

**BYLAWS  
OF  
BEAVER CREEK RESORT COMPANY OF COLORADO  
(as amended through 2/20/13)**

**ARTICLE I.  
Definitions.**

Each term in these bylaws with its first letter capitalized shall have the meaning defined for such term in the Articles of Incorporation for Beaver Creek Resort Company of Colorado (the "Resort Company") or as defined in these bylaws.

**ARTICLE II.  
Offices**

The principal offices of the Resort Company shall be at 226 Beaver Creek Plaza, Beaver Creek Resort, Avon, Colorado. The Resort Company may also have offices and may carry on its purposes at such other places within and outside the State of Colorado as the Board of Directors may from time to time determine.

**ARTICLE III.  
Membership, Voting, Quorum and Proxies.**

1. The members of the Resort Company shall be as set forth in the Articles of Incorporation as from time to time in force and effect.

2. **Voting Rights.** The voting rights of the members shall be as set forth in the Articles of Incorporation as from time to time in force and effect.

3. **Record Date.** The Board of Directors shall have the power to fix in advance a date as a record date for the purpose of determining members entitled to notice of or to vote at any meeting or to be furnished with any other information or material, or in order to make a determination of membership, for any purpose other than assessments which are provided for in Article IX herein. The members existing on any such record date shall be deemed members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than 50 days prior to the date on which the particular action requiring determination of membership is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which notice of such meeting is first given to any member shall be deemed the record date for the meeting.

4. **Quorum.** Except as otherwise provided in the Articles of Incorporation or these bylaws, the presence in person, by proxy, written ballot or electronic means of members of a class who are entitled to vote more than 20 percent of the total votes for the members of such class shall constitute a quorum for such class where a vote by class is required (class quorum), and the presence in person, by proxy, written ballot or electronic means of members of any of the classes who are entitled to vote more than 20 percent of the votes of all of the different class members combined shall constitute a quorum where a vote by the combined classes is required (combined quorum).

5. **Proxies.** Votes may be cast in person, through written ballots or electronic means, or by proxy. Every proxy must be executed in writing by the member or his duly authorized attorney-in-fact. Except as provided in Article X herein, no proxy shall be valid after the expiration of eleven months from the date of its execution, and every proxy shall automatically cease at such time as the members granting the proxy no longer qualifies as a member in the class of voting membership for which vote the proxy was given.

(a) The Resort Company may provide to each member a form of proxy and/or written ballot in writing or by electronic means describing the questions and candidates for the position of director for which the member is eligible to vote at such meeting. Such form of proxy may also include provisions by which the member may direct how the member's vote shall be cast, pursuant to the proxy, regarding such questions or candidates. Such form of proxy, as provided by the Resort Company, shall not specify to whom the proxy is granted. With respect to any form of proxy so provided by Class A members, such proxy may provide that if a Class A member does not fill in such blank with the name of an individual to whom such member grants such proxy, but otherwise duly returns a completed proxy to the Resort Company, then such Class a member shall be deemed to have granted such proxy to the Resort Company administrator; provided that the Resort Company administrator shall only cast votes on behalf of such Class A member in accordance with the specific direction indicated by such Class A member on the form of proxy and in no event shall the Resort Company administrator have authority pursuant to such proxy to exercise any discretion on behalf of such Class A member regarding any question or candidate.

(b) Except as provided in Section 5(a) above, the Resort Company shall not solicit proxies or written ballots.

6. **Majority Vote.** At any meeting of members where a vote by class is required, if a class quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person, by proxy, by written ballot, or electronic means, shall be the act of the members of such class unless the vote of a greater number is required by law, the Articles of Incorporation, the Declaration or these bylaws as from time to time in force and effect. At any meeting of the combined members of all classes where a vote by class is not required, if a combined quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person, by proxy, written ballot, or electronic means, shall be the act of the combined class members, unless the vote of a greater number is required by law, the Articles of Incorporation, the Declaration or these bylaws as from time to time in force and effect. At each election of directors of a class or directors at large, the number of candidates equaling the number of such directors to be elected, having the highest number of votes cast in favor of their election, shall be elected as the directors of such class or directors at large, as the case may be.

#### **ARTICLE IV. Property Rights and Rights of Enjoyment of Facilities and Functions.**

Each member and Guest shall be entitled to the use and enjoyment of Facilities and Functions as set forth in the Declaration as from time to time in force and effect, subject to such rules and regulations as may be adopted by the Resort Company's Board of Directors from time to time.

**(a) USFS Permits.** The Term Special Use Permit and the Special Use Permits issued by the United States Department of Agriculture, Forest Service, to Beaver Creek Associates, Inc. and any replacements or substitutes for such permits, for the development and operation of the Mountain Facility and related lands, as such permits have been and may be amended and assigned from time to time.

**(b) Transportation Function.** The Resort Company shall perform its Transportation Function (as such Function is defined in the Declaration) and shall maintain and operate its Facilities relating to the Transportation Function in accordance with the requirements of law, the Declaration, the Articles of Incorporation, these bylaws and the USFS Permits and in substantially the same manner and, at a minimum, to substantially the level and standards of service provided by the Resort Company during the 1997 fiscal year; provided that (a) the Resort Company shall, as its access to sources of funding permits, increase or may decrease service, in order to accommodate, respectively, increases or decreases in the number of Guests visiting Beaver Creek Resort, the number of overnight Guests in Beaver Creek Resort, the number of skiers or others using the Mountain Facility, the number of homeowners residing in Beaver Creek Resort, and the number of businesses in Beaver Creek Resort, and (b) the Resort Company may turn over all or part of the Transportation Function to a governmental entity as provided in Section 3.23 of the Declaration to the extent the members of the Resort Company consent to such turn over by the

Affirmative Vote of a Majority of the Classes. If the Resort Company turns over all or part of the Transportation Function to a governmental entity as provided in Section 3.23 of the Declaration, then the Resort Company shall be automatically released from its obligations under this Section (b) with respect to that portion of the Transportation Function that is so turned over to a governmental entity.

