but not all of the Classes as described herein. In such event, the voting percentage allocated to each benefited Unit shall be as calculated as provided in Section 4.3.8. The Master Association shall not have a vote with respect to any Unit that may be owned by it. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Master Association may exercise such voting rights subject to and in accordance with the provisions of this Declaration and those of the bylaws of the Master Association. The Voting/Assessment Percentage of each Unit shall be calculated as follows:

4.3.1        Hotel Residential Units. Each Hotel Residential Unit shall be allocated a Voting/Assessment Percentage equal to the number of actual bedrooms comprising the Hotel Residential Unit as a percentage of the aggregate number of bedrooms (both actual and, for Commercial Units and the Hotel Unit, equivalent bedrooms) comprising all Units within Riverfront Village, then multiplied by an adjustment percentage equal to one hundred percent (1.00). In determining the number of actual bedrooms, one-room studio Units shall be considered a one (1) bedroom Unit, and lofts generally open to the floor below and dens not permitted as a bedroom per applicable building codes shall not be considered a bedroom.

4.3.2        Vacation Club Units. Each Vacation Club Unit shall be allocated a Voting/Assessment Percentage equal to the number of actual bedrooms comprising the Vacation Club Unit as a percentage of the aggregate number of bedrooms (both actual and, for Commercial Units and the Hotel Unit, equivalent bedrooms) comprising all Units within Riverfront Village, then multiplied by an adjustment percentage equal to one hundred thirty-three and one-third percent (1.333). In determining the number of actual bedrooms, one-room studio Units shall be considered a one (1) bedroom Unit, and lofts generally open to the floor below and dens not permitted as a bedroom per applicable building codes shall not be considered a bedroom. The Voting/Assessment Percentage calculated with respect to each Vacation Club Unit divided into Fractional Ownership Interests will be allocated to the Owners of the Fractional Ownership Interests comprising such Vacation Club Unit on the same basis as each Owner's fractional interest in the Vacation Club Unit; meaning, by way of example and not of limitation, that if a Vacation Club Unit is divided into Fractional Ownership Interest constituting a 1/52 share of such Vacation Club Unit that entitles the Owner to occupy a Vacation Club Unit on a recurring basis every year, then each Owner of such a Fractional Ownership Interest therein shall be entitled to cast 1/52 of the votes with respect to such Vacation Club Unit.

4.3.3        Riverfront Residential Members. Each Riverfront Residential Unit shall be allocated a Voting/Assessment Percentage equal to the number of actual bedrooms comprising the Riverfront Residential Unit as a percentage of the aggregate number of bedrooms (both actual and, for Commercial Units and the Hotel Unit, equivalent bedrooms) comprising all Units within Riverfront Village, then multiplied by an adjustment percentage equal to sixty six and two-thirds percent (0.667). In determining the number of actual bedrooms, one-room studio Units shall be considered a one (1) bedroom Unit, and lofts generally open to the floor below and dens not permitted as a bedroom per applicable building codes shall not be considered a bedroom. Notwithstanding the foregoing, in the event that any Fractional Ownership Interests are created in Riverfront Residential Unit(s), or Riverfront Residential Unit(s) are otherwise operated as a vacation ownership club, equity or non-equity club or other vacation ownership-related club (but expressly excluding the operation of a rental pool or other rental management program), the adjustment percentage applicable to such Riverfront Residential Unit(s) shall be increased from 0.667 to an adjustment percentage of 1.333. In the event that any Riverfront Residential Unit(s) are operated as a hotel (but expressly excluding the operation of a rental pool or other rental management program), the adjustment percentage applicable to such Riverfront Residential Unit(s) shall be increased from 0.667 to an adjustment percentage of 1.00; provided, however, that in the event any such rental pool or rental management program otherwise excluded from such adjustment is managed by the Hotel Unit Owner or operator of the Hotel Unit and the applicable Unit(s) become entitled to use the Hotel Services in connection with management, the Unit(s) included in such pool or program shall not be excluded and shall be adjusted to an adjustment percentage of 1.00.

4.3.4     **Commercial Members.** Each Commercial Unit shall be allocated a Voting/Assessment Percentage equal to the number of equivalent bedrooms comprising the Commercial Unit as a percentage of the aggregate number of bedrooms (both actual and, for Commercial Units and the Hotel Unit, equivalent bedrooms) comprising all Units within Riverfront Village, then multiplied by an adjustment percentage equal to one hundred percent (1.00). In determining the number of equivalent bedrooms, each six hundred (600) square feet of interior air space of the Commercial Unit shall be considered one (1) bedroom. Remainder areas of a Commercial Unit of less than six hundred (600) square feet shall be allocated a fraction of a bedroom equal to such remainder square footage divided by six hundred (600).

4.3.5     **Hotel Unit Owner.** The Hotel Unit Owner shall be allocated a Voting/Assessment Percentage equal to the number of equivalent bedrooms comprising the the Hotel Unit, excluding all areas of the Hotel Unit subject to a Shared Easement, as a percentage of the aggregate number of bedrooms (both actual and, for Commercial Units and the Hotel Unit, equivalent bedrooms) comprising all Units within Riverfront Village, then multiplied by an adjustment percentage equal to one hundred percent (1.00). In determining the number of equivalent bedrooms, each six hundred (600) square feet of interior air space of the Hotel Unit shall be considered one (1) bedroom. Remainder areas of the Hotel Unit of less than six hundred (600) square feet shall be allocated a fraction of a bedroom equal to such remainder square footage divided by six hundred (600).

4.3.6     **Undeveloped Property Owners.** Prior to the creation of the first Project within Riverfront Village, each parcel of Undeveloped Property shall have an equal Voting/Assessment Percentage. Upon the creation of the first Project by the recording of a Project Declaration and associated Map, all Undeveloped Property within Riverfront Village in the aggregate shall be allocated a one percent (1%) Voting/Assessment Percentage, with such Voting/Assessment Percentage allocated equally between each separate parcel of Undeveloped Property. Notwithstanding the formula for calculating a Unit's Voting/Assessment Percentage as set forth above, during the period that Undeveloped Property exists within Riverfront Village, the aggregate Voting/Assessment Percentage for all Units shall be reduced by one percent (1%) so as to permit this vote and assessment of the Undeveloped Property (such one percent reduction allocated among all Units as a proportionate reduction).

Notwithstanding the foregoing or any contrary provision herein, in the event that the Vacation Club Project remains Undeveloped Property, or consists of Units less than the numbers noted below on the applicable dates, the following shall occur: (a) commencing from the date falling one (1) year following the date of issuance of a temporary or permanent certificate of occupancy for the Hotel Unit and for eighty percent (80%) of the Hotel Residential Units and the Hotel Unit is open for business and operating in accordance with the Hotel Maintenance Standard (the "Hotel Opening Date"), the Vacation Club Project shall be deemed for all purposes under this Declaration, including, without limitation, the payment of Vacation Club Access Fees, the levy of Assessments and the allocation of votes pursuant to Voting/Assessment Percentage formula set forth herein, to consist of thirty four (34) Residential Units of two (2) bedrooms each; (b) commencing from the date falling two (2) years following the Hotel Opening Date, the Vacation Club Project shall be deemed for purposes of payment of the Vacation Club Access Fee to consist of fifty (50) Residential Units of two (2) bedrooms each (with voting and Assessment rights and obligations remaining at thirty four (34) Residential Units; and (c) commencing from the date falling three (3) years following the Hotel Opening Date, the Vacation Club Project shall be deemed for all purposes under this Declaration, including, without limitation, the payment of Vacation Club Access Fees, the levy of Assessments and the allocation of votes pursuant to Voting/Assessment Percentage formula set forth herein, to consist of fifty (50) Residential Units of two (2) bedrooms each. In addition, in the event that the Riverfront Residential Units remain Undeveloped Property, or consists of Units less than the numbers noted below on the applicable dates, the following shall occur: (a) commencing from the date falling one (1) year following the Hotel Opening Date, the Riverfront Residential Units shall be deemed for all purposes under this Declaration, including, without limitation, the levy of Assessments and the allocation of votes pursuant to Voting/Assessment

Percentage formula set forth herein, to consist of thirty (30) Residential Units of two (2) bedrooms each; and (b) commencing from the date falling three (3) years following the Hotel Opening Date, the Riverfront Residential Units shall be deemed for all purposes under this Declaration, including, without limitation, the levy of Assessments and the allocation of votes pursuant to Voting/Assessment Percentage formula set forth herein, to consist of forty five (45) Residential Units of two (2) bedrooms each. At any time that the Vacation Club Project is developed, or the Riverfront Residential Units are developed, as applicable, such that either consists of a number of Residential Units greater than the number set forth in this paragraph, the applicable Class shall thereafter become the number of Residential Units and the number of actual bedrooms existing with respect to such Class.

Further, notwithstanding the foregoing, an Undeveloped Property Owner may elect to have a full Voting/Assessment Percentage for each Unit planned but not yet developed on the Undeveloped Property by the recording in the real property records of Eagle County, Colorado of the Undeveloped Property Owner's election to be allocated a Voting/Assessment Percentage for each Unit planned for such Undeveloped Property as described in Exhibit D attached hereto. Nothing herein or in Exhibit D shall be construed as in any way limiting the development rights applicable to a particular parcel of Undeveloped Property and reference should be made solely to the PUD Plan with respect to restrictions on development rights. At the time that a parcel of Undeveloped Property becomes subject to a Project Declaration and associated Map and Units are created as described in Article 2 above, the Units thereby created shall be allocated the Voting/Assessment Percentage as calculated above and the Units deemed to have existed pursuant to this paragraph shall no longer be deemed to exist.

**4.3.7        Allocation of Votes Related to Shared Easements.** Owners acknowledge and agree, by acceptance to the deed to their Unit or Fractional Ownership Interest, that the Shared Easement Owners have a substantial interest in maintaining the quality of amenities, furnishings and improvements that are part of the respective Shared Easements and that these substantial interests require protection by the Master Association; therefore, pursuant to Section 38-33.3-207(4)(a)(I) of the Act, no actions or matters may be approved by the Owners (as to actions or matters which are the subject of a member vote) or undertaken by the Executive Board concerning a Shared Easement without the prior written consent of the applicable Shared Easement Owner, except as otherwise expressly provided in this Declaration.

**4.3.8        Class Voting/Assessments.** As described in this Declaration, an individual Class may at times vote on matters affecting that Class only, and certain groups of Classes may vote on matters affecting such group of Classes only, including, without limitation, the budget ratification vote with respect to each of the Shared Easements as described in Section 6.6 below. In connection with such Class votes, each Unit and/or Fractional Ownership Interest entitled to participate in such vote shall be allocated a voting percentage equal to its Voting/Assessment Percentage as a percentage of the aggregate Voting/Assessment Percentages of all Units and Fractional Ownership Interests entitled to vote.

**4.3.9        Valid Class Interests.** Should the Executive Board deem a particular matter which is required by this Declaration or the Act to be submitted to the vote of the Owners to affect exclusively one Class of membership of the Master Association, the Executive Board may give notice of a meeting of such Class(es) exclusively and conduct a vote on the matter affecting only such Class(es) in order to protect the legitimate, valid interest of such Class(es). Any determination by the Executive Board that a matter should be for the consideration of less than all Owners shall require, in addition to the affirmative vote of a majority of voting Directors of the Executive Board, the affirmative vote of at least one (1) Class Director representing each Class subject to such vote. If a dispute arises as to whether a matter should be subject to the consideration of all Owners or the consideration of one or more Classes of Owners, then any Class Director may submit such issue to binding arbitration in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitration shall be final and binding on the parties and judgment may be entered thereon in a court having jurisdiction over the Master Association. The arbitrator

shall be appointed by the Executive Board, which appointment shall require, in addition to the affirmative vote of a majority of voting Directors, the affirmative vote of at least one (1) Class Director from each Class to be the subject of a proposed vote. In the event the Executive Board is unable to do so within ten (10) days of submitting this matter to arbitration, the arbitrator shall be designated by the chief judge in the District Court of Eagle County, Colorado. The cost and expense of the arbitrator shall be deemed an expense of the Master Association.

4.3.10     Notice of Voting/Assessment Percentages. The Master Association shall, from time to time, upon the affirmative vote of a majority of the members of the Executive Board, calculate and determine the Voting/Assessment Percentages for the Units and place of record in the Office of the Clerk and Recorder of Eagle County, Colorado, a copy of the Notice of Voting/Assessment Percentages in the form attached hereto as Exhibit E, completed with the then-current Voting/Assessment Percentages. At minimum, the Executive Board shall record a Notice of Voting/Assessment Percentages upon the recording of any new Project Declaration or supplement thereto. The Voting/Assessment Percentages for each Unit as set forth in a recorded Notice of Voting/Assessment Percentages shall be presumed to be correct unless made in bad faith or shown to be clearly in error.

4.3.11     Subject to Act. Notwithstanding any provision in this Declaration or in the bylaws of the Association, no term pertaining to voting requirements in this Declaration or in the bylaws shall be construed so as to violate the Act and each such term shall be enforceable only to the extent permitted under the Act.

Section 4.4     Election of Directors. During the period that Declarant is entitled to appoint all of the members of the Executive Board as discussed in Section 2.7 of the Bylaws of the Master Association as adopted as of the date of this Declaration (the "Bylaws"), the Executive Board of the Master Association shall consist of three (3) Directors, who shall be appointed by Declarant without regard to the categories of Directors or the election thereof by certain Classes of Members as described in this Section below. Beginning at the time that Declarant is entitled to appoint seventy-five percent (75%) of the members of the Executive Board and ending at the expiration of the Declarant Control Period, each as set forth in the Section 2.7 of the Bylaws, the Executive Board of the Master Association shall consist of five (5) Directors, three (3) of whom shall be appointed by Declarant, one (1) of whom shall be elected by the Hotel Residential Members, and one (1) of whom shall be elected by the Vacation Club Members. Such interim Executive Board structure is based on the anticipated size of such Classes and the goal that each such Class should be properly represented on the Executive Board. Until the end of the Declarant Control Period, any action taken by the Executive Board will require the affirmative vote of a majority of the members of the Executive Board at a meeting where a quorum is present, as provided in the Bylaws, and no class of Directors of the Executive Board will have the authority to vote or act separately with respect to any matter before the Executive Board.

It is hereby determined that, after the expiration of the Declarant Control Period, in order to protect the valid interests of the various classes of Owners, each class requires representation on the Executive Board and is hereby entitled to elect certain Directors thereto. After the expiration of the Declarant Control Period, the Executive Board shall consist of seven (7) persons, of which the Class of Hotel Residential Members shall be entitled to nominate and elect two (2) Directors, the Class of Vacation Club Members shall be entitled to nominate and elect two (2) Directors, the Class of Riverfront Residential Members shall be entitled to nominate and elect one (1) Director, the class of Commercial Members shall be entitled to nominate and elect one (1) Director, and the Hotel Unit Owner shall be entitled to nominate and elect one (1) Director. In the event that at any time during the periods described in this Section 4.4 no Units or, if applicable, no Fractional Ownership Interests have been developed with respect to a certain Class such that there exists no Class of Owners to elect that Class' Director(s), the seat(s) on the Executive Board representing such Class shall be temporarily suspended until development of that Class of Units. By way of example and not of limitation, in the event that during the period that the Executive Board is to comprise five (5) Directors, as described above,

no Vacation Club Units have been developed, the Executive Board shall temporarily consist of four (4) Directors, three (3) appointed by Declarant and one (1) elected by the Hotel Residential Members. Notwithstanding anything contrary in this Section or elsewhere in this Declaration, the composition of the Executive Board shall at all times comply with the requirements of the Act and, if ever necessary to so comply, an election by all Owners other than a declarant to fill a temporarily suspended Executive Board seat until the end of such suspension may be held.

Section 4.5     Declarant Control. Notwithstanding anything to the contrary provided for herein or in the bylaws of the Master Association, Declarant shall be entitled to appoint and remove the members of the Master Association's Executive Board and officers of the Master Association to the fullest extent currently permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws of the Master Association. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado but, in such event, Declarant may at its option require that specified actions of the Master Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective. Any conveyance by Declarant together with an assignment of any "special declarant rights" as defined in the Act shall be deemed a conveyance to a declarant and, accordingly, shall not be considered a conveyance "to unit owners other than a declarant" as that phrase is used in the Act and for purposes of determining Declarant control pursuant to the Act, this Declaration and the Bylaws of the Master Association. Further, for purposes of determining Declarant control pursuant to the Act for purposes of this Declaration and the bylaws of the Master Association (and not for purposes of any declarant control period under a Project Declaration), a Unit which is subdivided into Fractional Ownership Interests shall be deemed a conveyance "to unit owners other than a declarant" only after conveyance of fifty-one percent (51%) of the Fractional Ownership Interests in such Unit.

Section 4.6     Fairness Standard. The Executive Board, the officers of the Master Association and the Master Association shall have the duty to represent the interest of the Owners of the various Classes in a fair and just manner on all matters that may affect any or all Classes of Owners. In upholding their duties, the Executive Board, the officers and the Master Association shall be held in their decisions, to the standards of good faith and reasonableness with respect to such matters, taking into account the effect, if any, of the matter on Riverfront Village as a whole.

Section 4.7     Owner's and Master Association's Address for Notices. All Owners of an individual Unit or Fractional Ownership Interest shall have one and the same registered mailing address to be used by the Master Association or other Owners for notices, demands and all other communications regarding Master Association matters. Such registered address shall be the address as listed on the deed pursuant to which an Owner acquires title unless and until an Owner or Owners shall furnish a new address to the secretary of the Master Association. Such notice of a new address shall be in written form and signed by all of the Owners or by such persons as are authorized by law to represent the interests of all Owners. Notwithstanding the foregoing, the Master Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit or Fractional Ownership Interest which is signed by less than all of the Owners of such Unit or Fractional Ownership Interest. Information compiled with respect to Owners shall be used by the Master Association only in connection with the proper conduct of Master Association business and for no other purpose.

All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners:

Executive Board  
Riverfront Village Master Association  
c/o East West Resort Development XIV, L.P., L.L.L.P.  
P.O. Drawer 2770  
Avon, CO 81620

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit, delivery charges prepaid, with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three business days after deposit in the U.S. mail.

## ARTICLE 5 SHARED EASEMENTS IN HOTEL AND VACATION CLUB

Section 5.1     Shared Easements. Particular Classes shall share in the use and enjoyment (as limited by this Article 5 below) of certain "Shared Easements" as defined herein. Construction of the areas to be subject the Shared Easements is incomplete at the time of recording of this Declaration. Subsequent to the completion of such construction and the resubdivision of the applicable Project Lot by the recording of a Project Declaration and associated Map, the Shared Easements applicable to such Project will be labeled and depicted on the Map and the recording of such Map in the real property records of Eagle County, Colorado shall effectively grant and convey to the Master Association and to the benefited Owners as described herein the Shared Easements, subject to all restrictions, reservations and provisions in this Declaration. The Owner of a Project Lot on which Shared Easements are established shall further execute such documents or instruments and take such actions as are reasonably requested by the Master Association to evidence or effect the applicable Shared Easements. The "Shared Easements" are hereby defined as the Shared Access Easement, the Shared Parking Easement, the Hotel Parking Access Improvements Easement, the Club Recreational Facilities Easement, the Vacation Club Recreational Facilities Easement and the Hotel Services Easement as set forth in Section 5.2 though 5.6, inclusive, below.

### Section 5.2     Shared Access Easement.

5.2.1     Easement. A "Shared Access Easement" shall be granted and conveyed by the Hotel Unit Owner as provided herein to the Master Association for the benefit of the Hotel Residential Members, the Vacation Club Members and the Commercial Members over, across and through those areas depicted on the Hotel Map as "Shared Access Easement" for purposes of access. The Shared Access Easement shall include the private drive, porte-cochere, entry, entry improvements and landscaping, certain hallways, lobby, lobby bathrooms and certain Level P1 bathrooms serving the Hotel Project as depicted on the Hotel Map, together with all improvements, facilities, furnishings and personal property associated with or serving such areas or its operations. The areas of the Shared Access Easement are generally depicted on Exhibit F hereto, but nothing herein or in Exhibit F shall be construed as limiting or in any manner restricting the Hotel Unit Owner's development rights with respect to the Hotel Project and the plans depicted on Exhibit F may be modified from time to time by the Hotel Unit Owner in its sole and absolute discretion, provided the Shared Access Easement depicted on the Hotel Map reasonably accomplishes the intent of this Section to provide access to the above-described benefited Members.

5.2.2     Access Management; Charges. The areas of the Hotel Unit subject to the Shared Access Easement shall be maintained, managed and operated by the Hotel Unit Owner in accordance with the

Hotel Maintenance Standard. Pursuant thereto, the Hotel Unit Owner shall have sole and absolute discretion over the establishment of regulations, procedures and rules with respect to such areas provided such regulations, procedures or rules do not unreasonably impair the access which the Shared Access Easement is intended to provide. Any such determinations concerning the Shared Access Easement may be changed at any time in the sole discretion of the Hotel Unit Owner. The Hotel Unit Owner shall have the right to charge the Master Association and the Master Association shall pay for the use of the Shared Access Easement an amount equal to the Operating Expenses and Capital Expenses related to the Shared Access Easement areas, as defined and provided in this Article 5 below, which charges will be allocated to the Hotel Residential Members, the Vacation Club Members, the Commercial Members and the Hotel Unit Owner in accordance with their respective Voting/Assessment Percentages.

**5.2.3      Hospitality Services; Third-Party Service Providers.**    The

Master Association and the Owners each acknowledges and agrees that the Hotel Unit Owner, in connection with the operation of the Hotel Project, may, but is not obligated to, offer hospitality services to the Master Association and/or certain of its Classes from time to time. To the extent the Hotel Unit Owner elects to provide such services, the terms and conditions regarding the provision of such services will be addressed in a separate hospitality services agreement. By way of illustration only, the hospitality services may include items such as maid and laundry service and room service. The Master Association and the Owners acknowledge and agree that the Hotel Project is a complex and integrated set of improvements and building systems and require a high level of security. In an attempt to maintain the safety of the Hotel Unit and the health, safety and comfort of the individuals using such improvements, and to maintain the integrity of the Hotel Project and provide a level of security commensurate with the Hotel Maintenance Standard, the Hotel Unit Owner must limit third-party access to the Hotel Unit and must properly screen and select all third-party service providers that enter the Hotel Unit. Therefore, the Shared Access Easement is hereby limited such that the applicable Classes of the Master Association, the Owners and the Master Association may not hire or otherwise allow entry into the Hotel Unit by any third-party property manager or property service provider (for example and by way of illustration only, cleaning services, plumbers, electricians and other servicemen) without the Hotel Unit Owner's prior written consent, which consent may be granted, conditioned or withheld in the Hotel Unit Owner's sole and absolute discretion. As part of its consent, the Hotel Unit Owner may require background screening and/or training prior to approving any such third-party property manager or property service provider. The foregoing restriction shall not apply to the Vacation Club Project's access through the Shared Access Easement areas for purposes of direct access to and from the Vacation Club Project via the Hotel Parking Access Improvement Easement, described below, and shall not restrict such use, including, without limitation, such direct access by property managers or service providers serving the Vacation Club Project.