**(c) Parking Function**

(i) The Resort Company shall care for, operate, manage, maintain and repair the parking areas utilized for the Resort Company's Parking Function (as such Function is defined in the Declaration) as required by law, the Declaration, the Articles of Incorporation, these bylaws and the USFS Permits and, at a minimum, to substantially the same conditions and standards of service provided by the Resort Company during the 1997 fiscal year; provided, however, that: (A) the Resort Company shall, as its access to sources of funding permits, increase or may decrease service, in order to accommodate, respectively, increases or decreases in the number of Guests visiting Beaver Creek Resort, the number of overnight Guests in Beaver Creek Resort, the number of skiers or others using the Mountain Facility, the number of homeowners residing in Beaver Creek Resort, and the number of businesses in Beaver Creek Resort; (B) the Resort Company shall not be required to construct any parking spaces or other improvements in order to satisfy the requirements of this Section (c) (i); and (C) the Resort Company shall be required to satisfy the requirements of this Section (c) (i) only to the extent that the Declarant, the Mountain Special Member or their respective affiliates or delegates provide land and improvements for the parking areas. The foregoing shall not limit the ability of the Declarant or the Mountain Special Member to modify, relocate or replace the parking facilities on the same or other land; provided, however, the modification, relocation or replacement of parking facilities shall not materially increase the cost to the Resort Company of fulfilling the parking Function with respect to such modified, relocated or replaced parking facilities.

(ii) To the extent that the Resort Company operates a particular parking facility for a parking fee, the Resort Company shall be entitled to retain all revenues received from such operation.

**(d) Vehicular Access Limitation Function.** The Resort Company shall not adopt any prohibition, restriction, or impairment that would directly or indirectly have the consequence of negatively impacting access to Beaver Creek or vehicular, pedestrian or bicycle traffic within Beaver Creek, including, without limitation, any prohibition, restriction, or impairment of access to Beaver Creek, the Mountain Facility, any property owned by the Declarant or the Mountain Special Member, or any Lodge or other commercial business in Beaver Creek by the public, the Declarant, any Owners, Lessees, Guests or Subowners, or any commercial or service vehicles, except (i) reasonable restrictions in response to demonstrated health and safety concerns, (ii) prohibitions, restriction or impairments adopted pursuant to the Declaration, the Articles of Incorporation and these bylaws by the Resort Company against any Owner, Lessee, Guest or Subowner who has failed to comply with the provisions of the Declaration, the Articles of Incorporation or these bylaws, (iii) reasonable restrictions based on reasonable access provided by alternative modes of transportation, and (iv) reasonable restrictions based on the availability of parking within Beaver Creek Resort from Time to time. Additionally, the Resort Company shall permit access to and through Beaver Creek and the Mountain Facility as required by the USFS Permits.

**(e) Marketing Function.** The Resort Company shall, as its access to sources of funding permits, allocate within each of its annual budgets and spend in each of its fiscal years an amount for the Marketing Function not less than the amount allocated for the Marketing Function in the annual budget for its 1998 fiscal year.

**(f) Functions and Facilities, Generally.**

(i) The Resort Company shall not change the Resort Company's policies, standards or procedures in a manner that would directly or indirectly have the consequence of materially adversely affecting (A) the lawful operation, marketing or occupancy of any Lodges, condominiums or other residences or dwelling units that are or may be used for lodging purposes in Beaver Creek, (B) the lawful operation or marketing of any commercial businesses in Beaver Creek, (C) the lawful operation and

marketing of the Beaver Creek golf course, or (D) lawful activities relating to the construction, operation, use, maintenance and marketing of the Mountain Facility (the "Mountain Activities"). The Mountain Activities include, without limitation: (1) movement and operation of passenger vehicles (including, without limitation, buses, vans, and other vehicles transporting passengers over public and private roads within or adjacent to Beaver Creek or over, around and through the Mountain Facility), commercial vehicles, and construction vehicles and equipment; (2) activities relating to the construction, operation and maintenance of roads, trails, ski trails, skiways and other facilities relating to the Mountain Facility (including, without limitation, tree cutting and clearing, grading and earth moving and other construction activities, construction, operation and maintenance of access roads, snow-making equipment, chairlifts, gondolas or other transportation systems, operation of vehicles and equipment relating to trash removal, snow removal, snow grooming, and over-the-snow or over-the-terrain transportation, and operation of safety and supervision vehicles); (3) activities relating to the use of the Mountain Facility (including, without limitation, skiing, snow-boarding, ski-patrol activities, and other over-the-snow activities, hiking, horseback riding, bicycling and other recreational activities); (4) ski racing and organized events and competitions relating to the activities described in clause (3) above; (5) concerts, fireworks displays, and other performances and special events; (6) the construction, operation and maintenance of restaurants, clubs, restrooms and other public use facilities; and (7) public access to adjacent U.S. Forest Service Lands.

**(ii)** The Resort Company shall not knowingly take any action that would cause Declarant, the Mountain Special Member or their affiliates to be in non-compliance with respect to any requirements imposed on Declarant, the Mountain Special Member or any of their affiliates by the U.S. Forest Service (including, without limitation, the permits issued to the Mountain Special Member by the U.S. Forest Service, the Colorado Division of Wildlife, Eagle County, Colorado, or any other federal, state or local governmental agency). If the Resort Company has been satisfying or otherwise assisting with the satisfaction of such requirements prior to the 1997 annual meeting of the members, and then this Section (f) (ii) shall not be construed to require the Resort Company to satisfy or otherwise assist with the satisfaction of such requirements to the extent any change in law after the 1997 annual meeting materially increases costs and expenses actually incurred by the Resort Company to satisfy such requirements.

**(iii)** Subject to the terms of the Declaration, the Articles of Incorporation and these bylaws, the Resort Company shall perform its Functions and construct, maintain and operate its Facilities and regulate land use and development in a manner befitting a premier, world-class, recreational residential, commercial and public resort.

**(iv)** The Resort Company shall neither perform its Functions nor construct, maintain or operate its Facilities nor regulate land use and development in a manner that discriminates against the Declarant or its affiliates, the Mountain Special Member or its affiliates or any other member of the Resort Company, or any of their respective directors, officers, employees, agents, tenants, landlords, suppliers, invitees, licensees, contractors or guests.

**(v)** To the extent that the Resort Company is required under this Section (f) to perform its Functions and operate and maintain its Facilities in accordance with the USFS Permits, and to the extent that any new obligations would be imposed on the Resort Company by the USFS Permits, the Resort Company shall not be bound by such new obligations without its prior consent, which shall not be unreasonably withheld or delayed. The Resort Company shall not be deemed to have unreasonably withheld its consent if the Resort Company has reasonably determined that such new obligations would materially increase the costs and expenses to the Resort Company in performing its Functions and maintaining its Facilities in accordance with the USFS Permits.

**(vi)** The Resort Company shall not be required to borrow funds to satisfy its obligations under this Section (f).

**ARTICLE V.  
Administration.**

1. **Annual Meeting.** The annual meeting of the members shall be held at a place in Eagle County, Colorado, designated by the Board of Directors the last week in the month of November in each year, or at such other date designated by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in Colorado, such meeting shall be held on the next succeeding business day.

2. **Special Meetings.** Special meetings of any class of members or the combined classes of members, for any purpose, unless otherwise prescribed by statute, may be called by the president or by the Board of Directors, and shall be called by the president at the request of the members entitled to vote 30 percent or more of the total votes of such class or combined classes of members.

3. **Place of Meeting.** The Board of Directors may designate any place, either within or outside Colorado, as the place for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all members entitled to vote at a meeting may designate any place, either within or outside Colorado, as the place for such meeting. If no designation is made, or if a special meeting shall be called otherwise than by the board, the place of meeting shall be the principal office of the Resort Company in the Beaver Creek® Resort, Eagle County, Colorado.

4. **Notice of Meeting.** Written or printed notice of any meeting of the members stating the place, day and hour of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered personally or by mail to each member entitled to vote at such meeting not less than 10 nor more than 50 days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears in the office of the Resort Company, with postage thereon prepaid. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at corporate expense.

5. **Informal Action by Members.** Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the members, and may be stated as such in any articles or document filed with the Secretary of State of Colorado.

6. **Voting.** In the election of directors each member shall have the right to vote as set forth in the Articles of Incorporation as from time to time in force and effect.

**7. Election Procedures.**

(a) For meetings at which one or more directors will be elected, the Resort Company shall establish a date by which all nominations for such position or positions must be received by the Resort Company and such date shall not be earlier than 50 days before the date of the meeting. The Resort Company shall notify the members in writing of the date by which nominations must be received not earlier than 75 days before the date of such meeting.

(b) To appear on a proxy and a ballot distributed by the Resort Company, each candidate for the position of director of Class A, B, C or D shall be nominated by: (i) in the case of each Class A director, one or more Class A members holding collectively at least 10 Class A votes; (ii) in the case of the Class B director, at least one Class B member; (iii) in the case of the Class C director, one or more Class C members operating collectively at least 5 Businesses; and (iv) in the case of the Class D director, one or more Class D members collectively holding at least 2 Class D votes. Every person so nominated for any position of director shall be a candidate for such position and such person's name shall be included in every list of candidates for such position prepared by the Resort Company; provided that no person who is an officer, director or employee of Declarant or any of its affiliates may be candidates for the position of Class A, B, C or D director.

## **8. Audit of Election Procedures.**

(a) With respect to the 1997 and 1998 annual meetings of the members, the Resort Company shall employ a reputable accounting firm (the "Auditor") to audit the voting and election procedures of the Resort Company as they relate to meetings of the Members (the "Audit"). The Audit shall include, without limitation, matters relating to: (i) the determination of Sites, Residential Sites, Regular Memberships and memberships by class, and the number of votes relating to such membership; (ii) the nomination process; (iii) notices given to members; (iv) attendance of members at such meeting by person or by proxy and whether a quorum is present in each case where a quorum is required; and (v) the votes cast for and against each questions put to a vote of the members or any class of members and the votes cast for each candidate for each position of director.

(b) For any meeting of the members occurring after the 1998 annual meeting of the members, the Resort Company shall, upon the request of at least three directors of the Resort Company, cause an Auditor to perform an Audit of the Resort Company's voting and election procedures, provided, however, a request to perform an Audit with respect to a particular election must be made within 90 days following the completion of such election. The class members who are the constituents of the directors requesting the Audit shall pay the costs of the Audit and the Resort Company shall reimburse such members for such costs.

(c) The Resort Company shall cooperate with the Auditor in connection with the performance of the Audit. The Resort Company shall use the information contained in the Audit, wherever applicable, as the basis for determining Sites, Residential Sites, Regular Memberships and memberships by class, and the number of votes relating to such memberships for the purposes of conducting future elections. To the extent the information contained in the Audit is based on interpretations made by the Auditor that are inconsistent with the Enabling Documents, then the Board of Directors shall decide the proper interpretation of the Enabling Documents to be used by the Resort Company regarding such determinations.

**9. Amendments.** This Article V may not be altered, amended or repealed except by the Affirmative Vote of a Majority of the Classes.

## **ARTICLE VI. Board of Directors.**

1. **Number, Tenure and Qualifications.** The business and affairs of the Resort Company shall be managed by a Board of Directors consisting of not less than three nor more than nine directors who need not be members of the Resort Company. Directors shall be elected or appointed for terms as set forth in the Articles of Incorporation. Each director shall hold office until the election or appointment and qualifications of his or her successor. The number of directors may be changed by amendment to the Articles of Incorporation in the manner set forth therein.

2. **Resignations, Vacancies.** Any director may resign at any time by giving written notice to the president or the secretary of the Resort Company. Such resignation shall take effect at the time specified, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the Board of Directors by reason of resignation or death of any director elected by Class A, B, C and D members may be filled by the affirmative vote of a majority of the directors then in office, though less than a quorum. Any vacancy occurring in the Board of Directors by reason of resignation or death of any director appointed by the Class E member or the Class F member shall be filled by appointment by the Class E member or the Class F member, as the case may be. Any director elected or appointed to fill any vacancy in the Board of Directors shall serve until the expiration of the term of his or her predecessor.

3. **General Powers.** The Board of Directors shall have and may exercise all the powers of the Resort Company except such as are expressly conferred upon the members by law, by the Articles of Incorporation, the Declaration or these bylaws as from time to time in force and effect.

4. **Additional Powers and Responsibilities.** In addition to its general powers, the Board of Directors shall have the authority and the responsibility, acting through the Resort Company's officers, and subject to the provisions of the Declaration:

(a) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Articles of Incorporation, the Declaration or the bylaws as from time to time in force and effect.

(b) To establish, make, amend, publish and enforce compliance with such reasonable rules and regulations governing the operation and use of Facilities and Functions and the personal conduct of the members and Guests (provided the Resort Company shall not make, amend or repeal any such rules or regulations, the effect of which would contravene the terms of the Declaration, the Articles of Incorporation or these bylaws, or any agreement to which the Resort Company is a party) and to establish, make, amend, publish and enforce payment of reasonable charges for the use of Facilities and Functions.

(c) To maintain in good order, condition and repair Facilities and all items of personal property used in the enjoyment of such property.

(d) To obtain and maintain insurance in connection with Facilities and related personal property in the manner and the amounts provided in the Declaration, and such other insurance as the Board of Directors may consider appropriate.