**Section 5.3      Shared Parking Easement.**

**5.3.1      Easement.** A "Shared Parking Easement" shall be granted and conveyed by the

Hotel Unit Owner as provided herein to the Master Association for the benefit of the Hotel Residential Members and the Commercial Members over, across and through the Hotel Parking, together with all improvements, facilities and personal property associated with or serving such areas or its operations. The Shared Parking Easement is for vehicular parking purposes and access to the parking spaces located in the Hotel Parking, but such use shall be subject to the regulation and operation of the Hotel Parking by the Hotel Unit Owner in Section 5.3.4 below (including, without limitation, the imposition of parking charges). The Hotel Parking may further be subject to a parking management plan established from time to time by the Hotel Unit Owner in its sole and absolute discretion by which the Hotel Unit Owner will manage and operate the Hotel Parking. The Hotel Parking may be used by the Hotel Residential Members only at those times when the Hotel Residential Member is in residence within the Hotel Project. To the extent such Hotel Residential Member is not in residence, the Hotel Residential Member shall not be entitled to use or occupy the Hotel Parking. The Hotel Unit Owner reserves the right and power to use and employ the Hotel Parking,

including, without limitation, valet parking services, for the benefit of the Hotel Unit and its hotel operations and use by the Hotel Unit Owner, Guests, Lessees and the general public.

5.3.2        Use of the Shared Parking Easement. No commercial vehicles, boats, motor homes, trailers or other recreational vehicles may be parked in the Hotel Parking. No abandoned, inoperable or unlicensed vehicle may be parked in the Hotel Parking. Except in the event of an emergency, no vehicle maintenance or repairs may be performed within any portion of the Hotel Parking. None of the Hotel Parking may be used for storage of any personal property or other items. Excessive noise, including but not limited to automobile stereo systems, racing of engines and use of horns is prohibited within the Hotel Parking. If a vehicle is equipped with an alarm system that continues to sound in excess of thirty minutes, the Hotel Unit Owner may have the vehicle towed from the Hotel Parking at the vehicle owner's expense. The owner of any vehicle leaking oil or other automotive fluid onto any portion of the Hotel Parking is responsible for any expenditure to restore same to a clean condition. Under no circumstances will the Hotel Unit Owner be held responsible for any damage to or theft of any vehicle parked within the Hotel Parking or any items within any such vehicle.

5.3.3        Valet Parking Service. The Master Association and Owners acknowledge and agree that the Hotel Unit Owner, in connection with the operation of the Hotel Parking, may, but is not obligated to, offer valet parking from time to time. To the extent such valet service is provided by the Hotel Unit Owner, the above-described Classes of the Master Association may use the valet service, and may be required to use the valet service. The Master Association acknowledges and agrees that if the Hotel Unit Owner offers valet parking the cost of providing valet service to the Master Association will be included in the "Operating Expenses" chargeable to the Master Association and allocated to the benefited Classes as described herein regardless of whether the Master Association utilizes such valet service.

5.3.4        Parking Management; Charges. The areas of the Hotel Unit subject to the Shared Parking Easement shall be maintained, managed and operated by the Hotel Unit Owner in accordance with the Hotel Maintenance Standard. Pursuant thereto, the Hotel Unit Owner shall have complete discretion over (a) whether parking will be by valet only; (b) whether there will be a designated area for particular users or Classes of Members, (c) whether there will be a combination of valet parking and self parking, (d) whether to charge a fee for parking and the rates for such charges, including, without limitation, the right to charge Guests and Lessees of Commercial Members and Hotel Residential Members, and the right to establish separate charges and terms for separate categories of users, and/or (e) the establishment of parking regulations, procedures and rules, the adoption and implementation of a parking management plan or policies and/or the imposition of parking restrictions. Any such determinations concerning the Hotel Parking may be changed at any time in the sole discretion of the Hotel Unit Owner. The Hotel Unit Owner shall have the right to charge the Master Association and the Master Association shall pay for the use of the Shared Parking Easement an amount equal to the Operating Expenses and Capital Expenses with respect to the Hotel Parking, as defined and provided in this Article 5 below, which charges will be allocated to the Hotel Residential Members, the Commercial Members and the Hotel Unit Owner in accordance with their respective Voting/Assessment Percentages. It is acknowledged and agreed that the Hotel Unit Owner, in consideration of the initial Hotel Unit Owner's expenditure of significant capital costs with respect to the Hotel Parking, the Hotel Unit Owner reserves the right to use and employ the Hotel Parking for the benefit of the Hotel Unit and its hotel operations as described in Section 5.3.1 above and elsewhere in this Declaration. Such Operating Expense and Capital Expenses shall be budgeted and charged separately from those related to the Hotel Parking Access Improvements Easements, as discussed in Section 5.3.5 below. The Master Association and the Owners acknowledge and agree that the Hotel Parking will involve use by members of the general public and third parties associated with the Hotel Project. The Master Association and the Owners further acknowledge and agree that parking and valet charges are expected to generate revenues, which revenues will be applied to offset the Operating Expenses and Capital Expenses as described above.

5.3.5        **Hotel Parking Access Improvements Easement.** A “Hotel Parking Access Improvements Easement” shall be granted and conveyed by the Hotel Unit Owner as provided herein to the Master Association for the benefit of the Hotel Residential Members, the Vacation Club Members and the Commercial Members over, across and through the Hotel Parking Access Improvements, together with all improvements, facilities and personal property associated with or serving such areas or its operations. The areas of the Hotel Unit subject to the Hotel Parking Access Improvements Easement shall be maintained, managed and operated by the Hotel Unit Owner in accordance with the Hotel Maintenance Standard and subject to the same reservations, restrictions and regulations as applicable to the Shared Parking Easement and set forth in this Section 5.3 and its subsections above, including, without limitation, the Hotel Unit Owner’s reserved rights with respect to the use and employment of same; provided, however, that such reservations, restrictions and regulations shall not unreasonably impede the access of Vacation Club Owners and Vacation Club Permitted Users through the Hotel Parking Access Improvements to and from the Vacation Club Project and no individual charges will be imposed on such access users other than the Operating Expenses and Capital Expenses as described herein. Subject to the forgoing, the Hotel Unit Owner shall have complete discretion over the establishment of regulations, procedures and rules with respect to such areas. Any such determinations concerning the Hotel Parking Access Improvements Easement may be changed at any time in the sole discretion of the Hotel Unit Owner. The Hotel Unit Owner shall have the right to charge the Master Association and the Master Association shall pay for the use of the Hotel Parking Access Improvements Easement an amount equal to the Operating Expenses and Capital Expenses related to the Hotel Parking Access Improvements Easement, as defined and provided in this Article 5 below, which charges will be allocated to the Hotel Residential Members, the Vacation Club Members, the Commercial Members and the Hotel Unit Owner in accordance with their respective Voting/Assessment Percentages. It is acknowledged and agreed that the Hotel Unit Owner, in consideration of the initial Hotel Unit Owner’s expenditure of significant capital costs with respect to the Hotel Parking Access Improvements, the Hotel Unit Owner reserves the right to use and employ the Hotel Parking Access Improvements for the benefit of the Hotel Unit and its hotel operations as described in Section 5.3.1 above and elsewhere in this Declaration. No revenues will be allocated to offset Operating Expenses or Capital Expenses as related to the Hotel Parking Access Improvements Easement.

#### Section 5.4        **Club Recreational Facilities Easement.**

5.4.1        **Easement.** A “Club Recreational Facilities Easement” shall be granted and conveyed by the Club Owner as provided herein to the Master Association for the benefit of the Hotel Residential Members, the Vacation Club Members, the Riverfront Residential Members and the Hotel Unit Owner over, across and through the Club Recreational Facilities for purposes of use and enjoyment, as restricted by and subject to this Declaration. Notwithstanding the foregoing, by taking title to a Unit, each Owner acknowledges and agrees that the Club Owner may alter, modify, improve or relocate any or all of the Club Recreational Facilities from time to time, in its sole and absolute discretion, provided same does not materially impair the benefits which the Master Association derives from the ordinary use and enjoyment of the Club Recreational Facilities, and the easement rights provided hereunder shall be temporarily suspended as necessary during the period of any repair, maintenance, replacement, renovation or relocation. Except for those facilities expressly included in the definition of “Club Recreational Facilities” or added from time to time pursuant to Section 5.8 below, no other improvements or facilities are included and no facilities added to the Hotel Project by the Hotel Unit Owner in the future shall be included in the definition of “Club Recreational Facilities”. Owners acknowledge and accept that the Club Recreational Facilities do not include any spa facility located within the Hotel Project, which spa facility, if any, shall be privately owned and operated and not subject to the Club Recreational Facilities Easement. The Owner of the Commercial Unit comprising any spa facility within the Hotel Project shall have all rights and discretionary powers with respect to its operations, including, without limitation, the charges to Owners and Owners Guests, Lessees and Vacation Club Permitted Users, and to the general public, for spa services.

**5.4.2      Management; Charges.** The areas of the Hotel Unit subject to the Club Recreational Facilities Easement shall be maintained, managed and operated by the Club Owner in accordance with the Hotel Maintenance Standard. Pursuant thereto, the Club Owner shall have complete discretion over the establishment of regulations, procedures and rules governing use and reservation of such areas and governing operations ("Club Rules"). Any such Club Rules may be changed at any time in the sole discretion of the Club Owner. The Club Owner shall have the right to charge the Master Association and the Master Association shall pay for the use of the Club Recreational Facilities Easement an amount equal to eighty percent (80%) of the Operating Expenses and Capital Expenses related to the Club Recreational Facilities Easement areas, as defined and provided in this Article 5 below, which charges will be allocated to the Hotel Residential Members, the Vacation Club Members, the Riverfront Residential Members and the Hotel Unit Owner (for itself and as the initial Club Owner; see Section 5.4.3 below) in accordance with their respective Voting/Assessment Percentages. The Club Owner shall be responsible for the payment of the remaining 20% of Operating Expenses and Capital Expenses, it being acknowledged and agreed that the Club Owner is paying both Hotel Unit Owner's Voting/Assessment Percentage share of the Master Association's 80% share of Operating Expenses and Capital Expenses and an additional 20% of Operating Expenses and Capital Expenses, as well as the Hotel Unit Owner's expenditure (for itself and as the initial Club Owner) of significant capital costs with respect to the Club, in consideration of the Club Owner's right to use and employ the Club and the Club Recreational Facilities as part of the Club Owner's operation of a resort, fitness and health club, which club will be open to membership by the public (as discussed in Section 5.4.4 below), and the right to use and employ the Club for the benefit of the Hotel Unit and its hotel operations and for use by day users of any spa facility located within the Hotel Project, all in accordance with Section 5.9.1 below. In the event that a separate reception desk is not operated as part of the Club Recreational Facilities, the Club Owner may, at its sole discretion, contract with the Owner of any spa facility located within the Hotel Project to operate a combined club/spa reception desk, in which event forty percent (40%) of the Operating Expenses and Capital Expenses related to such desk shall be payable as Operating Expenses and Capital Expenses of the Club Recreational Facilities Easement. The Master Association and the Owners acknowledge and agree that the Club and the Club Recreational Facilities will involve use by members of the general public and third parties associated with the club operated by the Club Owner (it being acknowledged and agreed that the Club Recreational Facilities may be used by outside third party members of the Club as described in Section 5.4.4 below) and by the Hotel Unit Owner in connection with its hotel operations. The Master Association and the Owners further acknowledge and agree that the Hotel Unit Owner and/or the Club Owner shall be entitled to all revenues generated from the Club, such as sales and resales of memberships, club membership dues from outside members, resort fees, guest fees, facilities fees and access fees paid by Guests, Lessees and members of the general public arising from the above-described club; provided, however, that other revenues generated specifically from operations of such club (e.g., charges for classes held at the Club) shall be applied as follows: 80% will be used to offset the 80% allocation of Operating Expenses and Capital Expenses as described above, and 20% shall be paid to the Club Owner. Owners shall not be required to pay initiation fees, dues or access fees, but shall pay for charges for purchased goods and services (e.g., classes and personal training).

**5.4.3      Conversion of Club.** In the event that the Club is subdivided from the Hotel Unit and converted into a Commercial Unit as permitted and provided in the Project Declaration for the Hotel Project, and immediately upon such event, the following shall automatically be effected and part of this Declaration: (a) the Club Recreational Facilities Easement shall be deemed to benefit both the Hotel Unit Owner and the Club Owner as benefited parties, (b) the Voting/Assessment Percentage allocated to the Hotel Unit shall reallocated between the Hotel Unit and the Club in accordance with their relative equivalent bedrooms (with the Club Owner thereafter being a Commercial Member for all purposes under this Declaration with the exception of its Voting Assessment Percentage, which shall remain calculated pursuant to the formula applicable to the Hotel Unit), (c) the eighty percent (80%) of Operating Expenses and Capital Expenses related to the Club Recreational Facilities Easement areas, as described in Section 5.4.2 above, shall

be allocated to the Hotel Residential Members, the Vacation Club Members, the Riverfront Residential Members, the Hotel Unit Owner and the Club Owner in accordance with their respective Voting/Assessment Percentages, it being acknowledged that the Club Recreational Facilities shall continue to be used and employed by the Club Owner in connection with Club operations and the Hotel Unit Owner in connection with its hotel operations, and (d) the Club Owner will continue to pay the remaining twenty percent (20%) of Operating Expenses and Capital Expenses and retain and allocate revenues as provided in Section 5.4.2 above.

5.4.4        **Club Usage.** The aggregate number of individuals granted the right use and enjoyment of the Club Recreational Facilities pursuant to general public memberships of the Club ("General Public Members") shall not exceed a total of 700, such persons being granted such membership privileges under any variety of membership that the Club Owner may offer within its exclusive discretion. Such usage of the Club and the Club Recreational Facilities by General Public Members shall be monitored by the Executive Board. The Club Owner shall provide on a monthly basis to the Executive Board reports of any written complaints and surveys related to the usage and related operations of the Club Recreational Facilities received from the Members and others having the right to use the Club Recreational Facilities as described in Section 5.9.1 below (the "Benefited Club Users"). In the event the reports indicate that the usage of the Club Recreational Facilities is at levels, on a general basis, or at specific times of the day or at specific times of the year, that generate (a) complaints by the Benefited Club Users in material excess of the levels of complaints received by the Hotel Unit Owner in connection with services other than the Club, or (b) ratings at levels materially below that experienced by the Hotel Unit Owner with respect to other services of the Hotel Unit, then at the written request (the "Meeting Request") of two or more members of the Executive Board from two or more different Classes (the "Requesting Board Members"), the Club Owner shall meet with the Requesting Board Members to determine appropriate measures to attempt to correct the conditions that are creating such levels of dissatisfaction. The parties agree to cooperate in good faith to attempt to develop appropriate remedial measures, which may include such measures as increases in the amount of equipment in the fitness facility or in the amount of pool furnishings and/or towels, increases in the level of staffing to monitor equipment usage and compliance with Club Rules, or limitations on usage by or reduction in numbers of General Public Members, which discussions will also involve the appropriate party (i.e., Club Owner or Master Association) who should bear the costs of such remedial measures, if any. If the parties are unable to resolve a dispute concerning the usage and related operations of the Club Recreational Facilities and the appropriate remedial measures, if any, within sixty (60) days of the date of the Meeting Request, either the Requesting Board Members or the Club Owner shall have the right to submit the dispute to such neutral expert as may be designated in accordance with this Section who shall be charged with determining the appropriate remedial measures, if any, and the allocation of costs relative to same, which measures and costs, if any, shall be commercially reasonable under the circumstances (the "Hospitality Expert").

The Hospitality Expert shall resolve any dispute submitted to it within thirty (30) days after referral of the dispute in accordance with standard hospitality practices in the management and operation of facilities having swimming pools, hot tubs and fitness centers operating within hotels operating in accordance with the Hotel Maintenance Standard. The Hospitality Expert's resolution shall be binding on the parties. The Executive Board and the Club Owner shall promptly pay in equal shares the Hospitality Expert's reasonable fees and expenses actually incurred in rendering its decision.

If a Hospitality Expert determination is to be made pursuant to the terms of this Section, the Requesting Board Members and the Club Owner will have ten (10) days from the date of such request to mutually agree on one (1) nationally recognized consulting firm or individual in the hospitality industry as the Hospitality Expert and, if they fail to agree, the Requesting Board Members and the Club Owner will each have an additional ten (10) days to each select one (1) a nationally recognized consulting firm or individual in the hospitality industry as the Hospitality Expert and within ten (10) days of such respective selections, the two (2) respective firms or individuals so selected by each of the Requesting Board Members and the Club

Owner will select another such nationally recognized consulting firm or individual to be the Hospitality Expert. If either fails to make its respective selection of a firm or individual within the ten (10) day period provided for above, then the other's selection will be the Hospitality Expert. Also, if the two respective firms or individuals so selected will fail to select a third nationally recognized consulting firm or individual to be the Hospitality Expert, then either the Requesting Board Members or the Club Owner, on behalf of both parties, may apply to any court of general jurisdiction in the County of Eagle, Colorado, for the appointment of the Hospitality Expert, and the other shall not raise any question as to the court's full power and jurisdiction to entertain the application and make the appointment. The hospitality expert designated pursuant to the appointment by the court shall be deemed to be the Hospitality Expert for purposes of this Section until a successor Hospitality Expert shall be appointed pursuant to this Section. Any hospitality expert selected by the parties or the court shall be a nationally recognized consulting firm or individual in the hospitality industry who is substantially engaged, or has been substantially engaged in the most recent prior five years, in business in the luxury tier segment of the hospitality industry. If the Hospitality Expert is required to apply the law of any state to resolve the dispute, then the law of the State of Colorado will apply.

Further, in the event that after two (2) years following the date that the Club has commenced operations, it is determined that excess capacity is available with respect to the Club, meaning that the reports described in this Section above have not generated the complaints and/or ratings which would permit the submittal of a Meeting Request, the Club Owner shall be entitled to increase the maximum number of General Public Members to a number which the Club Owner reasonably believes the Club can accommodate without generating such complaints/ratings. In such event, the 80%/20% split of Operating Costs and Capital Costs described in Section 5.4.2 above shall be automatically adjusted such that the Club Owner will pay an additional percentage over the 20% obligation equal to the percentage increase in General Public Members (by way of example and not of limitation, 700 members equals 20%, so 900 members would equal 25.7%).

#### Section 5.5      Vacation Club Recreational Facilities Easement

5.5.1      **Easement.** A "Vacation Club Recreational Facilities Easement" shall be granted and conveyed by the Vacation Club Developer as provided herein to the Master Association for the benefit of the Hotel Residential Members, the Vacation Club Members and the Hotel Unit Owner over, across and through those areas depicted on the Map of the Vacation Club Project as "Vacation Club Recreational Facilities Easement" for purposes of use and enjoyment, as restricted by and subject to this Declaration. The Vacation Club Recreational Facilities Easement shall include the pool, hot tubs and restrooms associated with the pool as depicted on the Vacation Club Map, together with all furnishings and personal property associated with or serving such areas or its operations. Use of the Vacation Club Recreational Facilities Easement shall extend to and benefit the Hotel Residential Members, Vacation Club Permitted Users and Guests and Lessees in residence within a Hotel Residential Unit, including Hotel Unit Owner Guests, who shall not be required to pay initiation fees, dues or access fees by the Vacation Club Operator, but shall pay for charges for purchased goods and services. Notwithstanding the foregoing, Guests and Lessees in residence within a Hotel Residential Unit, including Hotel Unit Owner Guests, may be charged a daily or term of stay use fee by the Club Owner as part of an overall fee for both the Club Recreational Facilities and the Vacation Club Recreational Facilities. The areas of the Vacation Club Recreational Facilities Easement are generally depicted on Exhibit G hereto, but nothing herein or in Exhibit G shall be construed as limiting or in any manner restricting the Vacation Club Developer's development rights with respect to the Vacation Club Project and the plans depicted on Exhibit G may be modified from time to time by the Vacation Club Developer in its sole and absolute discretion, provided the Vacation Club Recreational Facilities Easement depicted on the Vacation Club Map reasonably accomplishes the intent of this Section to provide such recreational facilities to the above-described benefited Members. Notwithstanding the foregoing, by taking title to a Unit, each Owner acknowledges and agrees that the Vacation Club Facilities Operator may alter, modify, improve or relocate any or all of the Vacation Club Recreational Facilities from time to time, in its sole and absolute discretion, provided same does not materially impair the benefits which the Master

Association derives from the ordinary use and enjoyment of the Vacation Club Recreational Facilities, and the easement rights provided hereunder shall be temporarily suspended as necessary during the period of any repair, maintenance, replacement, renovation or relocation. Except for those facilities expressly included in the definition of "Vacation Club Recreational Facilities", no other improvements or facilities are included and no facilities added to the Vacation Club Project by the Vacation Club Facilities Operator in the future shall be included in the definition of "Vacation Club Recreational Facilities" unless as expressly provided in Section 5.8 below.

**5.5.2 Management; Charges.** The areas of the Vacation Club Recreational Facilities Easement shall be maintained, managed and operated in accordance with the Hotel Maintenance Standard by the Vacation Club Facilities Operator. Pursuant thereto, the Vacation Club Facilities Operator shall have complete discretion over the establishment of regulations, procedures and rules with respect to such areas and operations. Any such determinations concerning the Vacation Club Recreational Facilities Easement may be changed at any time in the sole discretion of the Vacation Club Facilities Operator. The Vacation Club Facilities Operator shall have the right to charge the Master Association and the Master Association shall pay for the use of the Vacation Club Recreational Facilities Easement an amount equal to the Operating Expenses and Capital Expenses related to the Vacation Club Recreational Facilities Easement areas, as defined and provided in this Article 5 below, which charges will be allocated to the Hotel Residential Members, the Vacation Club Members and the Hotel Unit Owner in accordance with their respective Voting/Assessment Percentages.