(e) To fix, determine, levy and collect Common Assessments from Owners, Civic Assessments from Regular Members, Mountain Civic Assessments from the Mountain Special Member, and Special Assessments to meet the common expenses and costs of the Resort Company, and to create a reasonable reserve therefor, as more fully set forth in Article IX hereof.

(f) To collect promptly all delinquent assessments by suit or otherwise and to enjoin or seek damages from a member or Guest.

(g) To collect the charges and fees set forth in the Declaration (including but not limited to those set forth in Sections 3.19 and 3.20 thereof), and otherwise provided for in the Resort Company's Articles of Incorporation and these bylaws, as in effect from time to time.

(h) To insure, or cause an appropriate officer to issue, upon written demand of any member a certificate setting forth whether any assessment, charge, fine or penalty has been paid by such member. Such certificate shall be conclusive evidence against the Resort Company for all purposes. The Resort Company may charge a reasonable fee for such certificate.

(i) To protect and defend Facilities from loss and damages by suit or otherwise.

(j) To borrow funds in order to pay for any expenditure or outlay authorized by these bylaws, the Declaration and the Articles of Incorporation as from time to time in force and effect, including but not limited to funds borrowed from Declarant or an affiliate thereof, and to execute such instruments evidencing such indebtedness as may be necessary or advisable; provided, however, the Resort Company shall not make any significant expenditures or incur any indebtedness which would cause the Resort Company to not have sufficient funds allocated and necessary to perform its Functions and construct, maintain and operate its Facilities in accordance with the Declaration, the Articles of Incorporation and these bylaws.

(k) To enter into contracts within the scope of their duties and powers.

(l) To establish a bank account for the common treasury and for all separate funds which are required or may be deemed advisable by the Board of Directors.

(m) To maintain full and accurate books and records showing all of the receipts, expenses or disbursements of the Resort Company. Any member may inspect such records upon reasonable notice at any reasonable time.

(n) To prepare and upon request deliver to any requesting member an annual statement showing all receipts, expenses or disbursements since the last such statement.

5. **Compensation.** By resolution of the Board of Directors, any director may be paid any one or more of the following: his reasonable expenses incurred, if any, in furtherance of the business or affairs of the Resort Company; a fixed sum for attendance at meetings; or a stated salary as director. No such payment shall preclude any director from serving the Resort Company in any other capacity and receiving compensation therefor.

6. **Regular Meetings.** Regular meetings of the Board of Directors may be held without call or formal notice at such places within the State of Colorado, and at such times as the board may from time to time by vote determine. Any business may be transacted at a regular meeting. Until further determination, the regular meeting of the Board of Directors for the election of officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of members, or any special meeting of members at which a Board of Directors is elected.

7. **Special Meetings.** Special meetings of the Board of Directors may be held at any place within Colorado at any time when called by the president, or by 2 or more directors, upon at least 3 days prior notice of the time and place thereof being given to each director by leaving such notice with him or at his residence or usual place of business, or by mailing or telegraphing it prepaid, and addressed to him at his post office address as it appears on the books of the Resort Company, or by telephone or facsimile transmission. Notices shall state the purposes of the meeting. No notice of any adjourned meeting of the directors shall be required.

8. **Quorum.** A majority of the number of directors fixed by the bylaws shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the directors in attendance shall, except where a larger number is required by law, by the Articles of Incorporation, the Declaration or by these bylaws as from time to time in force and effect, decide any question brought before such meeting.

9. **Waiver of Notice.** Before, at or after any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the board shall be a waiver of notice by him or her except when a director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

10. **Informal Action by Directors.** Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the directors.

11. **Presence at Meetings.** Any Director may participate in a regular or special meeting of the Board of Directors by, and such meeting may be conducted through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.



**ARTICLE VII.**  
**Officers and Agents.**

1. **General.** The officers of the Resort Company shall be a president, one or more vice presidents, a secretary and a treasurer. The Board of Directors may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board of Directors. The salaries of all the officers of the Resort Company shall be fixed by the Board of Directors. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the bylaws or by the Board of Directors, such officer, agent or employee shall follow the orders and instructions of the president or his designee.

2. **Removal of Officers.** Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors or at any special meeting of the board called for such purpose.

3. **Vacancies.** A vacancy in any office, however occurring, may be filled by the Board of Directors for the unexpired portion of the term.

4. **President.** The president shall be the chief executive officer of the Resort Company. He shall have the general and active control of the affairs and business of the Resort Company and general supervision of its officers, agents and employees.

5. **Vice Presidents.** The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Board of Directors. In the absence of the president, the vice president designated by the Board of Directors or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties.

6. **The Secretary.** The secretary shall:

(a) Keep the minutes of the proceedings of the members, executive committee and Board of Directors;

(b) See that all notices are duly given in accordance with the provisions of these bylaws, the Articles of Incorporation, the Declaration and as required by law;

(c) Be custodian of the corporate records and of the seal of the Resort Company and affix the seal to all documents when authorized by the Board of Directors;

(d) Keep at its registered office or principal place of business within or outside Colorado a record containing the names and registered addresses of all members, the designation of the property owned or leased by each member, and, if such property is mortgaged and the mortgagee has given the Resort Company notice thereof, the name and address of the mortgagee;

(e) In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

7. **Treasurer.** The treasurer shall be the principal financial officer of the Resort Company and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Resort Company and shall deposit the same in accordance with the instructions of the Board of Directors. The treasurer shall receive and give receipts and acquittances for moneys paid in on account of the Resort Company, and shall pay out of the funds on hand all bills, payrolls and other just debts of the

Resort Company or whatever nature upon maturity. He or she shall perform all other duties incident to the office of the treasurer and, upon request of the Board of Directors, shall make such reports to it as may be required at any time. The treasurer shall, if required by the Board of Directors, give the Resort Company a bond in such sums and with such sureties as shall be satisfactory to the board, conditioned upon the faithful performance of his or her duties and for the restoration to the Resort Company of all books, papers, vouchers, money and other property of whatever kind in the treasurer's possession or under his or her control belonging to the Resort Company. The treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board of Directors or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

## **ARTICLE VIII. Obligations of the Members.**

1. **Assessments.** (a) Each Owner shall be obligated to pay and shall pay to the Resort Company the annual Common Assessment levied under Article IX with respect to such Owner's Site, and each Owner shall comply with any determinations made by the Board of Directors with respect to such assessments.