#### Section 5.6 Hotel Services Easement.

**5.6.1 Easement.** A "Hotel Services Easement" shall be granted and conveyed by the Hotel Unit Owner as provided herein to the Master Association for the benefit of the Hotel Residential Members, the Vacation Club Members and the Commercial Members over, across and through those areas depicted on the Hotel Map as "Shared Access Easement" and the right to access and enjoy certain "Hotel Services", hereby defined as central services desk, reception/front desk operations, lobby service, bell service, doorman service, concierge service, PBX operator, business center and other services related to such specific operations (expressly excluding, however, and without limitation, sales and marketing, reservations, housekeeping and engineering departments and internet, television, telephone (other than the PBX operator) and other communication services). The Hotel Services Easement shall not cover charges typically provided on an individual fee basis (e.g., long distance telephone charges, faxes, typical business center charges) and shall not include optional upgrade services (e.g., services within a Unit such as housekeeping or repair services). The specific parties permitted the use and enjoyment of the Hotel Services Easement is described in Section 5.9.1 below. Notwithstanding anything to the contrary in this Section 5.6, by taking title to a Unit, each Owner acknowledges and agrees that the Hotel Unit Owner may alter, modify, improve or relocate, provided same does not materially impair the benefits which the Master Association derives from the ordinary use and enjoyment of the Hotel Services, and the easement rights provided hereunder shall be temporarily suspended as necessary during the period of any such renovation or relocation. Except for those services expressly included in the definition of "Hotel Services" or added from time to time pursuant to Section 5.8 below, no other services, improvements or facilities are included, and no services or facilities added to the Hotel Project by the Hotel Unit Owner in the future shall be included in the definition of "Hotel Services".

**5.6.2 Management; Charges.** The Hotel Services and the Hotel Services Easement shall be maintained, managed and operated by the Hotel Unit Owner in accordance with the Hotel Maintenance Standard. Pursuant thereto, the Hotel Unit Owner shall have complete discretion over the establishment of regulations, procedures and rules with respect to such areas and operations. Any such determinations concerning the Hotel Services Easement may be changed at any time in the sole discretion of the Hotel Unit Owner. The Hotel Unit Owner shall have the right to charge the Master Association and the Master Association shall pay for the use and enjoyment of the Hotel Services Easement an amount equal to

80% of the Operating Expenses and Capital Expenses related to the Hotel Services and Hotel Services Easement, as defined and provided in this Article 5 below, which charges will be allocated to the Hotel Residential Members, the Vacation Club Members, the Commercial Members and the Hotel Unit Owner in accordance with their respective Voting/Assessment Percentages (subject, however, to the adjustment set forth in Section 6.3.1 below with respect to the Commercial Members). The Hotel Unit Owner shall be responsible for the payment of the remaining 20% of such Operating Expenses and Capital Expenses, it being acknowledged and agreed that the Hotel Unit Owner is paying both its Voting/Assessment Percentage share and an additional 20% of such Operating Expenses and Capital Expenses, as well the Hotel Unit Owner's expenditure of significant capital costs, in consideration of the Hotel Unit Owner's right and interest in the property, assets and services subject to the Hotel Services Easement and its right to use all such property, assets and services for the benefit of the Hotel Unit and its operations as described in Section 5.9.1 below and retain revenues related to same. The Master Association and the Owners acknowledge and agree that the Hotel Unit Owner shall be entitled to all revenues generated from the Hotel Services, including, without limitation, revenues generated under rental management agreements or hotel services agreements, in either event entered into between the Hotel Unit Owner and individual Owners, together with all revenues generated from resort fees, access fees, guest fees, facilities fees and other fees and/or charges paid by Owners, Guests, Lessees and members of the general public; provided, however, that no such fees shall be chargeable to any Vacation Club Permitted User unless such fees are specifically authorized by the Vacation Club Project Association and are applied to reduce the allocable share of expenses payable by Vacation Club Members.

**Section 5.7      Put Options.** In the event that (a) a Shared Easement Owner ceases operations of any Shared Easement, herein defined as (i) the Shared Easement Owner providing written notice to the Master Association that it is ceasing operations as to all or any lesser number of the Shared Easements which it operates, or (ii) the applicable Shared Easement has not been open for use by the benefited Members of the Master Association for one (1) complete winter ski season, unless such Shared Easement areas or services have failed to operate due to renovation, major repairs, casualty, damage or otherwise due to reasons beyond the reasonable control of the applicable Shared Easement Owner, or (b) a Shared Easement is damaged or destroyed due to fire or other adversity or disaster and a Shared Easement Owner provides written notice to the Master Association that it is abandoning the applicable Shared Easement, together with an assignment to the Master Association assigning its right to insurance proceeds relating to same, then the applicable Shared Easement shall be the subject of a mutual put obligation whereby the Shared Easement Owner shall be required to convey for no consideration other than the Master Association's obligation to maintain, manage and operate such Shared Easement and, if applicable, reconstruct such Shared Easement, all as provided herein, and the Master Association shall be required to accept conveyance and the obligation to maintain, manage and operate and, if applicable, reconstruct the applicable Shared Easement in accordance with the terms of this Declaration as Common Area, such mutual put obligation to be accomplished in accordance with the terms and provisions set forth in Exhibit I hereto. In the event the forgoing occurs such that the Club Recreational Facilities Easement and/or the Hotel Services Easement becomes Common Area as provided above, the Hotel Unit Owner at the unilateral election of the Hotel Unit Owner as evidenced in a writing executed by the Hotel Unit Owner and recorded in the real property records of Eagle County, Colorado, shall be absolutely and unconditionally released from its obligation to pay the additional twenty percent (20%) of Operating Expenses and Capital Expenses with respect to same as provided in Sections 5.4 and 5.6 above, the Hotel Unit Owner shall be deemed a benefited Member of such Shared Easement (but shall no longer enjoy the reserved rights with respect to any of such Shared Easement over and above the rights of other benefited Members), and such Operating Expenses and Capital Expenses shall be allocated among the benefited Members, including the Hotel Unit Owner, on the basis of their relative Voting/Assessment Percentages.

**Section 5.8      Shared Easement Expansions, Dispositions.** Without in any way restricting the right and power of a Shared Easement Owner to alter, modify, and/or improve the areas and services subject to the Shared Easements as set forth elsewhere in this Declaration, a Shared Easement Owner may from time to time request that real property, improvements and/or facilities be added to certain Shared Easements and included

in the definition of the applicable Shared Easement or disposed from and excluded from the definition of the applicable Shared Easement (e.g., Club Recreational Facilities Easement, Hotel Service Easement) for all purposes of this Declaration. In such event, Class Directors representing the interests of the benefited Members with respect to such Shared Easement shall promptly consider such request and, should each such Class of Directors affirmatively approve same by the act of such Class of Directors, a supplement to this Declaration may be executed by the applicable Shared Easement Owner and by an officer of the Master Association evidencing the approval by the applicable Class Directors and recorded in the real property records of Eagle County, Colorado, which supplement shall designate the specific real property, improvements and/or facilities to be included in or excluded from the applicable Shared Easement and the Class(es) thereby affected by such change. By the recording of such supplement, the applicable Shared Easement shall be deemed expanded and such additional real property, improvements and/or facilities shall be subject to all terms and provisions of the applicable Shared Easement as set forth herein. Alternatively, by the recording of such supplement, the applicable Shared Easement shall be deemed reduced and such excluded real property, improvements and/or facilities shall be removed from all terms and provisions of the applicable Shared Easement as set forth herein. A Shared Easement Owner may condition any such expansion or disposition request upon certain matters as described in the applicable request, including, without limitation, the payment of Capital Expenses relating to same and/or the exclusion or addition of certain Class(es) or other persons who shall share in the benefits and costs of such additional areas/services and, if so approved, shall be described in the supplement and by the recording of same shall modify the terms of the applicable Shared Easement. Nothing in this Section 5.8 (a) shall in any manner whatsoever be construed as limiting the Shared Easement Owner's unilateral right to make personal property purchases or otherwise make operational decisions relative to the Shared Easements (e.g., staffing decisions), subject to the Hotel Maintenance Standard, or (b) shall be construed as granting the Hotel Unit Owner the right to extend the Hotel Services Easement to the Riverfront Residential Members; provided, however, (i) use of the Hotel Services Easement may be extended to the Riverfront Residential Members upon the affirmative approval of Hotel Unit Owner and the Class of Directors representing the Vacation Club Members, together with the written approval of the holder of the brand name associated with the Hotel Unit and the holder of the brand name associated with the Vacation Club Project, such use to be pursuant to a license agreement acceptable to the approving parties, or (ii) that if and only for so long as the Vacation Club Project and all portions of the Project(s) on which the Riverfront Residential Units are located are operated under and in accordance with the agreements for the same brand as the Hotel Unit (such agreements for all such Projects and the Hotel Unit, collectively, the "Brand Agreements"), the Hotel Unit Owner may enter into a license agreement pursuant to which the use of Hotel Services may be extended to the Riverfront Residential Members, which license agreement shall provide that (I) the license shall terminate if and at such time as any or all of such Brand Agreements shall expire or otherwise terminate; and (II) the Riverfront Residential Members shall pay for, but not have the right to vote with respect to, such Hotel Services as if they were a benefited Class of the Hotel Services Easement in accordance with their Voting/Assessment Percentage, in which event the amount of the Assessments payable by all Class(es) benefited by the Hotel Services Easement shall be appropriately adjusted.

## **Section 5.9      Use and Enjoyment of Shared Easements; Limitations.**

**5.9.1      Use and Enjoyment Only; User Restrictions.** Subject to Section 5.16 below, the Shared Easements are perpetual, nonexclusive easements for use and enjoyment only and do not extend to or allow repair, maintenance or alteration of any portion of the Hotel Project or Vacation Club Project which is encumbered by or the subject of any such Shared Easements. The right of use and enjoyment of the Shared Easements is hereby granted to Owners benefited by the respective Shared Easements; subject, however, to all reservations, restrictions and provisions of this Declaration relating to the Shared Easements and to the following restrictions relative to the permissible users of the Shared Easements, which restrictions are controlling despite any contrary provisions in this Declaration:

5.9.1.1 With respect to Shared Easements benefiting Vacation Club Members, such right of use and enjoyment shall be limited exclusively to Vacation Club Permitted Users, who are defined and described in Section 5.9.5 below.

5.9.1.2 With respect to the Shared Parking Easement, Hotel Residential Members shall have the right to park in the Hotel Parking only when in residence within the Hotel Residential Units, without the payment of fees or charges in addition to Assessments. Commercial Members shall be entitled to use the Hotel Parking pursuant to the Hotel Parking Easement without additional fees and charges only by such persons and at such times as established by the Hotel Unit Owner. Other users, including, without limitation, Guests and Lessees in residence, customers and employees of Commercial Members and members of the general public, shall be permitted to use the Hotel Parking only upon such terms and fees as may be established by the Hotel Unit Owner, as described in Section 5.3.1 above and elsewhere in this Declaration.

5.9.1.3 With respect to the Club Recreational Facilities Easement, use of the Club Recreational Facilities shall be extended to (a) the Vacation Club Permitted Users including Guests and Lessees who are in residence in a Vacation Club Unit or Fractional Ownership Interest, for whom no fees may be charged for use of the Club Recreational Facilities (a "Club Use Fee"), (b) the Hotel Residential Members and Riverfront Residential Members and Immediate Family Members (defined below) (other than the ski storage/valet service as discussed immediately below), subject, however, to the Club Owner's right to adopt rules and restrict access relative to ownership of a Unit by multiple Owners or by an entity, (c) Guests and Lessees in residence insofar as they are in residence within a Hotel Residential Unit (including Hotel Unit Owner Guests) or a Riverfront Residential Unit, subject to the payment of such Club Use Fees as may be determined by the Club Owner, (d) Guests who are not in residence but who are accompanied by a Vacation Club Permitted User, an Owner of a Hotel Residential Unit or Riverfront Residential Unit, or a Guest or Lessee in residence ("Accompanied Guests"), subject to the payment of such Club Use Fees as may be determined by the Club Owner, (e) users of any spa facility located within the Hotel Project, which spa use must involve a private treatment room, subject, however, to the Club Owner's right to charge a Club Use Fee with respect to same, and (f) users pursuant to general public memberships, as discussed in Section 5.4.4 above. The foregoing persons permitted to use the Club Recreational Facilities shall be permitted the use and enjoyment of the ski storage/valet portion of the Club Recreational Facilities Easement only while in residence in the applicable Unit or Fractional Ownership Interest, subject to the Club Owner's discretion to permit additional use of such service, depending on availability, upon such fees or other terms as the Club Owner may determine.

5.9.1.4 With respect to the Vacation Club Recreational Facilities Easement, use of the Vacation Club Recreational Facilities shall be extended to (a) the Vacation Club Permitted Users, including Guests and Lessees in residence in a Vacation Club Unit or Fractional Ownership Interest, (b) the Hotel Residential Members and Immediate Family Members (defined below), (c) Guests and Lessees in residence within a Hotel Residential Unit only (including Hotel Unit Owner Guests), and (d) Accompanied Guests, none of whom shall be required to pay initiation fees, dues or access fees by the Vacation Club Operator, but may be charged a daily or term of stay use fee by the Club Owner as part of an overall fee for both the Club Recreational Facilities and the Vacation Club Recreational Facilities. Owners, Guests and Lessees of the Riverfront Residential Units shall have no right to use of the Vacation Club Recreational Facilities Easement.

5.9.1.5 With respect to the Hotel Services Easement, the Hotel Services shall extend to and benefit (a) the Vacation Club Permitted Users, and (b) the Hotel Residential Members and Commercial Members only but not the Guests and Lessees of such Hotel Residential Members or Commercial Members, who may be charged additional fees or charges with respect to the Hotel Services as determined by the Hotel Unit Owner in its sole and exclusive discretion. The Hotel Unit Owner otherwise retains exclusive

rights to and interest in the Hotel Services, including, without limitation, the areas listed as subject to the Hotel Services Easement and the Hotel Services provided to Guests and Lessees in residence and members of the general public. Without limiting the generality of the foregoing, the Hotel Unit Owner may utilize the Hotel Services in connection with any rental management agreements, hotel services agreements and/or other agreements or understandings between the Hotel Unit Owner and Hotel Residential Members or Vacation Club Permitted Users or otherwise related to the operation of the Hotel Unit as a full-service hotel and shall retain all revenues related to same, subject to the limitations in Section 5.9.5 regarding the charging of fees to the Vacation Club Permitted Users. The Hotel Services shall be provided exclusively by employees, independent contractors and/or other personnel of the Hotel Unit Owner and in no event or manner whatsoever shall the Hotel Services Easement be interpreted as permitting any person(s) other than such personnel of the Hotel Unit Owner use of the front desk or other areas in connection with providing Hotel Services or otherwise.

5.9.1.6 Subject to the limitation of the charging of fees to the Vacation Club Permitted Users contained in Section 5.9.5 below or elsewhere in this Declaration, the Hotel Unit Owner shall be entitled to distinguish between categories of Guests and/or Lessees (e.g., Guests accompanied by an Owner while in residence; Guests or Lessees in residence who are not also Hotel Unit Owner Guests) in determining permissible access and/or charges. Further restrictions and/or regulations clarifying the use and enjoyment rights of the Shared Easements may be contained in the rules and regulations applicable to particular Shared Easements, the right of which to adopt has been reserved to the Shared Easement Owners in this Declaration.

5.9.1.7 "Immediate Family Members" is defined as an Owner's spouse and the children of either spouse under the age of twenty-three who are living at home, attending school on a full-time basis, or in the military.

5.9.1.8 Whenever the phrase "in residence" is used in connection with any category of persons entitled to use a Shared Easement, such as an Owner, Guest, Lessee or Vacation Club Permitted User, such phrase shall mean only such persons within the meaning of the applicable defined term who are using the overnight accommodations of a Hotel Residential Unit, a Riverfront Residential Unit, a Vacation Club Unit or a Fractional Ownership Interest, or any of such Classes of Units as may be applicable in the specific context in accordance with applicable laws and ordinances regarding maximum legal occupancy.

5.9.2 Compliance With Law, Rules. The Shared Easements may be used and enjoyed only in accordance with and subject to all the other provisions of this Declaration governing and limiting the same. Without limitation on the generality of the foregoing, the Shared Easements may be used and enjoyed only for the purposes described herein and in accordance with all applicable laws and any rules, regulation and procedures adopted by the applicable Shared Easement Owner from time to time. Notwithstanding any contrary provision in this Declaration, rules adopted by a Shared Easement Owner may not discriminate in favor of either the Hotel Residential Members or the Vacation Club Members to the detriment of the other, except as may be contemplated by this Declaration, and may not materially impair the purpose of the applicable Shared Easement. A Shared Easement Owner shall send notice to each executive board or managing agent of a Project Association benefited by a particular Shared Easement concerning any proposed rule or amendment to a rule affecting such Shared Easement and representatives of such Project Associations shall be entitled to attend a meeting scheduled by the Shared Easement Owner at a reasonable date following such notice and given an opportunity to be heard prior to such rule or amendment being adopted.

5.9.3 Violations. If any Owner or such Owner's Guest, Lessee or any Vacation Club Permitted User fails to abide by any rules, regulations or procedures established by the applicable Shared Easement Owner, the applicable Shared Easement Owner may, in addition to and without waiving any other remedies available to it (including, without limitation, all rights and remedies against the Master Association),

restrict access to any or all of the Shared Easement areas and/or services by such individual Owner and such Owner's Guests, Lessees and Vacation Club Permitted Users, in accordance with its normal procedures under such circumstances. In the event that the Master Association is thirty (30) or more days delinquent in the payment of any Operating Expense or Capital Expense for which it is responsible, the applicable Shared Easement Owner, in addition to and without waiving any other remedies available to it (including, without limitation, all rights and remedies against the Master Association), may restrict the access by any delinquent Owner and such Owner's Guests, Lessees and Vacation Club Permitted User to any or all of its Shared Easement areas and/or services. Pursuant to this right and power of a Shared Easement Owner, the Master Association agrees to promptly provide to the Shared Easement Owner the names of any delinquent Owner. Nothing herein shall be construed as permitting a Shared Easement Owner to violate the Act or other applicable law and the foregoing remedies shall be limited thereby.

**5.9.4        Shared Easement Owner Reserved Uses.** The Shared Easements are non-exclusive and at all times are subject to the Shared Easement Owner's rights with regard to the area subject to the Shared Easement, including without limitation, the Shared Easement Owner's rights (a) to adopt rules, regulations and procedures with respect to the Shared Easements, (b) to have full and absolute authority over the manner and timing of maintenance, repair, operation and alteration of the Shared Easement areas, subject to the Hotel Maintenance Standard, (c) to have full and absolute authority over the manner and timing of services provided and operations relating to the Shared Easements, including, without limitation, the level of staffing, subject to the Hotel Maintenance Standard, (d) to use and enjoy and to employ the Shared Easement areas and related operations, including, without limitation, the right of the Hotel Unit Owner to own and operate the business of the Hotel Unit and the Club and, in connection therewith, to employ such Shared Easement areas and services to the benefit of the Hotel Unit and its operations (including, without limitation, the Club) and to grant to or otherwise permit Guests and Lessees in residence, including Hotel Unit Guests and third parties certain rights, privileges and interests in the Shared Easements upon terms satisfactory to the Hotel Unit Owner in its sole and subjective discretion, including the imposition and collection of charges with respect thereto, (e) to have full and absolute power and authority to add, subtract and modify any services, facilities or amenities, subject to Section 5.8 above, (f) to have full and absolute authority to assign and delegate the rights and/or obligations under this Declaration relative to the Shared Easement to a managing agent, and (g) to have full and absolute power and authority to sell and convey an area subject to a Shared Easement or portions thereof (including, without limitation, the Club) or to sell and assign all or any portion of the Hotel Unit Owner's rights and interests in the business of the Hotel Unit Owner to third parties, subject to the Shared Easement rights provided in this Declaration. The Hotel Unit Owner retains and reserves all rights to use, occupy, maintain, repair, replace, reconfigure, operate and enjoy the Hotel Unit, including the Shared Easement areas within the Hotel Unit.

**5.9.5        Vacation Club Member Benefits and Restrictions.** The Shared Easements benefiting the Vacation Club Members as described above shall extend to and benefit the following (each a "Vacation Club Permitted User"): each Vacation Club Member or such Member's exchange user, Lessees or Guests, as applicable, who are in residence within a Vacation Club Unit. The Shared Easements benefiting the Vacation Club Members as described above may be used by the Vacation Club Member or other Vacation Club Permitted Users only at those times while in residence and at no other time. The Hotel Unit Owner and its agents, employees, contractors, and licensees may interact with Vacation Club Permitted Users so as to verify compliance with this Section. Further, the Hotel Unit Owner may limit the access and use of the Shared Easement areas and services to Vacation Club Permitted Users pursuant to the same rules and regulations applicable to Hotel Residential Members from time to time. Notwithstanding the foregoing or any contrary provision in this Declaration, no fees (other than Assessments covering Shared Easement Payments, as described in this Declaration) shall be chargeable to any Vacation Club Permitted Users with respect to the Shared Easements benefiting them unless such fees are specifically authorized by the Project Association for the Vacation Club Project and are applied to reduce the allocable share of Assessments

payable by Vacation Club Members (but Vacation Club Permitted Users shall pay for charges for purchased goods and services).

**Section 5.10     Modifications to Hotel Project.** The Hotel Unit Owner at its election may make any alterations, modifications or improvements to the Hotel Project that the Hotel Unit Owner deems appropriate, in its sole and absolute discretion; provided, however, that such alterations, modifications or improvements may not materially impair the benefits which the Master Association and Owners benefited by applicable Shared Easements derive from the ordinary use and enjoyment of the Shared Easements, and the easement rights provided hereunder may be temporarily suspended as necessary during the period of any such alteration, modification, improvement, renovation or relocation. During any such suspension period, the Master Association shall continue to be responsible for Operating Expenses and, if applicable, Capital Expenses, to the extent same are continuing expenses of the applicable Shared Easement despite such temporary suspension of operations.

**Section 5.11     Additional Access Limitations.** The use of the Shared Easements by the Master Association is further subject to the following restrictions:

5.11.1     Building Control and Rights of Entry. Outside of regular business hours as set by the applicable Shared Easement Owner in its sole and absolute discretion (but subject to the Hotel Maintenance Standard), the benefited Members of the Master Association as described above may be required to provide identification or use an access card, access code or a similar security device in order to gain entry to the Shared Easement areas, provided such access regulations will not unreasonably limit Vacation Club Owners' or Vacation Club Permitted Users' access to and from the Vacation Club Project through the Hotel Parking Access Improvements. Any such actions on the part of the Shared Easement Owner shall not be deemed under any circumstances as an undertaking by the Shared Easement Owner to guarantee the safety and security of such Members or the security of the property of such Members. The Shared Easement Owner disclaims all responsibility to ensure the security and safety of persons and property within the areas of the Shared Easements and no person shall be entitled to rely upon such security or access control devices as a guarantee of safety and security.

5.11.2     Deliveries. All delivery services, including, but not limited to, those of packages, overnight mail, take-out food, floral deliveries and similar types of deliveries to occupants, shall be required to enter and exit the Shared Easement areas through the Hotel's front desk, which will notify the intended recipient of the delivery.

5.11.3     Large Deliveries/Moving Procedures. When delivering or moving large items through the Shared Easement areas to the Hotel Project, such as furniture, only the freight elevator within the Hotel Project will be used. All such delivery or moving must be coordinated with the Hotel operator prior to such activity.