(b) Each Regular Member shall be obligated to and shall collect the Civic Assessment described in Article IX and pay the total amounts thereof regularly to the Resort Company, or see to it that the Civic Assessment is collected and that the total amounts thereof are paid regularly to the Resort Company as to any transaction with respect to which the Civic Assessment is applicable, and each member shall comply with any determinations made by the Board of Directors with respect to such assessments.

(c) The Mountain Special Member shall be obligated to pay and shall pay to the Resort Company, the Mountain Civic Assessment levied with respect to the Mountain Special Member's Assessable Income and shall comply with any determinations made by the Board of Directors with respect to such assessment.

(d) Each Regular Member and the Mountain Special Member shall be obligated to pay and shall pay to the Resort Company any Special Assessment imposed under Article IX hereof, as the amount of such Special Assessment applicable to each member is determined under the provisions of that Article. Each Regular Member and the Mountain Special Member shall comply with any determinations made by the Board of Directors with respect to such assessment.

(e) Each member shall pay all charges, fines, penalties, interest, or other amounts payable to the Resort Company in connection with the Common Assessments, Civic Assessments, Mountain Civic Assessments or Special Assessments, or otherwise payable under the Declaration, the Articles of Incorporation or these bylaws.

2. **Time for Payments.** The amount of any Assessment, charge, fine, penalty or other amount payable with respect to any member or such member's Guest or Site shall become due and payable as specified in Article IX hereof or by the Board of Directors, and any such amount which is delinquent shall bear interest at the rate of 18 percent per annum from the date due and payable.

3. **Lien for Assessments and Other Amounts.** In addition to the rights set forth in Article IX hereof, the Resort Company shall have a lien against each Site to secure payment of any assessment, charge, fine, penalty or other amount due and owing to the Resort Company with respect to the Owner of that Site or with respect to such Owner's Lessees, Guests or Site plus interest from the date due and payable, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. All liens granted pursuant to this Section 3 and Sections 1, 2, 3 and 4, Article IX, hereof shall be junior to any first lien or encumbrance on a Site taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Eagle County, Colorado, prior to the time a notice of failure to pay any such amount is recorded in said office, describing the Site, and naming the Owner of the Site. Such lien may be foreclosed in the manner for foreclosures of mortgages in the State of Colorado.

**4. Compliance with the Declaration, Articles of Incorporation, Bylaws and Rules and Regulations.** Each member shall comply with all provisions of the Declaration, Articles of Incorporation, these bylaws, and any rules and regulations issued by the Board of Directors as from time to time in force and effect. The membership rights and privileges, including, but not limited to, the right to vote and the right to use Facilities and Functions of any member or Guest, may be suspended by action of the Board of Directors during the period when any assessments or other amounts due relating to such member's Site remain unpaid; but, upon payment of such assessments or other amounts, such rights and privileges shall be automatically restored. If the Board of Directors has adopted and published rules and regulations governing the use of Facilities or Functions and the personal conduct of any person related thereto, the directors or the officers of the Resort Company may, in their discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed 30 days, or if such person is in a continuous violation of such rules and regulations for a period until such time as the violation ceases. At the time such continuous violation ceases, the 30-day suspension may be applied to such person.

**5. Amendments.** This Article VIII may be amended only by the Affirmative Vote of a Majority of the Classes.

#### **ARTICLE IX. Assessments**

**1. Common Assessments.** The Board of Directors on or about May 1 of each year shall levy upon and subsequently collect from each Owner an annual assessment (the "Common Assessment") which shall be determined by multiplying (A) the assessed value of all real property located within and improvements located on or affixed to each of such Owner's Sites, as such value shall have been most recently determined by the Assessor of Eagle County, Colorado (the "Assessed Value"), by (B) the Common Assessment Rate determined by the Board of Directors in accordance with Section 7(a) of this Article IX. To determine the Assessed Value of each Site and the improvements thereon, the Board of Directors shall obtain a copy of the tax list and warrant covering and including all real property in Beaver Creek as soon as practicable after its publication by the Treasurer of Eagle County, Colorado on or about January 1 of each year. Notwithstanding the foregoing, if for any reason a current tax list and warrant is not available in a timely fashion or does not, in the judgment of the Board of Directors, provide sufficient information to determine the Assessed Values of one or more particular Sites and all of the improvements thereon, the Board of Directors may use any reasonable means available to it to determine such Assessed Values for purposes of levying Common Assessments, including without limitation reference to previous county assessed value determinations and other pertinent information and the employment of qualified appraisers. Identification of Owners for the purpose of levying Common Assessment shall be made in accordance with said tax list and warrant except to the extent that the Board of Directors shall send by first class mail, postage prepaid, a notice or notices to each Owner at the address shown on said tax list and warrant, or at such other address of which the Board of Directors may have notice, setting forth the Assessed Value, the Common Assessment Rate and the Common Assessment relative to each Site owned by such Owner. Payment of each Common Assessment shall become due and payable, in its entirety on or before June 30. Any portion of any Common Assessment not paid when due and payable shall become a lien on and against all of the real property owned by such Owner in Beaver Creek, including any Sites owned by such Owner other than the Site with respect to which the Common Assessment has not been fully paid. The Board of Directors in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Common Assessment which it deems sufficient to protect the interest of the Resort Company. Notwithstanding the foregoing, any Site which is exempt from taxation pursuant to Title 39, Article 3 of the Colorado Revised Statutes as amended (or any comparable statute), or any property, real or personal, of the State and its political subdivisions, may be granted an exemption from the Resort Company Common Assessment by the Board of Directors; provided that the Board of Directors specifically approves such exemption in each particular case.

**2. Civic Assessments.** The Board of Directors shall regularly levy upon and collect from each Regular Member an assessment (the "Civic Assessment") in regard to all sales of (a) tangible personal