5.11.4     Real Estate Agents. If any Unit within the Hotel Project is for sale, the individual Owner must provide the Hotel operator with the name and telephone number of the listing real estate agent. The listing real estate agent must notify the Hotel operator prior to each showing, which must take place during regular business hours as set by the Hotel operator. In no event may any for-sale sign be placed in any window within Riverfront Village.

**Section 5.12     Operating Expenses.** Each calendar year (or fiscal year, if different), the Master Association will pay to the applicable Shared Easement Owner a percentage, determined with respect to each of the Shared Easements as set forth in this Article 5 above, of (a) the expenses of maintenance, repair, replacement, operation, management, insurance, taxes, utilities and other expenses related to the ongoing operation and maintenance of the respective Shared Easements in accordance with the Hotel Maintenance

Standard, (b) that portion of common expenses of the Project Association for the Hotel Project allocable to the areas of the Hotel Unit subject to Shared Easements, as more fully described (or to be described) in the Project Declaration for the Hotel Project, (c) the cost of services to the applicable Units and/or Owners provided with respect to the Shared Easements as discussed in this Article 5 above, and (d) the expense of establishing and maintaining reserves for property and equipment repairs, replacement and maintenance, taxes, capital improvements and other purposes (collectively, the "Operating Expenses"). The applicable percentage of the Operating Expenses owing to the Shared Easement Owner shall become part the Master Association's annual budget, as determined and discussed in Article 6 below.

**Section 5.13 Capital Expenses.** A "Capital Project" is any project or capital improvement to any area encumbered by a Shared Easement undertaken by the applicable Shared Easement Owner in one or more calendar years (or fiscal years, if different), subject, however, to anything contrary in Section 5.4.4 above. Except as provided in Section 5.8 above, which permits new Capital Projects to be paid by benefited Owners upon the agreement of their respective Classes of Directors, a Capital Project shall not include the initial construction of the improvements and/or facilities subject to a Shared Easement. In no event will any project or capital improvement to any area which is not encumbered by a Shared Easement be considered a Capital Project. By way of example only, and without limiting the definition above, the following projects comprise a partial list of examples of a Capital Project: renovation of the lobby, repaving the entry drive, replacing carpet, purchasing new fitness equipment (subject to the provisions of Section 5.4.4) or resurfacing the swimming pool. In the event a Shared Easement Owner intends to undertake a Capital Project, the Shared Easement Owner will provide the Master Association written notice containing a description of the proposed Capital Project and an estimate of the aggregate hard and soft costs related to the proposed Capital Project (its "Capital Expenses"). Following such notice, the Shared Easement Owner shall be entitled to use and employ reserve funds collected as part of the Shared Easement Payments to pay Capital Expenses in connection with the proposed Capital Project. In the event that Capital Expenses exceed such collected reserves, the Shared Easement Owner may charge the Master Association the applicable percentage of the Capital Expenses exceeding such reserves only to the extent that the Capital Project is necessary to maintaining the Hotel Maintenance Standard or is otherwise necessary due to health safety concerns, each as evidenced either by a letter or other writing signed by the holder of the hotel brand or chain associated with the Hotel Unit or Vacation Club Project, as applicable, or by a written notice from the Shared Easement Owner documenting same. In such event, such excess Capital Expenses shall become part the Master Association's annual budget, as determined and discussed in Article 6 below. Each Shared Easement Owner shall also be entitled, but not obligated, to establish and maintain a reserve fund for the purpose of anticipated future Capital Projects and the applicable percentage of such proposed reserves shall be considered part of the Capital Expenses owing to the applicable Shared Easement Owner and become part the Master Association's annual budget, as determined and discussed in Article 6.

**Section 5.14 Vacation Club Access Fees.** Vacation Club Members (including, without limitation, as to each Vacation Club Unit, the Vacation Club Developer from and after the date a temporary or permanent occupancy certificate (an "Occupancy Certificate") is issued with respect to such Vacation Club Unit) shall pay an annual "access fee" to the Hotel Unit Owner, herein defined as the Vacation Club Access Fee. The Vacation Club Access Fee is hereby established at Seventy Five Dollars (\$75.00) per year per Fractional Ownership Interest as of the Hotel Opening Date, with annual adjustments thereafter based on the Consumer Price Index for all Urban Consumers, Denver, Boulder, Metro Area - All Items Index as published by the United States Department of Labor, Bureau of Labor Statistics or, if such index is no longer published, on a Consumer Price Index determined by the Hotel Unit Owner which reasonably approximates such Index. The full annual Vacation Club Access Fee shall be collected by the Master Association as part of its annual Assessments and shall be payable to the Hotel Unit Owner on or before June 30 of each calendar year unless adjusted as described in the immediately following paragraph. In the event the Vacation Club Unit is other than a two-bedroom/two-bathroom Unit or the Fractional Ownership Interest is other than an annually recurring interest, the Vacation Club Access Fee shall be adjusted per each such Fractional Ownership Interest

in the same manner as capital deposit obligations as set forth in Section 3.24 above. All such Vacation Club Access Fees shall become part of the annual budget of the Master Association as described in Article 6 below and be payable to the Master Association as part of the Assessments of the Vacation Club Members. Vacation Club Access Fees shall be prorated for the annual payment period in which a Vacation Club Unit is created, as defined in Section 2.76 above, or deemed created, as discussed in Section 4.3.6 above. The obligation of Vacation Club Members to pay the Vacation Club Access Fees shall be absolute, unconditional and irrevocable, payable without right of setoff or counterclaim or any deduction or withholding whatsoever, it being acknowledged and agreed that the payment of the Vacation Club Access Fee was a material inducement to Declarant to grant to the Vacation Club Members rights to the Shared Easements within the Hotel Unit as provided in this Declaration, and Declarant would not have granted such rights absent the Vacation Club Access Fees. The Project Association for the Vacation Club Project shall be fully obligated to the Hotel Unit Owner to pay any shortfall between the Vacation Club Access Fees collected from the Vacation Club Members and those owed to the Hotel Unit Owner. Vacation Club Access Fees may be payable to the Hotel Unit Owner prior to the actual creation of Vacation Club Units or Fractional Ownership Interest as set forth in Section 4.3.6 above. The obligation to pay the Vacation Club Access Fee shall expire and no longer be payable on the date falling fifty (50) years after the date that the Vacation Club Project has, or is deemed to have pursuant to Section 4.3.6 above, a minimum of fifty (50) Vacation Club Units for purposes of payment of the Vacation Club Access Fee.

Notwithstanding the foregoing paragraph, in the event the applicable Vacation Club Unit receives its Occupancy Certificate between January 1 and May 31 of the same calendar year as the applicable June 30 payment date, or between June 1 and December 31 of the prior calendar year as the applicable June 30 payment date, the following shall apply: (a) in the event the applicable Vacation Club Unit receives its Occupancy Certificate between January 1 and May 31 (or is deemed to have pursuant to Section 4.3.6 during such period), the related Fractional Ownership Interests shall pay on or before June 30 of the same calendar year a prorated Vacation Club Access Fee for the period from the issuance of such Occupancy Certificate through the end of the calendar year; (b) in the event the applicable Vacation Club Unit has received its Occupancy Certificate between June 1 and December 31 (or is deemed to have pursuant to Section 4.3.6 during such period), the related Fractional Ownership Interests shall pay on or before the next June 30 a prorated Vacation Club Access Fee for the period from the issuance of such Occupancy Certificate through the end of that calendar year, plus the full annual Vacation Club Access Fee for the year in which the payment is made. By way of example and not of limitation: a Vacation Club Unit issued a Occupancy Certificate on July 15<sup>th</sup>, 2009 would owe on June 30<sup>th</sup>, 2010 a prorated Vacation Club Access Fee for the balance of 2009, plus a full annual Vacation Club Access Fee for 2010; or a Vacation Club Unit issued an Occupancy Certificate on March 15, 2010 would owe on June 30, 2010 a prorated Access Fee for the balance of 2010.

**Section 5.15 Indemnification.** In consideration of the grant of the Shared Easements to the Master Association as provided above, the Master Association shall be obligated to and shall indemnify and defend each Shared Easement Owner and hold it harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements ("Losses"), arising with respect to any decisions, actions or operations of the Master Association related to the Shared Easements or otherwise having a material adverse effect on the applicable Shared Easement Owner, the Hotel Unit or the operations related to same, or the Vacation Club Project, including, without limitation, the failure of the Master Association to pay the Shared Easement Payments or other actions of the Master Association resulting in the failure of the Shared Easement Owner to adhere to the Hotel Maintenance Standard. The costs and expenses incurred by the Master Association arising under this Section shall be allocated among the Class(es) whose Members are responsible for the Losses as described herein.

**Section 5.16 Shared Easements Voidable.** Notwithstanding any contrary provision in this Declaration but subject to Section 5.17 below, in the event that at any time this Declaration is amended or otherwise modified that in any way alters, modifies or amends the terms, conditions, procedures, rights,

powers, obligations, liability or any other matter relating to or affecting the Shared Easements or otherwise relating to the Hotel Unit or Vacation Club Project (including, without limitation, relating to the Shared Easement Payments or Vacation Club Access Fees) without the prior written consent to such amendment or modification by the applicable Shared Easement Owner, any or all Shared Easements granted pursuant to this Declaration by the affected Shared Easement Owner shall be fully and absolutely voidable at the election of such Shared Easement Owner by the recording in the real property records of Eagle County, Colorado of a writing executed by such Shared Easement Owner. Again, subject to Section 5.17 below, by the recording of such a writing by the affected Shared Easement Owner, the Shared Easements so voided shall, without further action, immediately terminate and be void *ab initio* and all rights and obligations hereunder with respect to such Shared Easements shall immediately terminate, cease and be of no further force or effect, other than obligations arising prior to the date of such termination, including, without limitation, outstanding Shared Easement Payments. In such event, the areas previously subject to the terminated Shared Easement shall thereafter be held by the Shared Easement Owner free and clear of the applicable Shared Easement.

#### Section 5.17    Essential Shared Easements.

5.17.1    It is expressly acknowledged and agreed that the continued use and enjoyment by the Project Association for the Vacation Club Project, the Vacation Club Members and the Vacation Club Permitted Users (collectively, the "Vacation Club Benefited Parties"), and by the Project Association for the Hotel Project, the Hotel Residential Members, the Commercial Members and the Hotel Unit Owner and their respective Guests and Lessees (collectively, the "Hotel Benefited Parties") of the Shared Access Easement, the Hotel Parking Access Improvements Easement and the portion of the Hotel Services Easement consisting of telephone services (to the extent any telephone services are part of the Hotel Services Easement) (collectively, the "Essential Shared Easements"), are essential for access to and the use of the Vacation Club Project by the Vacation Club Benefited Parties and of the Hotel Project by the Hotel Benefited Parties and the continued operation thereof. Accordingly, anything in this Declaration to the contrary notwithstanding, subject to the provisions in subsection 5.17.2 below, the Master Association shall not, and shall not permit the Hotel Unit Owner or any other person or entity to, prevent, unreasonably restrict or otherwise interfere with the use and enjoyment of the Essential Shared Easements by the Vacation Club Benefited Parties or the Hotel Benefited Parties. Without limiting the foregoing, in the event there is a default in obligations to pay for any portion or all of the Shared Easement Payments with respect to the Essential Shared Easements, neither the Master Association nor the Hotel Unit Owner shall have the right to deny or interfere with the use or enjoyment of the Essential Shared Easements by the Vacation Club Benefited Parties or the Hotel Benefited Parties. In the event of any such default, each of the Master Association and the Hotel Unit Owner shall have the right and power to avail itself of all other rights and remedies at law or in equity, including the rights to seek specific performance or other equitable relief on a temporary or permanent basis, it being acknowledged and agreed that such right to specific performance is appropriate and just in these circumstances. Similarly, because the Vacation Club Benefited Parties and Hotel Benefited Parties would have inadequate remedies at law and would be irreparably harmed in the event that their use and enjoyment of the Essential Shared Easements are denied or interfered with, the Vacation Club Project Association, on behalf of itself and the Vacation Club Benefited Parties, and the Hotel Project Association, on behalf of itself and the Hotel Benefited Parties, shall be entitled to equitable relief, including the right to seek specific performance or other equitable relief on a temporary or permanent basis, without the necessity of posting any bond or proving special damages or irreparable injury, in addition to all other remedies available at law or equity, it being acknowledged and agreed that such right to specific performance and other equitable relief is appropriate and just in these circumstances. Nothing in this Section is intended to or shall be construed to prohibit the Hotel Unit Owner from imposing fines or late fees or charging interest in accordance with the provision of this Declaration or temporarily denying access to an Essential Shared Easement by any specific Vacation Club Benefited Party or Hotel Benefited Party whose violation of laws or of the rules and regulations applicable to the use of such Essential Shared Easements creates a safety hazard, or otherwise pursuing all other remedies available to the Hotel Unit Owner and/or Master Association.

5.17.2 The Vacation Club Benefited Parties and the Hotel Benefited Parties acknowledge and agree with respect to the portions of the Essential Shared Easements (i) comprising telephone services, that such services may be interrupted from time to time for reasons beyond the reasonable control of the Hotel Unit Owner, the Hotel Unit Owner shall have no liability for such interruptions, and in the event of any such interruptions, the Hotel Unit Owner only shall be required to make all commercially reasonably efforts necessary or appropriate to cause the services to be restored to all affected users of the telephone services on a nondiscriminatory basis as soon as is commercially reasonable under the circumstances; and (ii) that provide vehicular or pedestrian access to the Vacation Ownership Benefited Parties or the Hotel Benefited Parties, such means of access may be temporarily unavailable due to repairs or damage, destruction or other causes beyond the reasonable control of the Hotel Unit Owner. In the event any repair or reconstruction work temporarily closes any portions of the Essential Shared Easements that provide access to the Vacation Club Benefited Parties or the Hotel Benefited Parties, the Hotel Unit Owner shall to the maximum extent commercially reasonable under the circumstances, and on a nondiscriminatory basis, provide alternative access areas on, over and across the Hotel Unit that provide as nearly as possible the functional equivalent of the means of access that are temporarily closed. In establishing the alternative means of access, the Hotel Unit Owner shall take into consideration the necessity of the Vacation Club Benefited Parties and the Hotel Benefited Parties to have continuous access as well to loading, trash removal and parking areas serving such parties. In the event the damage or destruction is so severe that the alternative means of access cannot provide continuous access to the Vacation Club Benefited Parties and/or Hotel Benefited Parties, an alternative means of access, including, without limitation vehicular access to the underground parking facility serving the Vacation Club Project, shall be established, to the maximum extent and as soon as commercially reasonable under the circumstances, and on a nondiscriminatory basis, on, over and across the Hotel Unit for the benefit of the Vacation Club Benefited Parties and the Hotel Benefited Parties, as applicable, and the schedule and plans for the reconstruction of the Hotel Project shall take into consideration and accommodate to the maximum extent commercially reasonable under the circumstances the necessity of restoring on an expedited basis the portions of the Essential Shared Easements that provide access to the Vacation Club Benefited Parties and the Hotel Benefited Parties. In the event that all Units applicable to either the Vacation Club Benefited Parties or the Hotel Benefit Parties are uninhabitable due to casualty or otherwise, but the other set of Units remain habitable, the Hotel Unit Owner shall give priority to the Benefited Parties whose Units are habitable in restoring such access.

5.17.3 The obligations of the Hotel Unit Owner contained in Section 5.17.2 above are limited as follows: (i) in the event that the expenditure of costs for capital improvements is necessary to create such new access, the Class(es) benefited by such access shall timely pay all costs relative to same to the extent not covered by applicable insurance proceeds from insurance to be carried pursuant to this Declaration, provided, however, that in the event that any additional Class(es) become benefited by the new access, such additional Class(es), as a condition to such Class(es) being granted such benefit, shall reimburse its proportionate share of capital costs (based on relative Voting/Assessment Percentages) to the Class(es) having originally paid such capital costs, (ii) Section 5.3.5 above shall be deemed automatically modified with respect to such alternative access such that the benefited Class(es) only shall be responsible for related Operating Expenses and Capital Expenses, and (iii) such new access shall be deemed subject to the applicable Shared Easement for all other purposes hereunder.

**Section 5.18 LIMITATION OF LIABILITY OF SHARED EASEMENT OWNERS.** NOTWITHSTANDING THE DUTY OF A SHARED EASEMENT OWNER TO MAINTAIN, MANAGE AND OPERATE ITS SHARED EASEMENT AREAS, AND EXCEPT TO THE EXTENT COVERED BY THE APPLICABLE SHARED EASEMENT OWNER'S INSURANCE, NO SHARED EASEMENT OWNER SHALL BE LIABLE TO OWNERS, GUESTS, LESSEES, VACATION CLUB PERMITTED USERS, PROJECT ASSOCIATIONS, THE MASTER ASSOCIATION OR ANY OTHER OCCUPANTS OR PERSONS USING OR BENEFITING FROM SUCH SHARED EASEMENT(S) FOR PERSONAL INJURY, DEATH, DAMAGE OR LOSS ARISING FROM OR RELATING THE SHARED EASEMENTS

(INCLUDING, WITHOUT LIMITATION, THE SWIMMING POOLS AND HOT TUBS LOCATED ON THE PROPERTY) UNLESS THE DIRECT RESULT OF THE SHARED EASEMENT OWNER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. ALL OWNERS, BY ACCEPTANCE OF A DEED FOR ANY PORTION OF THE PROPERTY, ON BEHALF OF ITSELF AND EACH OF ITS GUESTS, LESSEES, VACATION CLUB PERMITTED USERS, UNIT OCCUPANTS, AND OTHER PERSONS USING OR BENEFITING FROM SUCH SHARED EASEMENT(S), HEREBY ASSUMES ALL RISKS WITH RESPECT TO SUCH USE, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS SECTION 5.18, AND HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AS OF THE DATE OF THIS DECLARATION, THE SHARED EASEMENT OWNERS, DECLARANT AND THE WESTIN LICENSE COMPANY, AND ANY AFFILIATE, AGENT, EMPLOYEE, REPRESENTATIVE, PREDECESSOR OR SUCCESSOR OF ANY OF THE FOREGOING RELEASED PARTIES, FROM ANY CLAIM RESULTING OR ARISING FROM SUCH INJURY, DEATH, DAMAGE OR LOSS. EACH DECLARANT UNDER ANY PROJECT DECLARATION CREATED ON THE PROPERTY SHALL PROMINENTLY INCLUDE AN IDENTICAL RELEASE IN ANY SUCH PROJECT DECLARATION. FURTHER, THE RULES AND REGULATIONS OF THE MASTER ASSOCIATION SHALL PROVIDE THAT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OWNER, UNIT OCCUPANT, INVITEE AND OTHER PERSONS USING OR BENEFITING FROM SUCH SHARED EASEMENT(S) ASSUMES ALL RISK OF DAMAGE, LOSS, HARM, INJURY AND DEATH ARISING FROM THE USE OF THE SHARED EASEMENTS, INCLUDING, WITHOUT LIMITATION, THE USE OF SWIMMING POOLS AND/OR HOT TUBS ON ANY PORTION OF THE PROPERTY.

## ARTICLE 6 ASSESSMENTS

Section 6.1 Covenant of Personal Obligation of Assessments. Declarant and every other Owner of a Unit or Fractional Ownership Interest, by acceptance of the deed or other instrument of transfer of his or her Unit or Fractional Ownership Interest (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, jointly and severally, with every other Owner and with the Master Association, and hereby does so covenant and agree to pay to the Master Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Unit or Fractional Ownership Interest. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Area, the facilities contained in the Common Area or any of the Shared Easements, or by abandoning or leasing his Unit or Fractional Ownership Interest. The Project Associations are hereby empowered and authorized, and upon the request of the Master Association are hereby required, to levy and collect from Owners of Units within their respective Projects the Assessments owing to the Master Association as part of such Project Association's own assessment procedures and to promptly remit such Assessments collected by the Project Association to the Master Association. In the event of any shortfall between the Assessment collected by a Project Association and the amount owed to the Master Association, the Project Association shall be obligated to pay such shortfall to the Association so as to timely pay all Assessments owing by such Project Association's members, including, without limitation, Assessments relating to Shared Easement Payments and Vacation Club Access Fees, it being agreed that each Project Association, jointly and severally with the Master Association and the delinquent Owner(s), shall be directly obligated to the applicable Shared Easement Owner with respect to such payments. Any Master Association or Project Association payments of Shared Easement Payments on behalf of a delinquent Owner, together with all costs, expenses, late fees, interest or other charges related thereto, shall be fully allocated to the delinquent Owner and any judgment lien filed in connection with such legal action by a Shared Easement Owner shall attach solely to the Unit(s) of the delinquent Owner. Assessments shall be levied against each Unit and Fractional Ownership Interest but, upon formation, each Project Association is hereby designated as the agent of each Owner of a Unit

within such Project for receipt of notices of Assessments and the collection of Assessments and remittance to the Master Association. Each Project Association of a Fractional Ownership Interest is hereby required to levy and collect from Owners of Fractional Ownership Interests within their respective Projects the Assessments owing to the Master Association as part of such Project Association's own assessment procedures and to promptly remit such Assessments collected by the Project Association to the Master Association. In the event that the Assessments collected and remitted to the Master Association by any Project Association are less than the entirety of the Assessments owed by the Owners within such Project Association as a result of the failure of any of such Owners to pay assessments to the Project Association, the Project Association shall be deemed delinquent in its payment obligations hereunder and, further, shall provide a written statement of each delinquent Owners to the Master Association and to each Shared Easement Owner concurrently with submission of the Assessments to the Master Association.

**Section 6.2      Purpose of Assessments.** The Assessments levied by the Master Association shall be used for the purpose of promoting the health, safety, convenience and general welfare of the Owners and the improvement and maintenance of the Common Area, and of the services and facilities located on the Common Area. Proper uses of the Assessments shall include, but are not limited to, the following:

6.2.1      Paying the Shared Easement Payments and Vacation Club Access Fees as provided in this Declaration;

6.2.2      Improving, repairing, replacing, renovating and maintaining any of the Common Area or other improvements maintained by the Master Association;

6.2.3      Furnishing garbage and trash pickup and water, sewer and other utility services to the Common Area and/or to other areas and Projects within Riverfront Village;

6.2.4      Obtaining and maintaining insurance in accordance with the provisions of Article 8 below;

6.2.5      Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements and other purposes;

6.2.6      Paying expenses of the Design Review Board in accordance with the Design Review Board Covenants;

6.2.7      Paying the Vacation Club Access Fees to the Hotel Unit Owner as provided in Section 5.14 above;

6.2.8      Carrying out all other Functions, powers, rights and duties of the Master Association specified in the Master Association Documents; and

6.2.9      Generally, addressing any other expenses necessary to meet the purposes of the Master Association.

**Section 6.3      Apportionment of Annual Assessments.**

6.3.1      The total annual Assessment for any fiscal year of the Master Association shall be assessed to the Owners of the Units (and Fractional Ownership Interests therein) on the basis of the Voting/Assessment Percentage calculated pursuant to Section 4.3 above. With respect to Assessments which are the responsibility of a certain Class or Classes only, including, without limitation, Assessments to cover Shared Easement Payments, such Assessments shall be assessed to the benefited Class(es) on the basis of the

Voting/Assessment Percentage of a Unit as a percentage of the aggregate Voting/Assessment Percentages for all Units within such Class(es). Notwithstanding the foregoing or any contrary provision herein, with respect to Assessments relating solely to the Hotel Services Easement, the adjustment percentage applicable to the Commercial Members as set forth in Section 4.3.4 above shall change from 1.00 to 0.50, and the Commercial Members' Voting/Assessment Percentage shall be adjusted accordingly with respect to the Hotel Services Easement (other than with respect to the Club in the event of conversion of the Club to a Commercial Unit, which shall not benefit from this adjustment). The purpose of such adjustment is to reflect the reduced level of benefit to the Commercial Members from the Hotel Services relative to other benefited Classes (e.g., de minimus use of reception, checkout or concierge services).