property made by such member or made, consummated, conducted, transacted or occurring within the geographical boundaries of Beaver Creek and services made, performed or rendered by or on behalf of such member within the geographical boundaries of Beaver Creek (all of which are referred to herein as "Local Sales") which are subject to the Colorado Emergency Retail Sales Tax Act of 1935 (Colorado Revised Statutes, 1973, Title 39, Article 26), as amended (the "Colorado Sales Tax"), and (b) other tangible personal property made, consummated, conducted, transacted or occurring within the geographical boundaries of Beaver Creek. However, the Civic Assessment shall not apply to any gross receipts from sales (i) in connection with any event sponsored by the Resort Company, or (ii) in connection with any event sponsored by an organization exempt from Colorado Sales Tax, but, only to the extent such gross receipts relate to purchases by the organization for official organization business that are therefore exempt from Colorado Sales Tax, or (iii) where the property purchased is to be delivered to the purchaser outside of Beaver Creek by common carrier or by mail. Each such member's Civic Assessment shall be determined by multiplying such member's Local Sales that are included within such member's Net Taxable Sales (as defined for purposes of the computation of the Sales Tax) plus such member's gross receipts from the sale of tangible personal property not covered by the Sales Tax by the Civic Assessment Rate determined by the Board of Directors in accordance with Section 7(b) of Article IX. Each such member's Civic Assessment shall be due and payable without notice to the Resort Company each time and at such time as such member is required to remit or pay Colorado Sales Tax to the State of Colorado or would be required to make such payment if the property sold were covered by the Sales Tax. Each such member shall also deliver to the Resort Company without notice true and correct copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (all of which are referred to herein as "Reports") made or provided to the State of Colorado by such member in connection with any Local Sales under the provisions of said Act at such time as such Reports are required to be made to the State of Colorado. If any subsequent adjustments, additions, or modifications are made to any Colorado Sales Tax remitted or paid or Report made by any member to the State of Colorado, such member shall within 30 days thereafter so notify the Resort Company and provide it with true and complete copies of all Reports or other written material issued or received by such member in regard thereto. If any adjustment increases the amount of Colorado Sales Tax a member is required to remit or results in a refund of such tax, such member shall accordingly pay an appropriate additional Civic Assessment or receive an appropriate refund from the Resort Company of any excess Civic Assessments previously paid. Any portion of any Civic Assessment not paid by any member when due and payable shall become a lien on and against all of the real property owned or leased by such member in Beaver Creek. The Board of Directors in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Civic Assessments which it deems sufficient to protect the interests of the Resort Company.

**3. Mountain Civic Assessments.** The Board of Directors shall levy upon and collect from the Mountain Special Member (as well as any other member or entity selling products or services on the Mountain Facility) a special assessment (the "Mountain Civic Assessment") in regard to all sales of (a) tangible personal property made by such member or made, consummated, conducted, transacted or occurring on the Mountain Facility, and services made, performed or rendered by or on behalf of such member on the Mountain Facility (all of which are referred to herein as "Mountain Sales") which are subject to the Colorado Sales Tax (as defined in Section 2 above), (b) other tangible personal property made, consummated, conducted, transacted or occurring on the Mountain Facility, and (c) ski tow and lift tickets. The Mountain Civic Assessment is determined by multiplying (i) the sum obtained by adding the Mountain Sales that are included within such member's Net Taxable Sales (as defined for purposes of the computation of the Sales Tax), and such member's gross receipts from the sale of tangible personal property not covered by the Sales Tax and the sale of ski tow and lift tickets, by (ii) the Mountain Civic Assessment Rate determined by the Board of Directors in accordance with Section 7(c) of Article IX. With respect to the sale of ski tow and lift tickets, the "gross receipts" of the member shall mean the total amount of payments (whether made in cash or by check or credit card charge) actually received by the member from such sales, provided that the total amount of such payments received shall not include any related sales commissions paid to sales agents who are not employees of such member, or any sales, use, business, license, occupations or other excise taxes (other than income taxes) imposed by any governmental unit which are determined by reference to the amount of sales or gross receipts. The Mountain Civic Assessment is due and payable to the Resort Company, without notice, each time and at such time as the member is required to remit or pay Colorado Sales Tax to the State of Colorado or

would be required to make such payment if the property sold were covered by the Sales Tax. Each member responsible for paying a Mountain Civic Assessment shall deliver to the Resort Company, without notice, true and correct copies of all Reports (as defined in Section 2 above) made or provided to the State of Colorado by such member in connection with any Mountain Sales under the provisions of said Act at such time as such Reports are required to be made to the State of Colorado. If any subsequent adjustments, additions, or modifications are made to any Colorado Sales Tax remitted or paid or Report made by any member to the State of Colorado, such member shall within 30 days thereafter so notify the Resort Company and provide it with true and complete copies of all Reports or other written material issued or received by such member in regard thereto. If any adjustment increases the amount of Colorado Sales Tax a member is required to remit or results in a refund of such tax, such member shall accordingly pay an appropriate additional Mountain Civic Assessment or receive an appropriate refund from the Resort Company of any excess Mountain Civic Assessments previously paid. Any portion of any Mountain Civic Assessment not paid by any member when due any payable shall become a lien on and against all of the real property owned or leased by such member in Beaver Creek or the Mountain Facility. The Board of Directors in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Mountain Civic Assessments which it deems sufficient to protect the interests of the Resort Company.

**4. Special Assessments.** Special Assessments shall include Resort Assessments, Local Improvement Assessments, or Real Estate Transfer Assessments, and Recreation Assessments as those terms are used below. They shall be imposed as provided in this Section 4 and shall be collected by the Resort Company. Any portion of any Special Assessment not paid by any member when due and payable shall become a lien on and against all of the real property owned or leased by such member in Beaver Creek. The Board of Directors in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Special Assessments which it deems sufficient to protect the interests of the Resort Company.

(a) **Resort Assessments.** The Board of Directors may levy in any fiscal year one or more Resort Assessments, applicable to that year only, for any proper purpose of the Resort Company, provided that each such assessment shall be approved by the Affirmative Vote of a Majority of the Classes at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to all members at least 30 days in advance (unless each member waives such notice). Any such assessment which is so approved shall be levied in proportion to each member's total Common, Civic, Recreation, and Mountain Civic Assessment contribution to the Resort Company for the previous fiscal year; however, if no such contributions were made in the previous fiscal year, such Resort Assessment may be levied in such proportion as is determined by the Board of Directors and approved by the Affirmative Vote of a Majority of the Classes. The date or dates that any such Resort Assessment is due and payable shall be set forth in the resolution of the Board of Directors authorizing such Resort Assessment. However, no Resort Assessment shall be levied unless it has been approved by at least 75% of the Class A, B, C and D Directors.

(b) **Local Improvement Assessments.**

(i) **Local Improvements.** In the judgment of the Board of Directors, if certain improvements within Beaver Creek are desirable, if those improvements will especially benefit certain Sites, and if all or a part of the costs of those improvements should in fairness be paid for by the Owners of the benefited Sites, the Board of Directors may propose a Local Improvement Assessment. With respect to each proposed Local Improvement Assessment, the Board of Directors shall specify the nature of the proposed improvement, shall designate those Sites which will be especially benefited by the improvement (the "Benefited Sites"), and shall recommend a Local Improvement Assessment calculated to meet the costs applicable to the local improvement, with the board specifying the amounts of such assessments, the dates for payment of such assessments, and the portion, if any, of the costs of any improvement that will be borne by the Resort Company. The Local Improvement Assessment shall then be submitted to a vote of the Owners of the Benefited Sites, at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Sites at least 30 days in advance (unless each such Owner waives such notice). If the Owners of the Benefited Sites containing

more than 50 percent of the area of the total Benefited Sites approve the Local Improvement Assessment at such a meeting, the Local Improvement Assessment shall take effect.