**6.3.2** Notwithstanding any terms in this Section to the contrary, (a) the Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 9, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 9; and (b) in the event a specific item in the Master Association's budget benefits a certain Class or certain Classes but not all Classes, or in the event the Master Association has provided services to a certain Project, Units or Class(es) in excess of those provided to other Projects, Units or Classes within the Property, the rate of Assessments levied with respect to such item or services shall be modified to equal the Voting/Assessment Percentage as recalculated pursuant to Section 6.3.1 above.

**6.3.3** The total annual Assessments of the Master Association shall be apportioned among all Units and Fractional Ownership Interests as provided in this Section. The Executive Board shall determine the date on which regular Assessments shall commence, which date may be delayed at the discretion of the Executive Board regardless of the adoption and ratification of a Master Association budget and/or the collection of working capital deposits pursuant to such budget. Until such date of commencement of regular Assessments, Declarant shall be responsible for all expenses of the Master Association.

**Section 6.4      Amount of Total Annual Assessments.** The total annual Assessments against all Units shall be based upon the Master Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such fiscal year, as approved pursuant to Section 6.6 below, which estimates shall include the Shared Easement Payments due as provided in Section 6.5 below and reasonable reserves for necessary repair, replacement and capital improvement projects of the Master Association, and may include, among other things, the costs associated with the items enumerated in Section 6.2 above, together with any other costs and fees which may reasonably be expected to be incurred by the Master Association for the benefit of the Owners under or by reason of the Master Association Documents. In the event of surplus funds remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves the Executive Board may, within its discretion, apply the surplus funds applicable to a particular budget, to the benefit of its benefited Members (a) into reserves, (b) toward the following year's Common Expenses, (c) toward deficiencies arising under Section 6.5.3 or 6.5.4 below, (d) toward a credit to Owners against future assessments or in the form of a distribution, or (e) any combination of the foregoing.

**Section 6.5      Shared Easement Payments.**

**6.5.1      Budget Procedures.** On or before the date falling three (3) months prior to the beginning of the Master Association's fiscal year, each Shared Easement Owner will develop a budget estimating the total amount of the year's Operating Expenses and Capital Expenses anticipated to be incurred by the Shared Easement Owner in the subsequent calendar year (or fiscal year, if different) with respect to each of the Shared Easements and shall submit same to the Master Association. During the period prior to the expiration of the declarant control period as established under the Act for the Vacation Club Project, the Hotel Unit Owner shall also submit same to the Executive Board for the Vacation Club Project and each such party

shall cooperate in good faith to reach agreement as to Operating Expenses contained in such budget given the parameters of Section 5.12 above. Similarly, during the period prior to the expiration of the declarant control period as established under the Act for the Vacation Club Project, the Vacation Club Facilities Operator shall also submit same to the Hotel Unit Owner and each such party shall cooperate in good faith to reach agreement as to Operating Expenses contained in such budget given the parameter of Section 5.12 above. If a dispute arises as to a particular budget during such period, then either party may submit such issue to binding arbitration in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitration shall be final and binding on the parties and shall establish the applicable Operating Expense budget. The arbitrator shall be appointed by joint agreement of the Hotel Unit Owner and the Executive Board for the Vacation Club Project, or the Vacation Club Facilities Operator and the Hotel Unit Owner, as applicable. In the event the parties are unable to reach agreement as to an arbitrator within ten (10) days of submitting this matter to arbitration, the arbitrator shall be designated by the chief judge in the District Court of Eagle County, Colorado. The cost and expense of the arbitrator shall be shared equally between the Hotel Unit Owner and the Executive Board for the Vacation Club Project, or the Vacation Club Facilities Operator and the Hotel Unit Owner, as applicable. Following the expiration of such declarant control period, the above-described procedures shall cease and, in lieu thereof, each of the Shared Easement Owners shall be limited in the level of increases to the annual budget of Operating Expenses, as follows: such budget may be increased on an annual basis by no more than the greater of (a) five percent (5%) of previous year's budget, (b) the percentage increase, for the twelve (12) month period ending August 31 of the calendar year prior to the budget year (or four months prior to the end of the fiscal year, if different), of the Consumer Price Index for all Urban Consumers, Denver, Boulder, Metro Area - All Items Index as published by the United States Department of Labor, Bureau of Labor Statistics or, if such index is no longer published, on a Consumer Price Index reasonably determined by the Hotel Unit Owner which approximates such Index, (c) increases in actual costs relative to the applicable Shared Easements as certified by an independent accounting firm, or (d) increases voluntarily approved by the Executive Board within its discretion, including the affirmative of at least one (!) Director from each affected Class of Directors.

6.5.2        Obligation. Following the establishment of the budget of Operating Expenses and Capital Expenses as set forth above, the percentage of each such estimate for which the Master Association is responsible, as provided in Article 5 above, is owed to the applicable Shared Easement Owner with respect to each of the Shared Easements and is referred to herein as the "Shared Easement Payment". The Master Association will pay each Shared Easement Payment without demand or set-off, in equal installments due on the first day of each calendar quarter in such calendar year (or fiscal year, if different). Any failure or delay of a Shared Easement Owner in establishing or updating the amount of the Shared Easement Payment for any calendar year (or fiscal year, if different) will not be deemed a waiver, modification, or release of the right to so establish or update those installments, or of the obligation of the Master Association to pay installments of a Shared Easement prospectively.

#### 6.5.3        Accounting.

6.5.3.1        Within 120 days after the end of each fiscal year of the Master Association, the applicable Shared Easement Owner will prepare and submit to the Master Association an accounting of the actual Operating Expenses incurred for the fiscal year just ended, together with a reconciliation of those actual Operating Expenses and the resulting annual obligation of the Master Association for Shared Easement Payments with the aggregate of the quarterly installments of estimated Shared Easement Payments paid by the Master Association for that same fiscal year. If the sum of those quarterly installments so paid by the Master Association proves to be less than the final annual obligation for Shared Easements (other than for reasons of non-payment of Assessment, which obligation shall be the responsibility of the applicable Project Association), then the Master Association will pay such deficiency to the applicable Shared Easement Owner within 30 days after such Shared Easement Owner delivers its annual accounting and reconciliation statement. Conversely, if the sum of those monthly installment payments is

greater than the final annual obligation for Shared Easements, the applicable Shared Easement Owner will either reimburse the excess to the Master Association contemporaneously with such Shared Easement Owner's submission of its annual reconciliation statement, or give the Master Association a credit, equal to the amount of the excess, against the quarterly installments of Shared Easements next due and owing until the credit is exhausted.

6.5.3.2 Upon completion of the Capital Project, the applicable Shared Easement Owner will provide the Master Association with written notice containing the total actual Capital Expenses of such Capital Project and the difference, if any, between the Capital Expenses paid by the Master Association and the actual total Capital Expenses for which the Master Association is responsible. Within one hundred twenty (120) days of such notice, the Master Association or the Shared Easement Owner, as applicable, will pay to the other an amount equal to such difference.

6.5.4 No Waiver; Special Levies. Any failure or delay of a Shared Easement Owner in establishing or updating the quarterly installments of estimated Shared Easement Payments for any calendar year (or fiscal year, if different) will not be deemed a waiver, modification, or release of the right to so establish or update those installments, or of the obligation of the Master Association to pay installments of Shared Easement Payments prospectively or to make the year-end reconciliation. At its election, in the event that a Shared Easement Owner incurs unusual or otherwise unanticipated Operating Expenses beyond the reasonable control of the Shared Easement Owner, the Shared Easement Owner may also make specific levies of Shared Easement Payments in arrears for the actual amount of Operating Expenses already incurred (e.g., in a case where a Shared Easement Owner incurs an Operating Expense that is unusual or otherwise non-recurring), provided the budget procedures set forth in Section 6.5.1 above are observed. Any Shared Easement Payment which is thus specially levied shall require that the Executive Board immediately adopt a new budget and to submit such budget to the Owners for a ratification vote as set forth in Section 6.6 below. If ratified, such levy shall be due and payable to the applicable Shared Easement Owner within 30 days thereafter. If necessary, the Executive Board shall assess a Special Assessment to cover such levy. Notwithstanding the foregoing, in the event that the cause for a specific levy of a Shared Easement Payment as described in this Section becomes necessary due to actions of the Shared Easement Owner such as a delay in establishing or updating the estimated Shared Easement Payments, the Master Association may have up to one hundred twenty (120) days to make the applicable Shared Easement Payment if, in the reasonable judgment of the Executive Board, payment within thirty (30) days would cause material cash flow problems for the Master Association.

6.5.5 Books and Records. The Master Association, in the applicable Shared Easement Owner's offices and at the Master Association's sole cost and expense, may audit the Shared Easement Owner's books and records for the purpose of verifying actual Operating Expenses, provided the Master Association gives the Shared Easement Owner reasonable prior notice thereof (and in any case not less than five business days in advance), and further provided that such audit may be undertaken only during ordinary business hours and will be subject to such limitations and procedures as the Shared Easement Owner may reasonably impose in order to avoid any material interference with normal business operations. The Master Association may conduct such an audit no more frequently than once in any fiscal year.

6.5.6 Payment Due Date and Late Charges. If, for any particular Shared Easement Payment, Vacation Club Access Fee payment or other payment obligation owing to a Shared Easement Owner from the Master Association, this Declaration fails to establish an express due date, then the same will be due and payable within 30 days after the Shared Easement Owner makes written demand for payment. Any installment of Shared Easement Payments not made within 15 days after it becomes due and payable is delinquent. The Master Association is obligated to pay a monthly late fee equal to 1.5% of the delinquent amount, which late fees accrues initially as of the occurrence of the delinquency, and thereafter on the first day of each ensuing calendar month until the delinquency is cured. If any late fees collected by a Shared

Easement Owner prove to be in excess of the amount permissible under applicable law, then the excess, at the Shared Easement Owner's election, either will be refunded to the Master Association or applied as a credit against obligations for other Shared Easement Payments accruing under this Declaration. All sums paid by the Master Association to a Shared Easement Owner over and above amounts collected from a Project Association and related to payment obligations of Owners within such Project Association shall become the obligation of such Project Association and shall further be allocated as Assessments to all Owners within such Project.

**Section 6.6      Fiscal Year; Annual Budget.** The fiscal year of the Master Association shall be the calendar year unless the Executive Board adopts a different fiscal year by the affirmative vote of a majority of Directors, including at least one (1) Director from each Class of Directors. The Executive Board shall, no less than annually, develop and adopt a proposed advance budget as described in Section 6.4 above pursuant to the procedures set forth below, which budget must contain the estimate of Shared Easement Payments as determined by each Shared Easement Owner and submitted pursuant to Section 6.5.1 above. The budget must also include the Vacation Club Access Fees. Within a reasonable time following the adoption of any proposed budget for the Master Association by the Executive Board, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver (a) a summary of the budget relative to all Owners with respect to those budgetary matters affecting all of Riverfront Village, and (b) separate summaries to all Owners within a Class or Classes with respect to those budgetary matters affecting only such Class or Classes, and shall set a date for a meeting to consider ratification of the budget within a reasonable time after mailing or other delivery of the applicable summary. Unless at that meeting Owners holding a Voting/Assessment Percentage equal to or exceeding eighty-five percent (85%) of the aggregate Voting/Assessment Percentages subject to each such budget reject the budget, the budget is ratified, whether or not a quorum is present. Each Owner understands and accepts that Owners purchasing within Riverfront Village are relying on the quality of maintenance and service expected within Riverfront Village, including, without limitation, the Hotel Maintenance Standard with respect to the Shared Easements, and that the above-described procedures and ratification vote are designed to protect such standards and expectations on behalf of all Owners. In the event that the proposed budget is rejected, the periodic budget last ratified in accordance with this Section must be continued until such time as the Owners entitled to ratify a particular budget ratify a subsequent budget proposed by the Executive Board. The Executive Board shall levy and assess the Master Association's annual Assessments in accordance with the annual budgets. Notwithstanding the foregoing or any contrary provision herein, nothing in this Declaration shall be construed as limiting the obligation of Vacation Club Members or the Project Association for the Vacation Club Project to pay the Vacation Club Access Fees, which are established under Section 5.14 above and not subject to the budgetary or other procedures herein applicable to other Assessments.

Any proposed budget for the Master Association shall first be approved by a majority of the members of the Executive Board present at a meeting in which a quorum exists. Nothing herein shall be construed as granting the Executive Board the power or ability to reject budgets submitted by a Shared Easement Owner with respect to the Shared Easement Payments, except with respect to a request to the Executive Board for its voluntary approval of budget increases pursuant to Section 6.5.1 above.

**Section 6.7      Special Assessments.** In addition to the annual Assessments authorized above, the Executive Board may at any time and from time to time determine, levy and assess in any fiscal year (without the vote of the members of the Master Association, except as provided in the Act and in this Section below) a special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine). Any amounts determined, levied and assessed pursuant to this Section shall be assessed to the Units and Fractional Ownership Interests in the same manner as described with respect to annual Assessments in Section 6.3 above. Special Assessments shall be based on a budget adopted in accordance with Section 6.6 provided that, if necessary, the Master Association may adopt a new budget

pursuant to Section 6.6 prior to levying a special Assessment. Such special Assessment(s) shall be due and payable as determined by the Executive Board.

**Section 6.8     Due Dates for Assessment Payments; Master Association Obligations.** Unless otherwise determined by the Executive Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Master Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article), on the first day of each fiscal quarter. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board may assess a "late charge" on the installment in an amount of fifteen percent (15%) of the amount outstanding or such other charge as the Executive Board may fix by rule from time to time as provided in the bylaws of the Master Association to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a quarter or other applicable payment period. The Master Association shall be obligated to pay all Shared Easement Payments and Vacation Club Access Fees as provided herein regardless of any delinquency of Assessment payments by Owners. Any such payments made by the Master Association on behalf of a delinquent Owner, together with all costs, expenses, late fees, interest or other charges related thereto, shall be fully allocated to the delinquent Owner and any judgment lien filed in connection with legal action by a Shared Easement Owner shall attach solely to the Unit(s) of the delinquent Owner. Further, the Master Association is obligated to promptly and vigorously pursue collection enforcement actions against Owners delinquent in the payment of Assessments as related to Shared Easement Payments and/or Vacation Club Access Fees, and the applicable Shared Easement Owner shall be entitled to the remedy of specific performance to require the Master Association to so pursue such actions, as described in Section 3.20 above.

**Section 6.9     Declarant's Obligation to Pay Assessments.** Declarant shall be obligated to pay the annual and special Assessments (including installments thereof) on each Unit owned by it which are assessed, due and payable during the period of Declarant's ownership of such Unit.

**Section 6.10     Default Assessments.** All monetary fines assessed against an Owner pursuant to the Master Association Documents, or any expense of the Master Association which is the obligation of an Owner and collected in accordance with this Declaration shall become liens against such Owner's Unit or Fractional Ownership Interest which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to the Assessment at least thirty (30) days prior to the due date.

**Section 6.11     Lien for Assessments.** The annual, special and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 6.12 below) shall be burdens running with, and a perpetual lien in favor of the Master Association upon, the specific Unit to which such Assessments apply. In the event any such Unit has been further subdivided into Fractional Ownership Interests, these obligations shall be burdens running with, and a perpetual lien in favor of the Master Association upon the specific Fractional Ownership Interests and any reference to a "Unit" in this Section 6.11 and/or in Sections 6.12 through 6.16, inclusive, below shall be deemed to mean, if applicable, the Fractional Ownership Interests to which the applicable Assessments pertain. To further evidence such lien upon a specific Unit, the Master Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the bylaws of the Master Association and Section 6.12 below, the name of the Owner or Owners of the Unit, and any and all other information that the Master Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Master Association, or the Managing Agent and

shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

**Section 6.12    Effect of Nonpayment of Assessments.** If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the Maximum Rate on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Master Association may declare due and payable all unpaid monthly or other installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Master Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Master Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Master Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Master Association without foreclosing or in any way waiving the Master Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Master Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of annual and special Assessments and all default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 5.7 above, any accrued interest under this Section, the Master Association's costs, expenses and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Master Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Master Association's lien.

Foreclosure or attempted foreclosure by the Master Association of its lien shall not be deemed to estop or otherwise preclude the Master Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Master Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease or mortgage the Unit, and to convey, or otherwise deal with the Unit acquired in such proceedings.

**Section 6.13    Successor's Liability for Assessments.** Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Master Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, except as provided in Section 6.14 and Section 6.15 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees as shown upon any certificate issued by or on behalf of the Master Association to such named successor in interest pursuant to the provisions of Section 6.15 below.

**Section 6.14    Waiver of Homestead Exemption; Subordination of Master Association's Lien for Assessments.** By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably

waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Master Association's perpetual lien for Assessments shall be superior to all other liens and encumbrances except real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute. All other persons not holding liens described above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Master Association's future liens for Assessments, interest, late charges, costs, expenses and attorneys' fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance except as follows: To the extent permitted under the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens, shall be superior to the Association's liens. With respect to the foregoing sentence, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided above or in Section 6.15 below, shall not affect the Master Association's lien on such Unit for Assessments, interest, late charges, costs, expenses and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 6.15 Statement of Status of Assessments. Upon fourteen (14) calendar days' written request to the Managing Agent, Executive Board or the Master Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner or prospective purchaser of a Unit shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery), a statement of the Owner's account setting forth:

6.15.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees then existing against a particular Unit;

6.15.2 The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

6.15.3 The date of the payment of any installments of any special Assessments then existing against the Unit; and

6.15.4 Any other information deemed proper by the Master Association, including the amount of any unpaid lien created or imposed under the terms of the Declaration and collected by the Master Association as permitted under this Declaration.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Master Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Master Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Master Association shall have no right to assert a priority

lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

## **ARTICLE 7 EASEMENTS**

Section 7.1     Easement of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Unit and Fractional Ownership Interest, subject to the easements set forth in this Article. Such easement is subject to such reasonable regulation on access and use imposed by the Master Association, including, without limitation, the right of the Master Association to restrict the use and enjoyment of any Common Area by Owners to the time period of occupancy by such Owner and/or by Owners of Fractional Ownership Interests to the time period covered by the applicable Fractional Ownership Interest and so long as such Owners in fact occupy the Unit which is subject to the Fractional Ownership Interest during such period. Owners acknowledge and understand that the Shared Easements and the areas subject to the Shared Easements are not Common Area and the rights, privileges and obligations relative to same are set forth elsewhere in this Declaration.

Section 7.2     Recorded Easements. The Property shall be subject to any easements or rights of way as shown on any recorded plat affecting the Property, and as shown on the recorded Maps, and as reserved or granted under the Project Declarations. The recording data for recorded easements, rights of way, licenses or other matters appurtenant to or included in the Property or to which any parts of the Property may become subject is set forth on the attached Exhibit H.

Section 7.3     Easements for Encroachments. The Common Area, and all portions of it, are subject to easements hereby created for encroachments of any portion of a Unit, Project or the Common Area as follows:

    7.3.1       In favor of the Master Association so that it shall have no legal liability when any part of the Common Area encroaches upon the common area of a Project;

    7.3.2       In favor of each Project Association so that the Project Association shall have no legal liability when any part of any common area or common elements of a Project encroaches upon the Common Area;

    7.3.3       In favor of the Project Associations and the Master Association for the existence, maintenance, repair and reconstruction of such encroachments.

Encroachments referred to in this Section include, but are not limited to, encroachments of improvements located on the Common Area onto Project Lots or common area or common elements of Projects, encroachments of overhangs or other portions of Buildings or other improvements located on the Project Lots onto the Common Area, and other encroachments caused by error or variance from the original plans in the construction of the Projects, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Projects. Such encroachments shall not be considered to be encumbrances upon any Unit, any part of the Projects or the Common Area.

Section 7.4     Reservation of Easements, Exceptions and Exclusions. Declarant reserves for itself and its successors and assigns who are specifically assigned this right and easement and hereby grants to the Master Association and its successors and assigns the concurrent right to establish from time to time by declaration or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues and conduit installation areas,

consistent with the ownership of the Property for the best interest of all of the Owners and the Master Association, in order to serve all the Owners. The foregoing rights shall not apply to either Lot 1 or Lot 3 as depicted on the Subdivision Plat following conveyance of fee title of such Lots by Declarant.

**Section 7.5     Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

**Section 7.6     Master Association Easement.** An easement is hereby granted to the Master Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

**Section 7.7     Easements of Access for Repair, Maintenance and Emergencies.** Some portions of the Common Area or the facilities serving same are or may in the future be located on or within certain Units or common area or common elements of certain Projects, or may be conveniently accessible only through certain Units or common area or common elements of certain Projects. The Master Association shall have the irrevocable right to have access to each Project Lot and each Unit and to all common elements or common areas of any Project from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Area therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to any Unit. Subject to the provisions of Section 3.19 above, damage to the interior of any part of a Unit or Project resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Area or as a result of emergency repair at the instance of the Master Association shall be a Common Expense.

**Section 7.8     Declarant's Rights Incident to Construction and Marketing.** Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, hereby retains a right and easement of ingress and egress over, in, upon, under and across those portions of the Property owned by Declarant and any Common Areas on the Property and the right to store materials on such areas and to make such other use of such areas as may be reasonably necessary or incident to the complete construction and sale of the Units and the Projects, including, but not limited to, construction trailers, temporary construction offices, sales offices and directional and marketing signs. Declarant may designate a portion of the Common Area for the foregoing construction and other purposes in connection with the development of a particular Unit or Project. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit or Units owned by Declarant as sales offices, management offices or model residences so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit or otherwise where such use is permitted under applicable zoning for the Unit. The use by Declarant of any Unit owned by Declarant as a model residence, office or other use shall not affect the Unit's designation on the Map as a separate Unit. Declarant further reserves exclusive easement rights over and across those portions of the Property owned by Declarant and any Common Areas on the Property for the purpose of marketing, sales and rental of Units or of other projects developed or marketed by Declarant or its affiliates from time to time, including, without limitation, the right to show the Property and to display signs and other promotional devices. Declarant also reserves the right to lease or rent unsold Units. None of the foregoing rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, Lessee, Guest or Vacation Club Permitted User.

**Section 7.9     Governmental Requirements.** Declarant hereby reserves the right to grant such easements and rights-of-way across the Property, from time to time, as may be required by any government agency; provided, however, that no such grant shall unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, Lessee or Guest. Such easements and rights-of-way shall specifically

include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental agencies, for so long as the Declarant holds an interest in any Unit subject to this Declaration. The foregoing rights shall not apply to either Lot 1 or Lot 3 as depicted on the Subdivision Plat following conveyance of fee title of such Lots by Declarant.

**Section 7.10 Declarant Easements.** Declarant reserves unto itself, its successors, assigns who are specifically assigned this right and easement, and its employees and agents, for so long as it holds any interest in any Unit, the easement rights reserved to Declarant or otherwise granted to Owners pursuant to this Article 7.

**Section 7.11 Right of Declarant and Master Association to Own Units and to Use Common Area.** An easement is hereby reserved by Declarant for itself and its successors and assigns who are specifically assigned this right and easement and granted to the Master Association and its officers, agents, employees, successors and assigns to maintain offices, storage areas, conference areas and recreational areas for use by the Master Association within the Common Area, subject to all rules and regulations established under this Declaration. The Master Association shall also have the right (but not the obligation) to purchase and own any Unit for the purpose of maintaining an office for the Master Association or for any other use which the Master Association determines is consistent with the operation of Riverfront Village. The costs and carrying charges incurred by the Master Association in purchasing and owning any such Unit shall be part of the Common Expenses.

**Section 7.12 Maintenance and Remodeling Easement.** Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, hereby retains, and each Project Association is hereby granted, a right and easement across the Project Lot lines surrounding the Building(s) of a particular Project as necessary from time to time, during such reasonable hours following advance written notice to the applicable adjacent Project Association, as is reasonably necessary to accomplish the maintenance, repair, removal, or replacement of such Building(s) or the Common Area, including, without limitation, the placement of scaffolding to accomplish same. In the event of a dispute among Project Associations or Owners with respect to the scope of the easement reserved in this Section, the decision of the Executive Board shall be final.

**Section 7.13 Easements Deemed Created.** All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

## **ARTICLE 8 RESTRICTIONS ON USE**

**Section 8.1 Land Use Restrictions.** In addition to the restrictions found elsewhere in this Declaration, all or any portion of the Property shall be further restricted in its use, density or design according to the PUD Plan; any supplemental declarations of land use restrictions for Riverfront Village recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, if any such supplemental declarations are recorded prior to the time Declarant transfers or conveys any such Property to the Master Association or to any third party; and the rules and regulations of the Master Association. Each Owner shall comply with all other terms, provisions, covenants, conditions, restrictions, easements and reservations on the Owner's part to be complied with under this Declaration.

**Section 8.2 Maintenance of Property.** Units, except for any portion of the Property then undergoing major construction, including all improvements on such portion of the Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and in good repair, and no

trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit or common area of a Project so that they are visible from, or are a nuisance in any way to, any neighboring Unit or any road.

**Section 8.3     Use of Property During Construction.** It shall be expressly permissible and proper for Declarant and any Owner acting with the prior written consent of the Design Review Board, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Property, to perform such activities and to maintain upon portions of said Owners' property as they deem necessary such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage yards, construction yards, portable toilets, equipment and signs. However, no activity by an Owner will be performed and no facility will be maintained by an Owner on any portion of the Property in such a way as to unreasonably interfere with the use or access of any other Owner or its Guests or Lessees or of Vacation Club Permitted Users to the applicable Unit or Fractional Ownership Interest. If any Owner's use under this provision is deemed objectionable by the Design Review Board in its reasonable judgment, then the Design Review Board, in its sole discretion, may withdraw this permission.

**Section 8.4     No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any portion of Riverfront Village nor shall anything be done or placed on any portion of Riverfront Village which is or may become a nuisance. As used herein, the term "noxious or offensive activity" shall not include any activities of an Owner, Declarant or their respective designees which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate Master Association Documents or the statutes, rules or regulations of any governmental authority having jurisdiction with respect thereto and do not unreasonably interfere with any Owner's use of its Unit or with any Owner's ingress and egress to or from its Unit and a roadway. Further, the reasonable odors and noises associated with the commercial use of the Commercial Units and the reasonable odors and noises associated with the reasonable use of the Common Area shall not constitute noxious or offensive activity.

**Section 8.5     No Unsightliness.** No unsightliness shall be permitted on any Unit or the common areas or common elements of any Project. Without limiting the generality of the foregoing:

8.5.1       Except as permitted by the Act, motor vehicles classed by manufacturer rating as exceeding three-quarter ton, mobile homes, travel trailers, tent trailers, trailers, trucks (except pickup trucks used for personal, and not commercial, transport), snowmobiles, golf carts, boats, boat trailers, tractors, detached campers, camper shells, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use;

8.5.2       Pipes for water, gas, sewer, drainage or other purposes, wires, cables, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground, and satellite dishes shall be appropriately regulated by the Design Review Board as permitted by applicable law; and

8.5.3       No lumber, grass, shrub or tree clippings or plant waste, compost, metals, bulk materials or scrap or refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Unit or the common areas or common elements of any Project.

All structures, including tennis courts, outdoor swimming pools, outdoor hot tubs or jacuzzis, if any, shall comply with the Design Guidelines and, to the extent not "grandfathered" under applicable law, shall

comply with the PUD Plan as in effect from time to time. The Design Review Board shall have the power to grant a variance from the provisions of this Section from time to time as it deems necessary or desirable.

**Section 8.6     Lights, Sounds and Odors.** All exterior lighting of improvements and grounds on the Property will be subject to regulation by the Design Review Board and the provisions of the PUD Plan. No light shall be emitted from any Unit or Project which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Unit; no sound shall be emitted from any Unit or Project which is unreasonably loud or annoying; and no odor shall be emitted from any Unit or Project which is noxious or offensive to others. Notwithstanding the foregoing, both residential uses and commercial uses are contemplated within Riverfront Village, and any functions, activities and uses permitted under the PUD Plan, other zoning laws, or rules or regulations applicable to the Property are expressly allowed, subject to the restrictions set forth in this Article 8 and by any Project Association. Among the uses permitted in the Commercial Units are restaurant/bars, shops, outdoor cooking/dining and lodges and the reasonable odors and noises, amplified and unamplified music, and vibrations deriving from any permitted facilities are expressly allowed; provided, however that no odor, noise, music or vibration shall have an unreasonable impact on any other Owner or such Owner's Guests or Lessees. No rules and regulations shall be adopted which unfairly discriminate against any use permitted within a Project.

**Section 8.7     Restriction on Animals.** No animals of any kind shall be raised, bred or kept on any Unit or Project except domestic cats, dogs or other household pets so long as they are not a nuisance or kept, bred or maintained for any commercial purposes. No person shall allow any dog owned or controlled by such person to roam within Riverfront Village unattended.

**Section 8.8     Restriction on Signs.** Except as otherwise provided in Section 8.14, no signs or advertising devices of any nature shall be erected or maintained on any Unit or Project in such a manner as to be visible outside any Unit except signs approved by the Design Review Board, signs required by applicable law or legal proceedings, identification signs for work under construction (as approved by the Design Review Board), temporary signs to caution or warn of danger or the Master Association signs necessary or desirable to give directions or advise of rules or regulations and permitted signs identifying businesses located in the Commercial Units.

**Section 8.9     Restrictions on Parking.** Parking of vehicles on the Property is permitted only within parking spaces constructed with the prior approval of the Design Review Board.

**Section 8.10    Restriction on Recreational Vehicles.** No motorcycle, motorbike, snowmobile or other motorized recreational vehicle shall be operated within or on the Property, except for (i) licensed motorcycles and motorbikes that are driven on the roadways, and (ii) vehicular uses that are otherwise specifically permitted by the rules and regulations of the Master Association.

**Section 8.11    Drainage Restriction.** The flow of any surface drainage into any sewer system on the Property, except into storm sewers constructed for that purpose, shall be prohibited.

**Section 8.12    No Fences.** No fences, walls, trees, landscaping or other barriers shall be permitted for the purpose of enclosing or demarcating any property boundaries except in accordance with the PUD Plan and then only with the prior written approval of the Design Review Board.

**Section 8.13    General Practices Prohibited.** The following practices are prohibited at the Property: (i) removing any rock, plant material, top soil or similar items from any property of others; (ii) carrying loaded firearms on the Property, except within private residences; (iii) using surface water for construction; and (iv) disposing carelessly of cigarettes and other flammable materials. Notwithstanding the foregoing, the

removal of rock, plant material, top soil or similar items from a Project Lot in accordance with approvals of the Design Review Board shall be exempt from the application of this Section.

Section 8.14 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any special declarant rights (as that term is defined in the Act); (ii) the erection or maintenance on the Property by Declarant or its duly authorized agents, or temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Riverfront Village, or (iv) the proper and legal development of Project Lots within Riverfront Village in accordance with this Declaration, the PUD Plan and approvals of the Design Review Board.

Section 8.15 Health, Safety and Welfare. In the event additional uses, activities and/or facilities are deemed by the Executive Board in its sole reasonable judgment to be nuisances or to adversely affect the health, safety or welfare of Owners or members of the general public or the value of any Property, the Executive Board may adopt rules and regulations restricting or regulating the same pursuant to the terms and conditions of this Declaration.

Section 8.16 Compliance with Law. In addition to the compliance requirements set forth in Section 8.1 above, no portion of the Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, State of Colorado, County of Eagle, Town of Avon and all other municipal, governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials. Furthermore, no Owner shall release, discharge or emit from the Property or dispose of, or allow any person under such Owner's control or direction to release, discharge or emit from the Property or dispose of, any material on, above or under the Property that is designated as a pollutant or contaminant under any federal, state or local law, regulation or ordinance.

Section 8.17 Subdivision of Project Lots. Declarant hereby reserves all rights and privileges defined as "development rights" under the Act with respect to the Project Lots, excluding, however, withdrawal rights. Without limiting the generality of the foregoing, Declarant shall have the right to subdivide any Unit owned by Declarant in conformance with applicable zoning. Declarant shall have the absolute right to submit the Project Lots to further subdivision, including, without limitation, the creation of townhome Units or condominium Units and/or common areas or common elements, so long as such subdivision complies with applicable zoning restrictions and the total number of Units subject to this Declaration does not exceed the maximum number of Units permitted pursuant to Section 1.3. The rights of Declarant set forth in this Section 8.17 shall expire twenty (20) years from the date of recording of this Declaration, unless terminated earlier pursuant to the terms and provisions of the Act, or unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Master Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of such rights by Declarant.

Section 8.18 Violation. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article 8 shall be made by the Executive Board after notice and an opportunity to be heard.

## ARTICLE 9 INSURANCE AND FIDELITY BONDS

Section 9.1 General Insurance Provisions. The Master Association shall maintain, to the extent reasonably available:

9.1.1      Property insurance on the Common Area for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

9.1.2      Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area and the Master Association in an amount, if any, deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Master Association, the Managing Agent and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties.

9.1.3      The Master Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Units and/or common areas or common elements of Projects that the Master Association is not obligated to insure to protect the Master Association or the Owners.

**Section 9.2      Cancellation.** If the insurance described in Section 9.1 above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Master Association promptly shall cause notice of that fact to be given to all Owners.

**Section 9.3      Policy Provisions.** Insurance policies carried pursuant to Section 8.1 above must provide that:

9.3.1      Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Master Association;

9.3.2      The insurer waives its rights to subrogation under the policy against any Owner or member of his household and Owner's Guests and Lessees;

9.3.3      No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Master Association, will void the policy or be a condition to recovery under the policy; and

9.3.4      If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Master Association's policy provides primary insurance.

**Section 9.4      Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 9.1 above must be adjusted with the Master Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Master Association, and not to any holder of a security interest. The insurance trustee or the Master Association shall hold any insurance proceeds in trust for the Owners as their interests may appear. Subject to the provisions of Article 11 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Master Association and Owners are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

**Section 9.5      Master Association Policies.** The Master Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment. To the extent the Master Association settles claims for damages to the Property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Master Association.

**Section 9.6      Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in Section 9.1 above shall issue certificates or memoranda of insurance to the Master Association and, upon request, to any Owner. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Master Association and to each Owner to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

**Section 9.7      Common Expenses.** Premiums for insurance that the Master Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

**Section 9.8      Fidelity Insurance.** Fidelity bonds must be maintained by the Master Association to protect against dishonest acts on the part of its officers, directors, trustees, agents and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Master Association in an amount not less than three (3) months' current Assessments plus reserves as calculated from the current budget of the Master Association. The Master Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer or disbursement of Master Association funds, fidelity insurance with aggregate coverage of not less than three (3) months' assessments plus reserves, as calculated from the then-current budget of the Master Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer or disbursement of Master Association funds be less than \$50,000. In addition all funds and accounts of the Master Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Master Association shall be kept in an account separate from the operational account of the Master Association. Any such fidelity coverage shall name the Master Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

**Section 9.9      Workmen's Compensation Insurance.** The Master Association shall obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

**Section 9.10      Other Insurance.** The Master Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Master Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

**Section 9.11      Insurance Obtained by Owners or Project Association.** It shall be the responsibility of each Owner or Project Association (as set forth in the applicable Project Declaration), at such party's expense, to maintain physical damage insurance on such Owner's Unit and personal property and furnishings and on the common elements of such Project and public liability insurance covering such Owner's Unit. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages shall affect any insurance coverage obtained by the Master Association or cause the diminution or

termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Master Association, the Project Association and/or the Owner. An Owner shall be liable to the Master Association for the amount of any such diminution of insurance proceeds to the Master Association as a result of insurance coverage maintained by the Owner, and the Master Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Master Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Master Association and other Owners.

The Executive Board may require an Owner or Project Association who purchases insurance coverage as described herein to file copies of such policies with the Master Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Master Association.

**Section 9.12     Insurance on Shared Easements.** Each Shared Easement Owner shall maintain, to the extent reasonably available:

9.12.1     Property insurance on the applicable Shared Easements for not less than broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies;

9.12.2     Business interruption and extra expense insurance equal to the amount of one (1) year's Shared Easement Payments receivable from the Master Association with respect to the applicable Shared Easement. In the event of casualty such that Units or Fractional Ownership Interests are rendered uninhabitable, Owners of Units or Fractional Ownership Interests that are the subject of such casualty shall have abated and be relieved of making Assessments relative to Shared Easement Payments up to the one (1) year coverage period or to the time when the Unit or Fractional Ownership Interest is rendered habitable, whichever is earlier; provided, however, such abatement shall effective and valid only to the extent that insurance proceeds are paid to the Shared Easement Owner to cover such abatement. Insurance payments made to a Shared Easement Owner pursuant to this insurance shall be deemed allocated among all Units and Fractional Ownership Interests that are the subject of such casualty in determining the respective Shared Easement Payments, if any, applicable to such Units and Fractional Ownership Interests, based on their relative Voting/Assessment Percentages ; and

9.12.3     Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the applicable Shared Easements in an amount, if any, deemed reasonably sufficient in the judgment of the Shared Easement Owner.

9.12.4     The Shared Easement Owner may carry such other and further insurance that the Shared Easement Owner considers appropriate.

9.12.5     All policy premiums, deductibles not otherwise allocated to individual Owners as provided herein and other costs related to the above-described insurance on the Shared Easements shall be part of the Operating Expenses payable by the Master Association in accordance with this Declaration.

9.12.6     Each Shared Easement Owner, for itself and for any person or entity claiming through it (including any insurance company claiming by way of subrogation), hereby waives any and every claim which arises or may arise in its favor against the Owners and their respective Guests and Lessees and Vacation Club Permitted Users for any and all loss or damage to property to the extent that the waiving party

who suffers such loss or damage is actually compensated by insurance. To the extent such waivers of subrogation are available on a commercially reasonable basis, the applicable insurance policies shall be properly endorsed to provide for such waivers as is necessary or appropriate to prevent a loss of insurance.

## ARTICLE 10 MECHANICS' LIENS

**Section 10.1 Mechanics' Liens.** Subsequent to the recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area or the common areas or common elements of any Project. Each Owner shall indemnify and hold harmless each of the other Owners, the Project Associations and the Master Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner, the common elements or common areas of any Project or against the Common Area, or any part thereof.

**Section 10.2 Enforcement by the Master Association.** At its own initiative or upon the written request of any Owner or Project Association (if the Master Association determines that further action by the Master Association is proper) the Master Association shall enforce the indemnity provided by the provisions of Section 10.1 above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Master Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Master Association in accordance with Sections 6.10, 6.11 and 6.12 above.

## ARTICLE 11 MASTER ASSOCIATION APPOINTMENT

**Section 11.1 Appointment.** The Master Association is hereby appointed and fully authorized and empowered to execute such documents and to perform such acts as are deemed necessary or desirable for the purpose of dealing with the Common Area upon their damage, destruction, condemnation, or obsolescence as provided below in Articles 12, 13, and 14. In addition, the Master Association, or any insurance trustee or substitute insurance trustee designated by the Master Association, is hereby appointed and fully authorized and empowered to purchase, maintain and administer insurance under Article 8 above, including: the collection and appropriate disposition of the proceeds of such insurance; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Master Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners as their interests may appear. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute acceptance of the grant of powers provided above.

**Section 11.2 General Authority.** As attorney-in-fact, the Master Association shall have full and complete authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Master Association as attorney-in-fact.

## **ARTICLE 12** **DAMAGE OR DESTRUCTION**

Section 12.1 Casualty to Common Area. In the event of damage or destruction to any part of the Common Area due to fire or other adversity or disaster, any insurance proceeds shall be collected by and paid to the Master Association and such insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Master Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, as applicable, or if there are no insurance proceeds, the Executive Board shall levy an Assessment pursuant to Article 6 in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction as determined by the Executive Board. Notwithstanding the foregoing, the Master Association shall have no obligation to repair or reconstruct the damaged or destroyed Common Area if such repair or reconstruction would be illegal under any state or local statute or ordinance governing health or safety or if within sixty (60) days after such damage or destruction Owners representing ninety percent (90%) of the votes in the Master Association elect not to rebuild. The Assessment provided for herein shall be a debt of each Owner and a lien on its Unit, and may be enforced and collected in the same manner as any assessment lien provided for in Article 5. If Owners representing ninety percent (90%) of the votes in the Master Association elect not to rebuild any damage or destruction to the Common Area in accordance with the terms and provisions set forth above, the Master Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a sightly condition and shall have the right to levy against and collect from the Owners an Assessment for this limited purpose, if necessary.

Section 12.2 Casualty to Unit or Project. In the event of damage or destruction of the improvements located on any Unit or any part thereof, any damage or destruction to any common areas or common elements of any Project (other than any Common Area which is governed by Section 11.1), due to fire or other adversity or disaster, the Owner of such Unit or the Project Association shall, at its sole cost and expense, with due diligence, either (i) cause the damaged or destroyed improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or (ii) demolish the destroyed or damaged improvements, in which event the damaged or destroyed improvements shall forthwith be demolished and all debris and rubble caused by such demolition shall be removed and the affected property regraded and landscaped. If such repair or restoration or such demolition, debris removal, regrading and landscaping is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if the same is commenced but then abandoned for a period of more than ninety (90) days, the Master Association may, after notice and an opportunity to be heard, impose a fine of \$1,000.00 per day or such other rate imposed by the Executive Board in compliance with the Act, charged against the Owner or Project Association as applicable, until such repair or restoration or such demolition, debris removal, regrading and landscaping is commenced or re-commenced, as the case may be, unless the Owner or Project Association can prove to the satisfaction of the Executive Board that such failure is due to circumstances beyond the control of such Owner or Project Association. Such fine shall be in addition to any assessment to which such property is subject and the Master Association shall have all of the rights pertaining to a default Assessment specified in Article 5 for such amount.

## **ARTICLE 13** **OBSOLESCENCE**

The Owners holding an aggregate of sixty-seven percent (67%) or more of the total voting interest in the Master Association, including sixty-seven percent (67%) of the total voting interest of each Class of members, may agree that all or portions of the Common Area are obsolete and adopt a written plan for the renewal and reconstruction thereof. Written notice of the adoption of such a plan shall be given to all Owners

and a copy of such plan shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as a Common Expense.

## ARTICLE 14 CONDEMNATION

**Section 14.1    Condemnation of Common Area.** In the event the Common Area, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof (herein, a "taking"), each Owner will be entitled to notice thereof, but the Master Association will act as attorney-in-fact for all Owners in the proceedings incident to the taking unless otherwise prohibited by law. The award for such taking will be payable to the Master Association as trustee for all of the Owners to be disbursed as follows:

14.1.1    If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless restoration or replacement of such improvements would be illegal under any state or local statute or ordinance governing health or safety or unless within sixty (60) days after such taking Owners representing ninety percent (90%) of the votes in the Master Association elect not to restore or replace such improvements, the Master Association will restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Executive Board, the Design Review Board and any other governmental or quasi-governmental entity having jurisdiction over the Property. If such improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such improvements, the Executive Board shall levy an Assessment in accordance with Article 6 in the aggregate amount of such deficiency and shall proceed to restore or replace such improvements.

14.1.2    If the taking does not involve any improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of improvements is completed, then the Master Association may retain such excess proceeds for use in the future for any purposes or Functions of the Master Association or distribute such excess in proportionate shares on the basis of all Assessments levied against such Units (other than default Assessments) for the prior twelve (12) month period.

**Section 14.2    Condemnation of a Unit or Common Area or Common Element of a Project.** In the event any Unit or common area or common element of a Project, or any portion thereof (other than any Common Area which is governed by Section 14.1), shall be taken, the condemnation award for such taking shall be paid solely to the Owner of such Unit or the Project Association, as applicable. The repair or restoration of any improvements located on such property which are affected by the taking shall be governed by the terms of Section 12.2. If an entire Unit shall be condemned, the Owner thereof shall automatically cease to be a member of the Master Association.

**Section 14.3    Allocation of Interest After Condemnation.** Section 39-33.3-107 of the Act shall govern the allocation of interests to Units following any condemnation.

## ARTICLE 15 EXPANSION

**Section 15.1    Reservation of Expansion Rights.** Subject to those restrictions set forth in Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject the property described on Exhibit B and/or unspecified other real property (subject to the restrictions of the Act) to this Declaration and the provisions of this Declaration.

**Section 15.2    Supplemental Declarations and Supplemental Plats.** Such expansion may be accomplished by the filing for record by Declarant in the Office of the Clerk and Recorder for Eagle County, Colorado, one or more Supplemental Declarations and, if the real property being subject to this Declaration by such Supplemental Declaration has not been previously platted in a plat recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, of a Supplemental Plat depicting such Expansion Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant shall not be obligated to expand the Property beyond that initially submitted to this Declaration.