(ii) **Apportionment of Local Improvements Assessments.** Local Improvement Assessments shall be assessed in proportion to the benefits received. The Board of Directors shall make such assessments in proportion as the frontage of each Benefited Site is to the frontage of all the Benefited Sites, or in proportion as the area of each Benefited Site is to the area of all the Benefited Sites, or by any other method that the Board of Directors finds will result in assessments being equitable in proportion to benefits received.

(iii) **Disposition of Funds Raised Through Local Improvement Assessments.** All funds collected through the imposition of a Local Improvement Assessment shall be applied to the costs of making, constructing, and installing the local improvement for which such assessment was imposed, except that any funds remaining unspent upon completion of such improvement shall be returned to the Owners of the Benefited Sites in the proportion on which such Sites were assessed.

(c) **Real Estate Transfer Assessments.**

(i) **Assessable Transfers.** Upon the occurrence of any transfer, as defined below, the transferee under such transfer shall pay to the Resort Company a real estate transfer assessment (the "Real Estate Transfer Assessment") equal to the fair market value, as defined below, of the Site subjected to transfer, multiplied by the Real Estate Transfer Assessment Rate determined in accordance with Section 7(d) of this Article IX.

(ii) **Definitions.**

(A) **Transfer.** For purposes of this Section 4(c) of this Article IX, "transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, assignment, lease or other transfer of beneficial ownership of any Site, including but not limited to (1) the conveyance of fee simple title to any Site, (2) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Sites, and (3) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, joint venture or other entity which, directly or indirectly, owns one or more Sites, but "transfer" shall not mean or include the transfers excluded under paragraph 4(c) (iii).

(B) **Transferee.** For purposes of this Section 4(c) of this Article IX, "transferee" means and includes all parties to whom any interest passes by a transfer, and each party included in the term "transferee" shall have joint and several liability for all obligations of the transferee under this Section 4(c).

(C) **Fair Market Value.** In the case of a transfer that is in all respects a bona fide sale, "fair market value" of the Site subjected to transfer shall be the consideration, as such term is defined below, given for the transfer. In case of a transfer that is a lease or is otherwise not in all respects a bona fide sale, fair market value of the Site subjected to transfer shall be determined by the Resort Company. A transferee may make written objection to the Resort Company's determination within 15 days after the Resort Company has given notice of such determination, in which event the Resort Company shall obtain an appraisal, at the transferee's sole expense, from a real estate appraiser of good reputation, who is qualified to perform appraisals in Colorado, who is familiar with Eagle County real estate values, and who shall be selected by the Resort Company. The appraisal so obtained shall be binding on both the Resort Company and the transferee. The above provisions notwithstanding, where a transferee does not make a full report of a transfer within 15 days after the time required by this Section 4(c) for making such report, the transferee shall be deemed to have waived all right of objection concerning fair market value, and the Resort Company's determination of such value shall be binding.

(D) **Consideration.** For purposes of this Section 4(c) of this Article IX, "consideration" means and includes the total of money paid and the fair market value of any property delivered, or contracted to be paid or delivered, in return for the transfer of any Site, and includes the amount of any note,

contract indebtedness, or rental payment reserved in connection with such transfer, whether or not secured by any lien, mortgage, or other encumbrance, given to secure the transfer price, or any part thereof, or remaining unpaid on the property at the time of transfer, whether or not assumed by the transferee. The term "consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Colorado, or a municipal or quasi-municipal governmental corporation or district.

(iii) **Exclusions.** The Real Estate Transfer Assessment shall not apply to any of the following, except to the extent that they are used for the purpose of avoiding the Real Estate Transfer Assessment.

(A) Any transfer to the United States, or any agency or instrumentality thereof, the State of Colorado, any County, City and County, Municipality, District or other political subdivision of this State.

(B) Any transfer to the Beaver Creek Resort Company of Colorado or its successors.

(C) Any transfer, whether outright or in trust, that is for the benefit of the transferor or his relatives, but only if there is no more than nominal consideration for the transfer. For the purposes of this exclusion, the relatives of a transferor shall include all lineal descendants of any grandparent of the transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust.

(D) Any transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith.

(E) Any transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution.

(F) Any transfer made (1) by a majority-owned subsidiary to its parent corporation, or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no consideration other than the issuance, cancellation or surrender of the subsidiary's stock; or (2) by a partner, member, or joint venturer to a partnership, limited liability company, joint venture, or other similar, legally recognized entity in which the partner, member or joint venturer has not less than a fifty percent (50%) interest, or by a partnership, limited liability company, joint venture or other similar, legally recognized entity to a partner, member or joint venturer holding not less than a fifty percent (50%) interest in such partnership, limited liability company, joint venture, or other similar, legally recognized entity, in each case for no consideration other than the issuance, cancellation or surrender of interests in such partnership, limited liability company, joint venture or other similar, legally recognized entity, as appropriate; or (3) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Site is transferred generally prorata to its shareholders and no consideration is paid other than the cancellation of such corporation's stock; or (4) by a partnership, limited liability company, joint venture, or other similar, legally recognized entity to its partners, members or joint venturers, in connection with a liquidation of such entity or other distribution of property to its partners, members or joint venturers, if the Site is transferred generally prorata to its partners, members or joint venturers and no consideration is paid other than the cancellation of the partners' members' or joint venturers' interests; or (5) to a corporation, partnership, joint venture or other association or organization where such entity is owned in its entirety by the persons transferring the Site and such persons have the same relative interests in the transferee entity as they had in the Site immediately prior to such transfer, and no consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the transferee entity; or (6) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the transferor(s) and the transferee(s) are and remain under common ownership and control as determined by the Board of Directors of the Resort Company in its sole discretion applied on a consistent basis; provided, however, that no such transfer or series of transactions shall be exempt unless the Board of