**Section 15.3    Expansion of Definitions.** In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Units" shall mean the Units as initially submitted to this Declaration plus any additional Units added by a Supplemental Declaration or Declarations and, if necessary, Supplemental Plat or Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

**Section 15.4    Effect of Expansion.** Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and, if necessary, Supplemental Plat(s) thereof, the Percentage Voting Allocation and the Voting/Assessment Percentage applicable to a Unit shall automatically be amended in the manner described in Section 4.3.

Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is an Owner at the time of the filing of this Declaration or is an Owner of a Unit constructed as Expansion Property) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Master Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

**Section 15.5    Termination of Expansion and Development Rights.** The rights reserved to the Declarant for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights") shall expire twenty (20) years from the date of recording this Declaration, unless terminated earlier pursuant to the terms and provisions of the Act, or unless the Expansion and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Master Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the Expansion and Development Rights by Declarant.

## **ARTICLE 16 ACKNOWLEDGMENTS AND HOTEL BRAND RIGHTS**

**Section 16.1    Acknowledgements.** Each Owner is hereby advised of the following matters affecting the Property and the Owners' use and enjoyment thereof:

**16.1.1**       Substantial construction-related activities relating to the development of Units or Projects or other development within or near Riverfront Village may cause considerable noise, dust and other inconveniences to the Owners.

**16.1.2**       Properties located within Riverfront Village may be developed pursuant to the land uses and restrictions set forth in the PUD Plan with no representation being made herein concerning the planned uses of such other properties. The zoning for Riverfront Village is established and governed by the

PUD Plan. Any amendment of the PUD Plan requires approval by the Town of Avon, Colorado. Each Owner acknowledges and agrees that such Owner has not relied upon any statements or representation regarding Riverfront Village or any other properties. Each Owner and Project Association further acknowledges and agrees that such Owner and Project Association will not take any action to impair or delay any development of real property governed by the PUD Plan so long as such development is consistent with the PUD Plan, and each Owner and Project Association hereby waives any right it may have to object to any Project to be developed on any Project Lot so long as such Project is in conformance with the terms, conditions and restrictions of the PUD Plan as the same may be amended from time to time.

16.1.3 Except for the Shared Easements as provided in this Declaration, which grant rights to use and enjoyment of certain amenities as set forth herein, no interest in or right to use any amenity located near the Property, such as ski areas, swimming pools, spas, workout facility, club facilities or the like, shall be conveyed to any Owner pursuant to this Declaration. The owners of those facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation of, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any Owners.

16.1.4 Use of woodburning fireplaces, stoves and other devices is restricted within Riverfront Village by governmental regulation.

16.1.5 The Property is located near railroad tracks and, while the use of such tracks is currently suspended, future use may restart, which use may cause considerable noise and other inconveniences to the Owners.

16.1.6 The Property is located adjacent to or near a Town of Avon public park, and the use of such park may generate considerable noise and other inconveniences to Owners. Further, a water treatment facility is located at the western boundary of the Property, which may at times generate odors or other impacts.

16.1.7 Commercial and public activities are and will be conducted within and near Riverfront Village (the "Commercial Activities"). The Commercial Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities within the Project may include, without limitation, the operation of a full-service hotel and associated amenities, a health spa, meetings and conference activities, restaurant and bar operations (which may include an outdoor deck/seating area), retail sales, public facilities, special events (which may include outdoor parties and events) and other uses or activities permitted by law, which uses and activities may occur during daytime and nighttime. Owners acknowledge that the Commercial Units will be used for commercial purposes and may affect an Owner's use and enjoyment of the Unit. Further, certain Commercial Activities and commercial operations may close during periods of the year at the discretion of the owner or operator of the applicable Commercial Unit.

16.1.8 Owners acknowledge and accept that there is planned a high-speed public gondola connecting Riverfront Village to the Beaver Creek Landing site within Beaver Creek Resort (the "Gondola"). The Gondola, coupled with related commercial uses which may or may not include lift ticket sales to access Beaver Creek ski mountain and other mountain support services, will generate impacts and inconveniences commensurate with the public nature of such uses. Owner acknowledges that the Gondola is expected to operate generally between December 20 and April 1 of each ski season, but that it may operate at other times and dates within the sole discretion of the Confluence Metropolitan District. Owner acknowledges that Declarant is not the operator of the Beaver Creek ski area, and accordingly, Declarant cannot make any representations relating thereto. More specifically, the Lower Beaver Creek Mountain Express Lift, which is also known as Chair Lift 15, is neither owned nor operated by Declarant nor the

Confluence Metropolitan District and no representation whatsoever is made to Owner regarding dates or time of operation. Neither Declarant nor any of its employees or agents has made any representations regarding the opening or closing dates of Chair Lift 15 or of such ski area in any given year. Owners are deemed to fully understand that the operator of the Beaver Creek ski area may decide, in its sole discretion, whether any or all of the chairlifts (including Chair Lift 15) within the Beaver Creek ski area should be operated. Without limiting the generality of the foregoing, Owners specifically acknowledge that Declarant has made no representations regarding opening and closing dates of the Beaver Creek ski area.

16.1.9 By accepting title to a Unit, each Owner shall be deemed to acknowledge and agree that there is no easement or other right, express or implied, for the benefit of Owner or the Unit for light, view or air included in or created by this Declaration, any Project Declaration, any Map or any other document, agreement or instrument or as result of Owner owning the Unit.

16.1.10 Owners acknowledge that the Gondola, the public plaza serving Riverfront Village and certain infrastructure within Riverfront Village, such as roads and utilities, are being constructed by the District and that such construction has been funded with the proceeds of municipal bonds, which bonds will be repaid from property taxes collected within Riverfront Village, as well as other properties within the District's boundaries. Operation and maintenance of the Gondola and public plaza shall also be the responsibility of the District.

## Section 16.2 Hotel Brand Rights.

16.2.1 Adherence to Hotel Brand Standards; Ownership of Hotel Brand's Intellectual Property. The Hotel Unit Owner may from time to time either own rights in, or enter into agreements providing it with rights in, certain trademarks, trade names and/or other intellectual property allowing for the association of the Hotel Unit with a particular hotel brand or chain (such brand or chain, the "Hotel Brand"; and such intellectual property, the "Hotel Brand Intellectual Property"). For so long as the Hotel Unit is associated with the Hotel Brand, the Hotel Unit Owner and the Hotel Brand shall each have the right to require that the Hotel Unit and the Hotel Project (including, without limitation, the common elements of the Hotel Project) be operated, managed and maintained at a minimum according to the standards of quality, service, character, appearance and image required by the Hotel Brand for hotels using the Hotel Brand Intellectual Property, as the same may be amended from time to time. The referenced rights or agreements may be terminated or may expire without renewal, resulting in the removal of the Hotel Brand designation then in use from the Hotel Unit. The Hotel Brand Intellectual Property shall at all times remain the sole and exclusive property of the Hotel Brand. Under no circumstances shall the Hotel Brand Intellectual Property be deemed part of Riverfront Village, the Hotel Project or any other Project, or an appurtenance of any Unit. In no event shall the Master Association or the Executive Board, any Project Association or any of their respective executive boards, nor the Unit Owners have any right, title or interest in any name under which the Hotel Unit is operated or in any other of the Hotel Brand Intellectual Property, or in any licensing arrangement between the Hotel Brand and any other party. Each Unit Owner, by its acceptance of a deed to its Unit, acknowledges the Hotel Brand's rights in the Hotel Brand Intellectual Property and agrees (i) that it acquires no rights in or to the Hotel Brand Intellectual Property, (b) not to interfere with or contest in any way the Hotel Brand's rights in the Hotel Brand Intellectual Property, and (c) not to form, create or utilize (or attempt to form, create or utilize) in connection with the Unit, Condominium, or Project, or any other real estate or hospitality project or venture, any entity whose name utilizes all or any portion of the Hotel Brand Intellectual Property.

16.2.2 Relation between Declarant under Project Declaration for Hotel Project and the Hotel Brand. The declarant under the Project Declaration for the Hotel Project (the "Hotel Declarant") (which is also the original owner of the Hotel Unit) has entered into, and may enter into, certain agreements with a Hotel Brand that permit the Hotel Declarant, while such agreements are in effect, to use certain Hotel

Brand Intellectual Property in connection with the initial sale and marketing of the Hotel Residential Units and operation of the Hotel Unit. However, the Hotel Declarant and the Hotel Brand are independent parties and no such agreements shall imply that any entity affiliated with the Hotel Brand has any financial interest in the Hotel Unit Owner or the Hotel Project. Notwithstanding any other condition, statement, or understanding of any Owner, the Executive Board or any other person to the contrary, (i) the Hotel Brand shall not be deemed to, and has not acted as, the developer, architect, engineer, contractor, sponsor, broker or marketer (or in any similar capacity) in connection with the Hotel Project or the marketing or sale of the Hotel Residential Units; and (ii) the Hotel Brand does not make, and shall not be deemed to have made, any representations or warranties of any nature whatsoever in connection with the Hotel Project, creation of the Hotel Project or the marketing or sale of the Hotel Residential Units.

16.2.3 **No Third-Party Beneficiaries.** No Owner shall be deemed a third-party beneficiary of any agreements between the Hotel Declarant (or any other owner of the Hotel Unit) and the Hotel Brand. The Hotel Brand shall be deemed a third-party beneficiary of the covenants contained in this Section 16.2. No amendment of this Section 16.2 shall be effective with respect to a Hotel Brand unless the applicable Hotel Brand at the time of the amendment has consented in writing to such amendment.

## **ARTICLE 17** **DURATION OF COVENANTS AND AMENDMENT**

Section 17.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 17.2 **Amendment.** The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon the written consent of Owners holding an aggregate of 67% or more of the total Voting/Assessment Percentages of Members; provided, however, to the extent permitted under the Act, (a) no amendment, modification or deletion of any provision of this Declaration relating to or arising from the Shared Easements, Shared Easement Payments or Vacation Club Access Fees, or which would otherwise have an adverse effect on the Hotel Unit or Vacation Club Project or their respective operations, shall be effected without the prior written approval of the Hotel Unit Owner or Vacation Club Facilities Operator, as applicable, and (b) no amendment shall be effective to change, limit, impair or reduce any right of Declarant as provided herein unless such amendment is approved in writing by Declarant. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under the Act. Further, the Executive Board and officers of the Master Association shall take no action to initiate, propose or support an amendment to this Declaration, and shall submit no proposed amendment for approval consideration by Owners when (x) relating to a provision requiring a vote of more than 67% of the total Voting/Assessment Percentages in the Master Association and/or of each Class of Members unless the proposed amendment is approved by sixty-seven percent (67%) of the total Voting/Assessment Percentages in the Master Association in accordance with the voting procedures herein and in the Bylaws without any Executive Board's action proposing or supporting same, (y) relating to a provision governing or affecting a Shared Easement, Shared Easement Payment or the Vacation Club Access Fees or otherwise involving an amendment having an adverse effect on the Hotel Unit or Vacation Club Project or their respective operations, without the prior written approval of the applicable Shared Easement Owner, or (z) involving an amendment in any way changing, limiting, impairing or reducing any right of Declarant as provided herein without the prior written approval of Declarant. Absent an initiative by the Executive Board proposing an amendment to this Declaration, proposals for amendments to this Declaration may be submitted to Owners for approval consideration only upon the written request of Owners together having Voting/Assessment Percentages representing a majority of the total Voting/Assessment Percentages of all Owners.

**Section 17.3 Recording of Amendments.** Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon recording in the Office of the Clerk and Recorder of Eagle County, Colorado, a copy of the amendment, executed and acknowledged by (a) the appropriate number of Owners accompanied by a certificate of a licensed title insurance company as to ownership, or upon the recording of a copy of the amendment, together with a duly authenticated certificate of the secretary of the Master Association stating that the required number of consents of Owners and a certificate of a licensed title company as to title to the Units were obtained and are on file in the office of the Master Association, and (b) Declarant and/or the Hotel Unit Owner to the extent required in Section 17.2 above.

## **ARTICLE 18 DECLARANT'S RIGHTS REGARDING TRANSFER**

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association or other entity, only by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

## **ARTICLE 19 SPECIAL DISTRICT**

The Master Association shall have the power, and is hereby authorized, to contract with and to cooperate with the District in order to ensure that their respective responsibilities are discharged. The Master Association is further authorized to act on behalf of its members to ensure that the level of services provided by the District is consistent with the standards of Riverfront Village.

## **ARTICLE 20 MISCELLANEOUS**

**Section 20.1 Restriction on Declarant Powers.** Notwithstanding anything to the contrary in this Declaration, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

**Section 20.2 Nonwaiver.** Failure by Declarant, the Master Association, the Hotel Unit Owner or any Owner to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

**Section 20.3 Severability.** The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect.

**Section 20.4 Number and Gender.** Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 20.5 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 20.6 Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the articles of incorporation of the Master Association and the bylaws of the Master Association, this Declaration shall control. In case of conflicts in the provisions in the articles of incorporation of the Master Association and the bylaws of the Master Association, the articles of incorporation of the Master Association shall control.

Section 20.7 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

*[remainder of page intentionally blank; signature page follows]*

Executed as of the 13<sup>th</sup> day of November, 2006.

EAST WEST RESORT DEVELOPMENT XIV,  
L.P., L.L.L.P., a Delaware limited partnership  
registered as a limited liability limited partnership

By: HF Holding Corp., a Colorado corporation,  
general partner

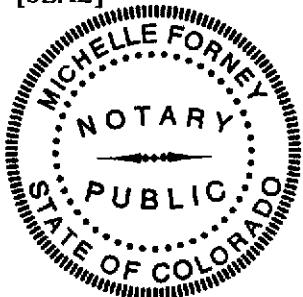
By: James P. Adams  
Name: James P. Adams  
Title: Vice President

STATE OF COLORADO )  
DENVER ) ss.  
COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of November, 2006, by James P. Adams, as Vice President of HF Holding Corp., a Colorado corporation, general partner of East West Resort Development XIV, L.P., L.L.L.P., a Delaware limited partnership registered as a limited liability limited partnership.

WITNESS my hand and official seal.

My commission expires: 5/15/2007  
[SEAL]



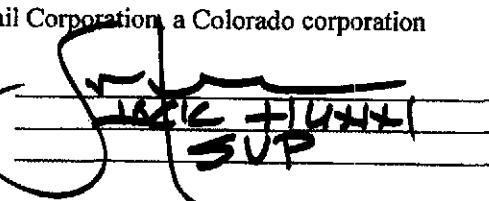
Michelle Forney  
Notary Public

## JOINDER OF LENDER

The undersigned, beneficiary under the Deed of Trust dated April 28, 2006, and recorded May 2, 2006, at Reception No. 200611201 in the office of the Clerk and Recorder of Eagle County, Colorado, as amended and supplemented from time to time (the "Deed of Trust"), for itself and its successors and assigns, approves the foregoing Declaration for Riverfront Village, affecting a portion of the Property encumbered by the Deed of Trust, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by that Declaration, subject, however, to the terms and conditions set forth in Section 4 of the Deed of Trust.

The Vail Corporation, a Colorado corporation

By:  
Name:  
Title:

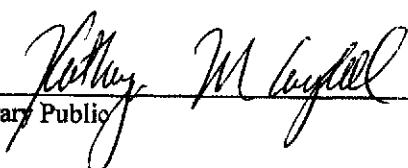
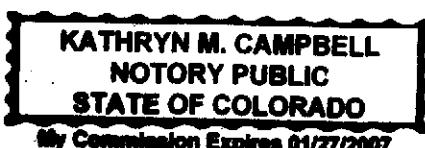


STATE OF COLORADO )  
COUNTY OF Eagle ) ss.  
                        )

The foregoing instrument was acknowledged before me this 14th day of September,  
2006 by Jack D. Hinman as Senior Vice President of The Vail Corporation, a Colorado  
corporation.

WITNESS my hand and official seal.

My commission expires: 1/27/07.  
[SEAL]

  
Notary Public

Approved as to Form:	<u>Vail Resorts Legal Department</u>
By:	<u>Julie Stengel</u>
Name:	<u>JULIE STENGEL</u>
Date:	<u>9-14-2006</u>

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lots 1, 2 and 3 as shown on that certain Final Plat, Riverfront Subdivision, recorded June 15, 2006 at Reception No. 200615950 in the real property records of Eagle County, Colorado.

A-1

G:\Clients\EWPartners-8000\Confluence-8000.0204\declaration-master-Final 2coln (2).doc

**EXHIBIT B**

**LEGAL DESCRIPTION OF EXPANSION PROPERTY**

Lots 4, 5, 6 and 7, and Tract B, as shown on that certain Final Plat, Riverfront Subdivision, recorded June 15, 2006 at Reception No. 200615950 in the real property records of Eagle County, Colorado.

B-1

G:\Clients\EWPartners-8000\Confluence-8000.0204\declaration-master-Final 2cIn (2).doc

**EXHIBIT C**

**DEPICTION OF HOTEL PARKING ACCESS IMPROVEMENTS**

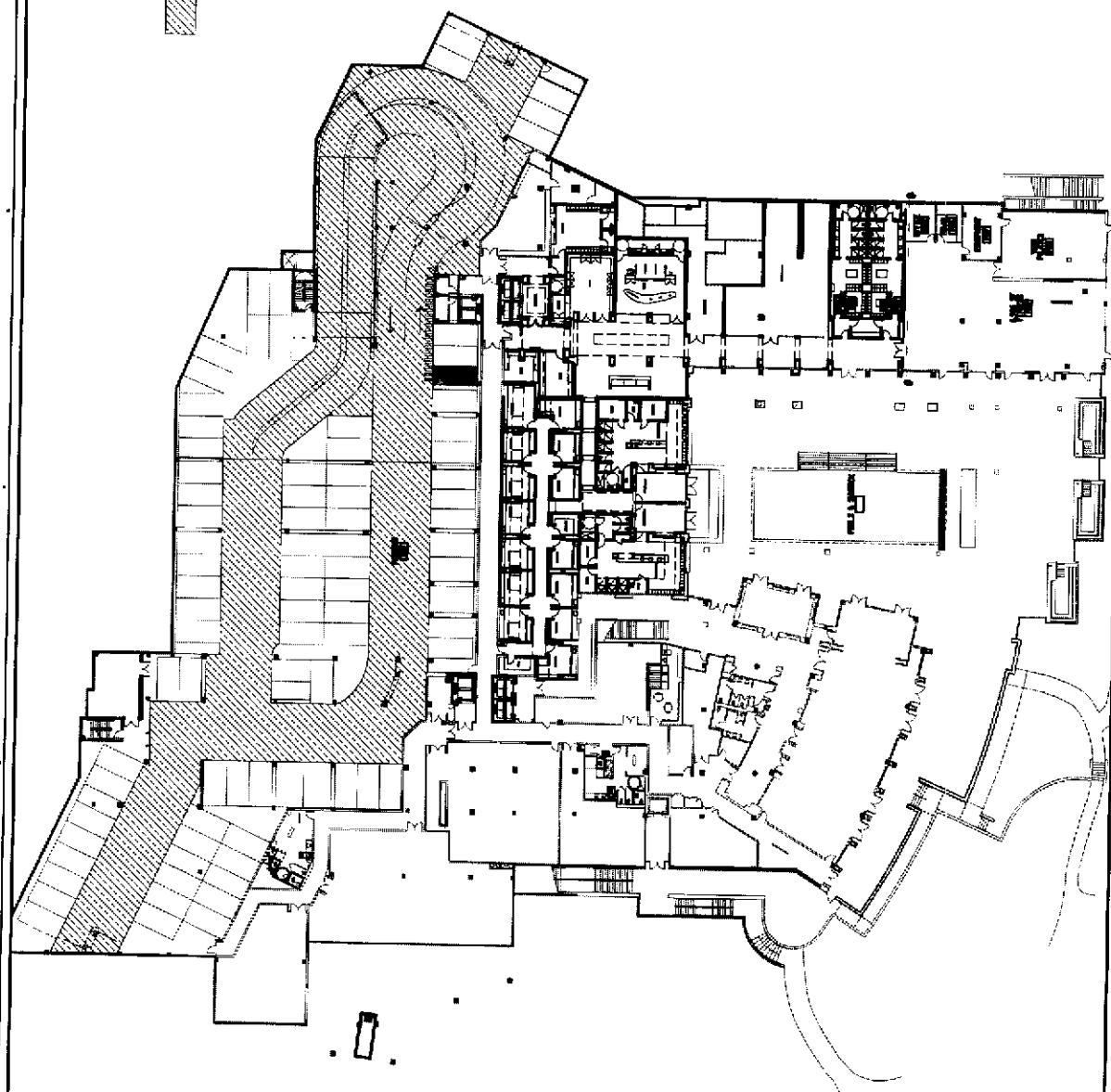
C-1

G:\Clients\EWPartners-8000\Confluence-8000.0204\declaration-master-Final 2chn (2).doc

WESTIN  
RIVERFRONT  
RESORT + SPA



HOTEL PARKING ACCESS IMPROVEMENTS 29156 51



HOTEL  
FLOOR PLAN  
PROJ. LEVEL P1

7421

H.-S.  
H.

WESTIN  
RIVERFRONT  
RESORT + SPA



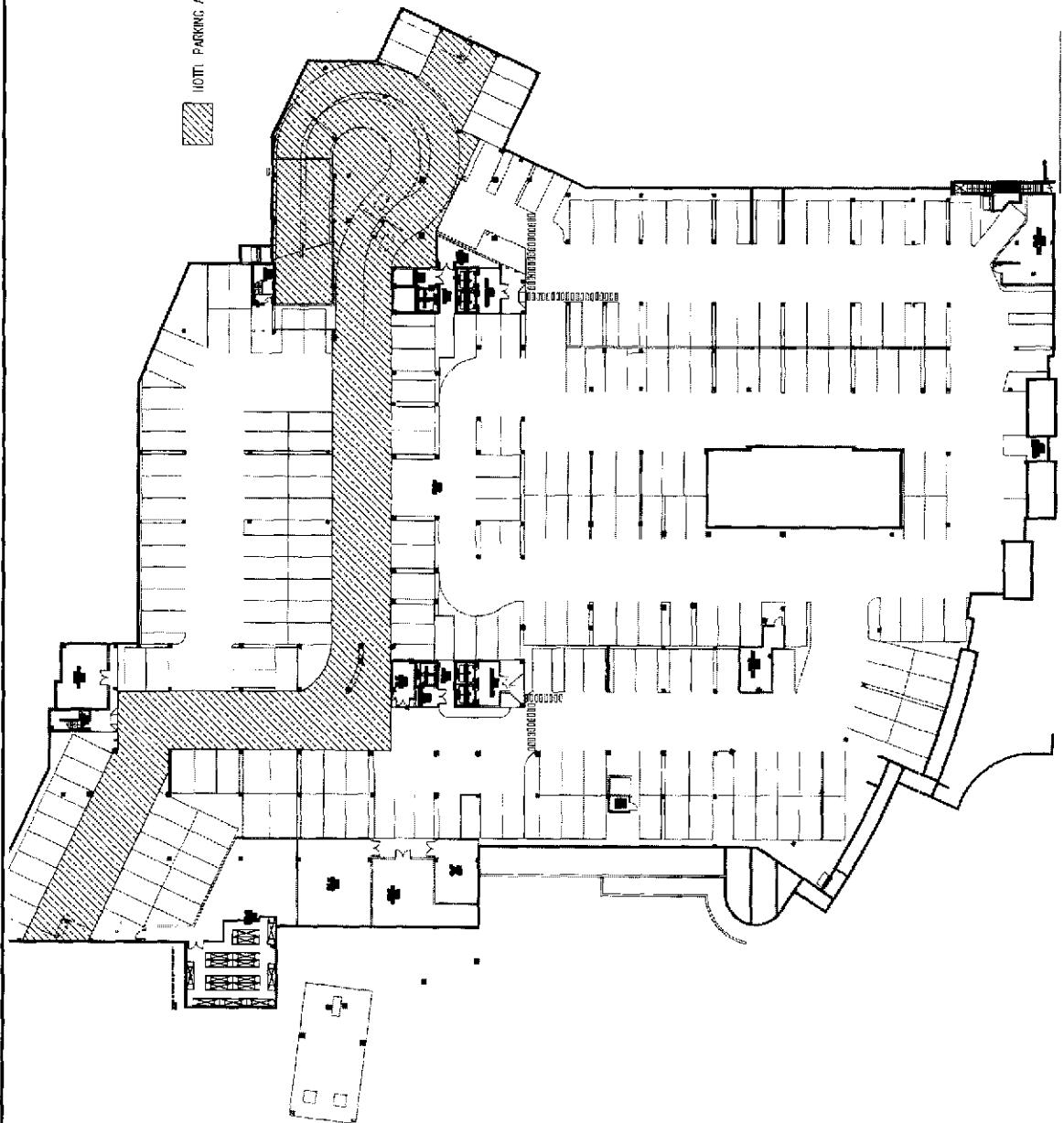
HOTEL  
FLOOR PLAN  
PROJ. LEVEL P2

+7411'-0"

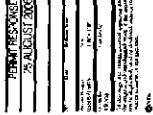
A2.HP2.SF



HOTEL PARKING ACCESS IMPROVEMENTS 15,863 SF



WESTIN  
RIVERFRONT  
RESORT + SPA



REPORT NUMBER: 01  
25 AUGUST 2006



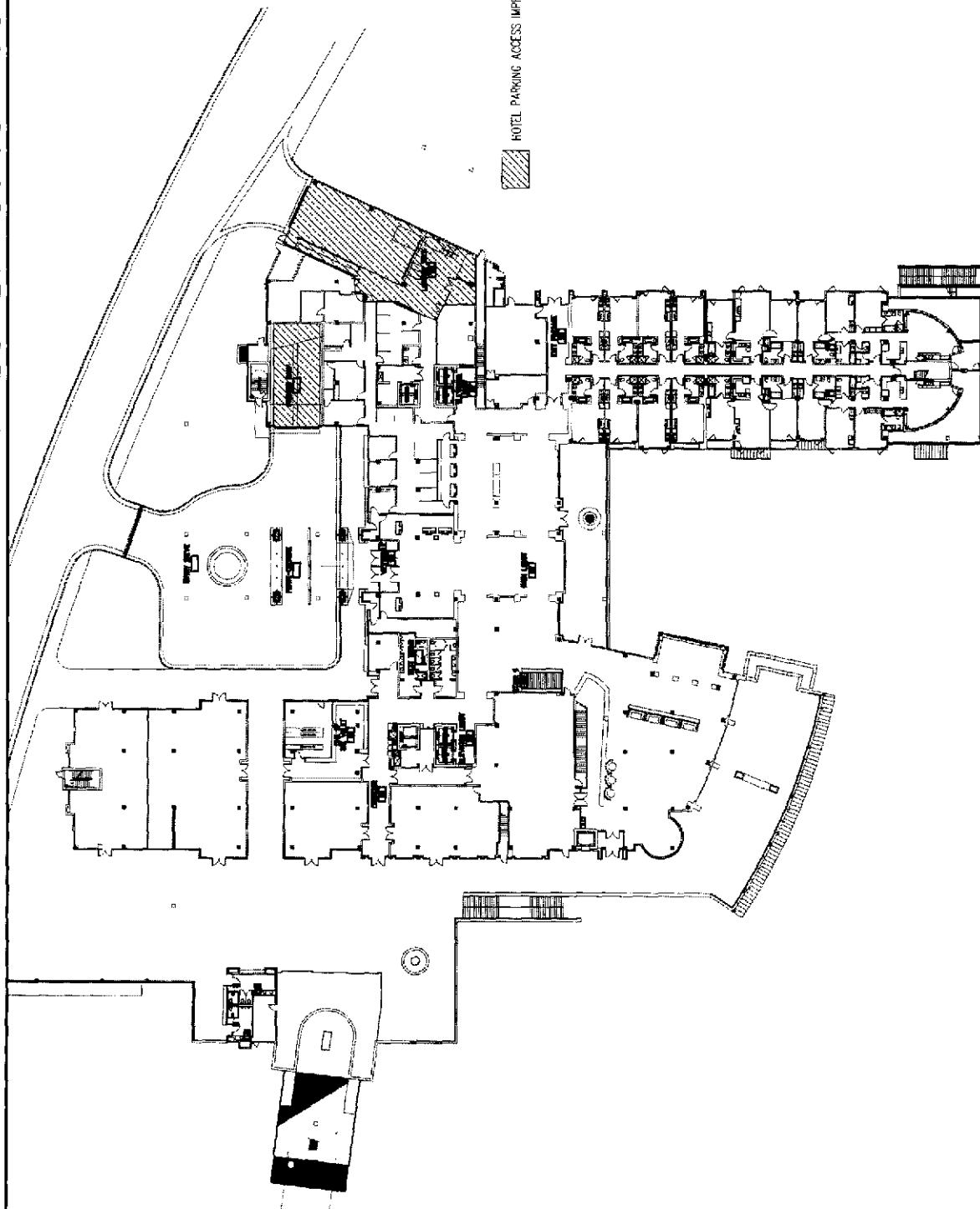
HOTEL  
FLOOR PLAN  
PROJ. LEVEL 01

+7437-SF



A2-H01-SF

HOTEL PARKING ACCESS IMPROVEMENTS 3,798 SF



## **EXHIBIT D**

### **Planned Densities For Undeveloped Properties**

Lot Number	Units	Bedrooms	Bedroom Equivalent
1	74	2	148
2	122	Studios	122
2	5	1	5
2	65	2	130
2	18	3	54
2	111,600 Sq. Ft.	600 Sq. Ft.	186
3	39	2	78
3	6,000 Sq. Ft.	600 Sq. Ft.	10
4	32	2	64
4	33	3	99
4	10	4	40
5	2	2	4
5	19	3	57
6	3	4	12
7	2	4	8

**EXHIBIT E**

**FORM OF NOTICE  
OF  
VOTING/ASSESSMENT PERCENTAGES**

This Notice of Voting/Assessment Percentages (the "Notice") is made as of \_\_\_\_\_, 20\_\_\_\_, by Riverfront Village Master Association, a Colorado nonprofit corporation (the "Master Association").

**WITNESSETH:**

WHEREAS, the Master Association is the master association formed pursuant to that certain Master Declaration for Riverfront Village recorded on \_\_\_\_\_, 2006 at Reception No. \_\_\_\_\_ (the "Master Declaration") in the real property records of the County of Eagle, Colorado (all capitalized terms herein shall have the meaning as defined in the Master Declaration, unless otherwise defined herein); and

WHEREAS, in Section 4.3.10 of the Master Declaration, the Master Association is authorized to periodically calculate and determine the Voting/Assessment Percentages for the various Units and record a Notice of Voting/Assessment Percentages in the real estate records of Eagle County, Colorado, evidencing same; and

WHEREAS, by an authorized vote of the Executive Board of the Master Association at a meeting held on \_\_\_\_\_, 20\_\_\_\_, the Master Association calculated and determined the Voting/Assessment Percentages for the various Units within the Master Association as described on Exhibit 1 attached hereto and incorporated herein by this reference, all such Units having been granted a temporary or permanent certificate of occupancy or other evidence of the right to occupy the Unit by the Town of Avon.

NOW, THEREFORE, the Master Association hereby records this Notice to evidence that it has calculated and determined the Voting/Assessment Percentages for the various Units within the Master Association and that the Voting/Assessment Percentages are as described on Exhibit 1 attached hereto, as of the date of this Notice. Any prior recorded Notices of Voting/Assessment Percentages recorded by the Master Association are hereby revoked and terminated in all respects, except to evidence Voting/Assessment Percentages applicable to Units prior to the date of this Notice.

*[remainder of page intentionally blank; signature page follows]*

IN WITNESS WHEREOF, the Master Association has executed this Notice of Voting/Assessment Percentages as of the date first above written.

RIVERFRONT VILLAGE MASTER ASSOCIATION,  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO        )  
                            )  
                            ) ss.  
COUNTY OF EAGLE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Riverfront Village Master  
Association, a Colorado nonprofit corporation.

WITNESS my hand and official seal.  
My commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_

NOTARY PUBLIC

**EXHIBIT F**

**DEPICTION OF SHARED ACCESS EASEMENT**

WEST  
RIVERFRONT  
RESORT +



WATERFALL  
GARDEN  
RESTAURANT  
+  
BAR



RIVERSIDE  
GARDEN  
RESTAURANT  
+  
BAR

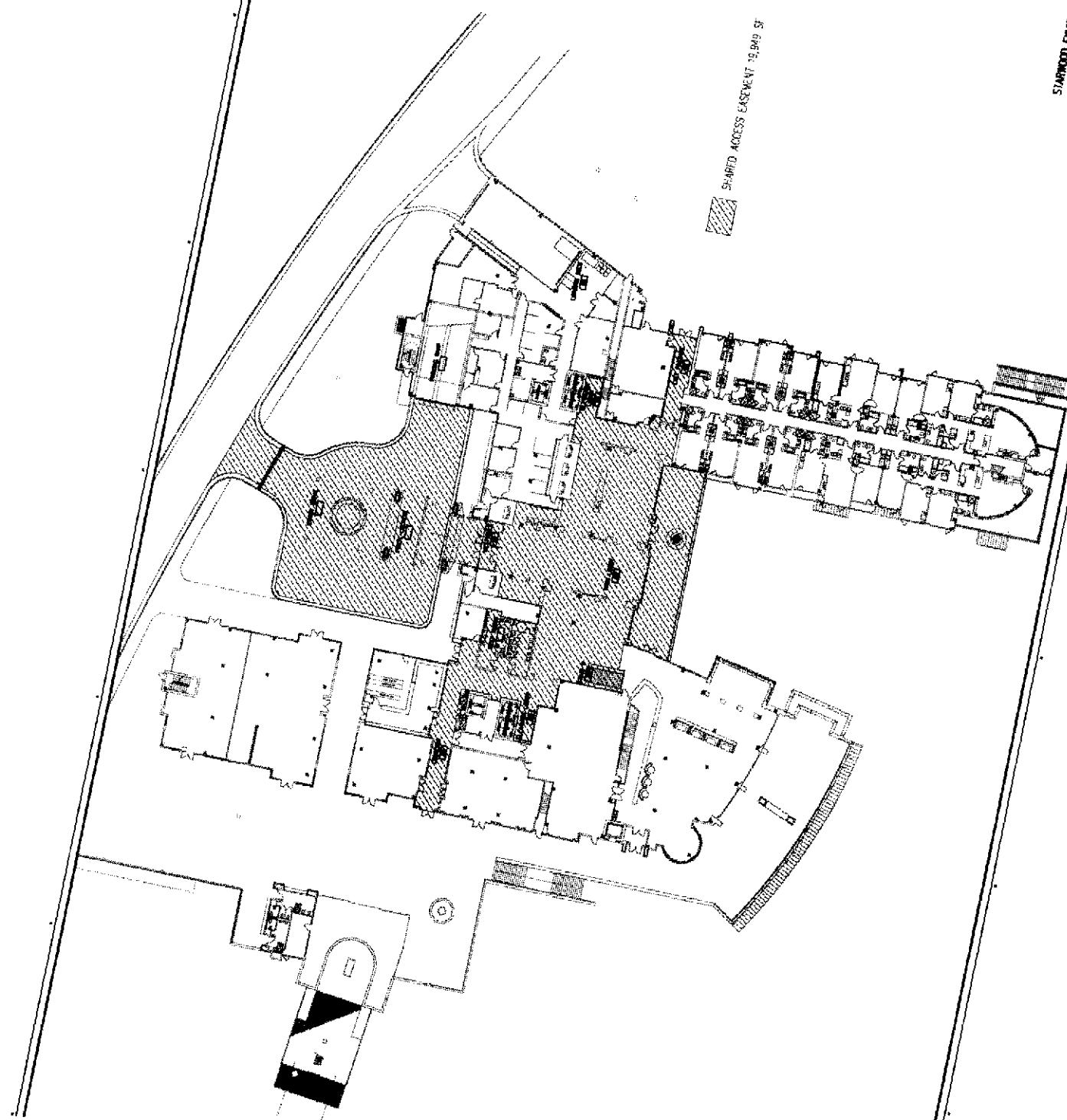
HOTEL  
FLOOR PLAN  
PROJ. LEVEL 01  
+7437'-0"

A2401-SF

STANHOPE EXHIBIT B-30-06

①

SHARED ACCESS EASEMENT 19,949 SF



**EXHIBIT G**

**DEPICTION OF VACATION CLUB RECREATIONAL FACILITIES**

*[Intentionally Omitted]*

G-1

*G:\Clients\EWPartners-8000\Confluence-8000.0204\declaration-master-Final 2cln (2).doc*

## **EXHIBIT H**

### **RECORDING DATA FOR EASEMENTS, LICENSES AND TITLE MATTERS**

The recording data for the recorded easements and licenses appurtenant to, or included in, the Property and or to which the Property is or may become subject, is as follows:

1. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 26, 1941, IN BOOK 128 AT PAGE 122.
2. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED SEPTEMBER 26, 1941, IN BOOK 128 AT PAGE 122.
3. TERMS, CONDITIONS AND PROVISIONS OF THE ORGANIZATION OF CONFLUENCE METROPOLITAN DISTRICT RECORDED FEBRUARY 08, 1999 AT RECEPTION NO. 686199.
4. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE APPROVING ANNEXATION AND ANNEXATION AGREEMENT RECORDED NOVEMBER 23, 1998 AT RECEPTION NO. 677378 AND 677379.
5. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF RIVERFRONT SUBDIVISION RECORDED JUNE 15, 2006 AT RECEPTION NO. 200615950.
6. TERMS, CONDITIONS AND PROVISIONS OF AMENDED PUD AGREEMENT RECORDED JUNE 15, 2006 AT RECEPTION NO. 200615957 AND ASSIGNMENT RECORDED JUNE 15, 2006 AT RECEPTION NO. 200615958 AND EXHIBIT A RECORDED JUNE 15, 2006 AT RECEPTION NO. 200615956.
7. TERMS, CONDITIONS AND PROVISIONS OF DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE CONFLUENCE PUBLIC IMPROVEMENTS FEE RECORDED JULY 21, 2006 AT RECEPTION NO. 200619693.

## EXHIBIT I

### Procedure for Mutual Put Obligation

1. Certain Definitions. For purposes of this exhibit, the following terms shall have the following respective meanings:

a. "Shared Easement Put Exercise Notice" shall mean a written notice, (i) from a Shared Easement Owner to the Master Association that it is ceasing operations as to all or any lesser number of the Shared Easements which it operates, or that a Shared Easement is damaged or destroyed due to fire or other adversity or disaster and that the Shared Easement Owner is abandoning the applicable Shared Easement, together with an assignment to the Master Association assigning its right to insurance proceeds relating to same, or (ii) from the Master Association to the applicable Shared Easement Owner that a Shared Easement has not been open for use by the benefited Members of the Master Association for one (1) complete winter ski season, unless such Shared Easement areas or services have failed to operate due to renovation, major repairs, casualty, damage or otherwise due to reasons beyond the reasonable control of the applicable Shared Easement Owner.

b. "Shared Easement Put Option" shall mean the right and option arising under Section 5.7 of the Master Declaration to require a conveyance of a Shared Easement pursuant to the terms and provisions of Section 5.7 and this Exhibit I.

c. All other capitalized terms used but not defined herein shall have the respective meanings given to them in the Master Declaration.

2. Exercise of Shared Easement Put Option. In order for a Shared Easement Put Option to be exercised, a Shared Easement Owner or the Master Association, as applicable, shall deliver a Shared Easement Put Exercise Notice to the other party. In the case of exercise by the Master Association, the Shared Easement Put Option must be exercised within three (3) months following the event giving rise to the Shared Easement Put Option, with time being of the essence. Upon the exercise of a Shared Easement Put Option, the Shared Easement Owner shall be required to convey for no consideration other than the Master Association's obligation to maintain, manage and operate such Shared Easement and, if applicable, reconstruct such Shared Easement, all as provided in the Master Declaration, and the Master Association shall be required to accept conveyance and the obligation to maintain, manage and operate and, if applicable, reconstruct the applicable Shared Easement as provided in the Master Declaration, such mutual put obligation to be accomplished in accordance with the terms and provisions set forth in this Exhibit I.

3. Title. If the Shared Easement Put Option is exercised, the applicable Shared Easement shall be assigned and conveyed to the Master Association free and clear of all monetary liens and encumbrances. The applicable Shared Easement Owner shall defend, indemnify and hold the Master Association harmless from and against any and all costs, expenses, liabilities and damages (including reasonable attorney's fees and expenses of litigation) incurred by the Master Association as a result of any such liens or encumbrances on the applicable Shared Easement, including, without limitation, claims or liens of mechanics, materialmen, suppliers, laborers, or others for work performed or materials supplied which attach or may in the future attach to the applicable Shared Easement and any other inchoate liens.

4. Closing. The closing of the Shared Easement Put Option (the "Closing") shall occur on the date that is thirty (30) days after the date of exercise of a Shared Easement Put Option, or on such other date as the parties may agree, at the offices of the managing agent for the Master Association. At the Closing,

a. The Shared Easement Owner and the Master Association shall execute and deliver to the other an Assignment and Assumption instrument in a form reasonably acceptable to the Shared Easement Owner and the Master Association (the "Assignment and Assumption"). Pursuant to the Assignment and Assumption, the Shared Easement Owner shall assign and convey to the Master Association the applicable Shared Easement and shall indemnify and hold the Master Association harmless from any liability or expense arising from events occurring prior to the date of such assignment, and the Master Association shall accept such assignment and agree to be bound to all provisions and obligations in the Declaration relating to the applicable Shared Easement and shall indemnify and hold the Shared Easement Owner harmless from any liability or expense arising from events occurring on or after the date of such assignment. To the extent that the Shared Easement Owner owns personal property necessary for the continued operation of the applicable Shared Easement, the Shared Easement Owner shall also deliver to the Master Association a bill of sale for such personal property.

b. Real property taxes and assessments, if any, applicable to the Shared Easement being conveyed for the period from January 1 of the year of the Closing through the day of Closing shall be prorated between the Shared Easement Owner and the Master Association based upon the most current levy and assessment (which shall be a final settlement) or, if such assessment is not available for the Shared Easement, then based upon the Shared Easement Owner's good faith estimate of such assessment, after consultation with the Eagle County Assessor (which shall not be a final settlement but shall be subject to a reapportionment based on actual taxes).

c. The Shared Easement Owner shall fully settle and satisfy such additional closing costs and expenses as may be shown on the settlement statements to be executed by the Shared Easement Owner and the Master Association in connection with the conveyance of the Shared Easement.

d. Each of the Shared Easement Owner and the Master Association shall execute and deliver such additional instruments, documents and agreements as may be reasonably requested by the other to evidence or perfect the transaction contemplated herein. Without limiting the foregoing, the Shared Easement Owner shall provide title insurance for the Shared Easement in an amount equal to the estimated replacement cost as reasonably estimated by the Master Association.

5. Damage to Shared Easement Area. In the event that the Shared Easement Put Option is exercised as a result of damage, destruction or other adversity or disaster occurring to the Shared Easement, the Shared Easement Owner shall also execute and deliver an assignment of insurance proceeds in substantially the form required by the provider of insurance, applicable to the damaged portion of the Shared Easement, or delivery of any such proceeds received by the Shared Easement Owner. The Shared Easement Put Exercise Notice shall be effective if and only if it is given by a Shared Easement Owner along with such assignment of insurance proceeds. At Closing, the Master Association shall accept such assignment of insurance proceeds or delivery of actual proceeds received and shall be required to reconstruct and repair the Shared Easement as provided in Article 12 of the Declaration as though the Shared Easement were Common Area.

6. Manner and Addresses for Notices. The Shared Easement Put Exercise Notice and any other notice given pursuant to this Exhibit shall be in writing and shall be given to a party at its registered address as set forth in Section 4.7 of the Declaration. All notices shall be deemed given and received (a) in the case of personal delivery, on the day of actual receipt by the receiving party, if on a business day, otherwise, on the next regular business day, (b) in the case of nationally recognized courier service, on the first business day following deposit with such courier service for next day delivery, and no signature affirming receipt by the receiving party shall be required, (c) in the case of U.S. Mail, on the third business day following deposit of a postage prepaid, certified return receipt requested envelope with the postal service, and (d) in the case of facsimile, on the day of transmission if sent prior to 4:00 p.m. place

of receipt, on a business day, otherwise, on the next succeeding business day, provided that to be effective, the facsimile transmission such be corroborated by a copy of the facsimile printout showing the sending and receiving telephone numbers and the date and time of transmission and, further, a hard copy of the transmission must be sent via overnight courier to the receiving party.

7. Time of Essence. Time is of the essence hereof. If the date set for performance of any obligation or the exercise of any right under Section 5.7 of the Declaration or this Exhibit falls on a Saturday, Sunday, or holiday observed by banks in Vail, Colorado, such performance or exercise will be deemed timely completed if rendered on the next following business day.

8. Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by Section 5.7 of the Declaration and this Exhibit shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George H.W. Bush.

9. Conflict. In the event of any conflict between this Exhibit and the Declaration, the Declaration shall control.

10. Severability. If any term, provision, covenant or restriction of Section 5.7 of the Declaration or this Exhibit is held by a court of competent jurisdiction to be invalid, void or unenforceable under applicable law, the remainder of the terms, provisions, covenants and restrictions of Section 5.7 of the Declaration or this Exhibit shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the term, provision, covenant or restriction that is held to be invalid, void or unenforceable shall be modified so that it accomplishes to the maximum extent possible the original business purpose of such term, provision, covenant or restriction in a valid and enforceable manner.