Directors finds that such transfer or series of transactions [A] is for no consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the transferor or transferee, as appropriate, [B] is not inconsistent with the intent and meaning of this Subsection (F), and [C] is for a valid business purpose and is not for the purpose of avoiding the obligation to pay the Real Estate Transfer Assessment. For purposes of this Subsection (F)(6), a transfer shall be deemed to be without consideration (x) if the only consideration is a book entry made in connection with an intercompany transaction in accordance with generally accepted accounting principles, or (y) no person or entity which does not own a direct or indirect equity interest in the Site immediately prior to the transfer becomes the owner of a direct or indirect equity interest in the Site (an "Equity Owner") by virtue of the transfer, and the aggregate interest immediately prior to the transfer of all Equity Owners whose equity interest is increased on account of the transfer does not increase by more than 20% (out of the total 100% equity interest in the Site), and no individual is entitled to receive directly or indirectly any consideration in connection with the transfer. In connection with considering any request for an exception under this Subsection (F)(6), the Board of Directors of the Resort Company may require the applicant to submit true and correct copies of all relevant documents relating to the transfer and an opinion of the applicant's counsel (such opinion and counsel to be reasonably acceptable to the Board of Directors) setting forth all relevant facts regarding the transfer, stating that in their opinion the transfer is exempt under this Subsection (F)(6), and setting forth the basis for such opinion.

(G) Any transfer made solely for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses, and any exchange of lots between Declarant and any original purchaser from Declarant of the one or more lots being transferred to Declarant in such exchange. To the extent that consideration in addition to previously purchased lots is paid to Declarant in such an exchange, the additional consideration shall be a transfer subject to assessment. To the extent that Declarant, in acquiring by exchange lots previously purchased from Declarant, pays consideration in addition to transferring lots, the amount of such additional consideration shall be treated as reducing the original assessable transfer and shall entitle an original purchaser from Declarant, who exchanges with Declarant lots previously purchased from Declarant, to a refund from the Resort Company of the amount of the transfer assessment originally paid on that portion of the original transfer.

(H) Any transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have effect of causing the occurrence of a second assessable transfer in a series of transactions which includes only one effective transfer of the right to use or enjoyment of a Site.

(I) Any lease of any Site (or assignment or transfer of any interest in any such lease) for a period of less than thirty years.

(J) Any transfer solely of minerals or interests in minerals.

(K) Any transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a deed given in lieu of foreclosure.

(L) The subsequent transfer(s) of a Site involved in a "tax free" or "tax deferred" trade under the revenue code wherein the interim owner acquires property for the sole purpose of reselling that property within 30 days after the trade. In these cases, the first transfer of title is subject to Real Estate Transfer Assessment and subsequent transfers will only be exempt as long as a transfer assessment has been paid in connection with the first transfer of such Site in such exchange.

(M) The transfer of a Site to an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended (or any comparable statute), provided that the Board of Directors specifically approves such exemption in each particular case.



(N) Any transfer made by a corporation or other entity, for consideration, (1) to any other corporation or entity which owns 100% of its equity securities (a "Holding Company"), or (2) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, 100% by such Holding Company.

(O) Any transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where consideration is paid for, or in connection with, such transfer; however, unless such transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the transferee in the transferor immediately prior to the transfer. For example, if corporation A owns 60% of corporation B, and corporation B owns 100% of corporation C and corporation C conveys a Site to corporation A for \$2 million, 60% of the Real Estate Transfer Assessment would be exempt and a Real Estate Transfer Assessment would be payable only on \$800,000 (i.e., 40% of the \$2 million consideration).

(P) The consecutive transfer of a Site wherein the interim owner acquires such Site for the sole purpose of immediately reconveying such Site, but only to the extent there is no consideration to the interim owner and such interim owner receives no right to use or enjoyment of such Site, provided the Board of Directors specifically approves such exemption in each particular case. To the extent that consideration is paid to, or for the benefit of, the interim owner, the additional consideration shall be a transfer subject to assessment. In these cases, the first transfer of title is subject to the Real Estate Transfer Assessment and subsequent transfers will only be exempt as long as a transfer assessment has been paid in connection with the first transfer of such Site in such consecutive transaction and only to the extent there is no consideration to the interim owner.

(iv) **Payment and Reports.** The Real Estate Transfer Assessment shall be due and payable by the transferee to the Resort Company at the time of the transfer giving rise to such Real Estate Transfer Assessment. With such payment, the transferee shall make a written report to the Resort Company on forms pre-scribed by the Resort Company, fully describing the transfer and setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the legal description of the Site transferred, and such other information as the Resort Company may reasonably require.

(d) **Recreation Assessments.** The Board of Directors shall levy and collect from each member a special assessment (the "Recreation Assessment") determined by multiplying such member's Recreation Income, as defined below, by the Civic Assessment Rate determined in accordance with Section 7(b) of this Article IX. "Recreation Income" shall mean all gross receipts from (i) the providing of ski lessons or other lessons or the rental of ski or other recreational equipment on the Mountain Facility, (ii) the operation of any recreational, entertainment or sports facility within Beaver Creek, including but not limited to any golf course, tennis, squash or racquetball court, sports spa, health spa, movie theater, equestrian facility or the like, (iii) the lease of any recreational or sports equipment within Beaver Creek (if not covered by the Civic Assessment) and (iv) the sale of lessons, instructions or guide services relating to any recreational or sports activities. For the purpose of determining such member's Recreation Income, "gross receipts" shall mean the total amount of payments (whether made in cash or by check or credit card charge) actually received by such member from any such sales or leases, provided the total amount of such payments shall not include any related sales commissions paid to sales agents who are not employees of such member, or any sales, use, business, license, occupational or other excise taxes (other than income taxes) imposed upon such member by any governmental unit which are determined by reference to the amount of sales or gross receipts. Each member shall pay the Recreation Assessment to the Resort Company on or before the twentieth day of each calendar month covering Recreation Income received during the preceding calendar month. However, Recreation Income shall not include any gross receipts received in connection with any event sponsored by the Resort Company or any charitable or a eleemosynary organization.

If at least 75% of the Class A, B, C, and D directors then in office approve, the Board of Directors may make such exemptions to the Recreation Assessment as they deem appropriate which exemption may exempt all activities otherwise covered by the Recreation Assessment.

**(e) Lodging Civic Assessment.** The Board of Directors shall levy and collect from each Member a Special Assessment (the "Lodging Civic Assessment") determined by multiplying such Member's Rental Income, as defined below, by the Lodging Civic Assessment Rate determined in accordance with Section 7(e) of this Article IX. "Rental Income" shall mean all gross receipts from the providing of a room, space, lodging service, or other accommodations at a Lodge or Residential Site (as such terms are defined in the Declaration) within Beaver Creek to any person who, for consideration, uses or possesses such room, space, lodging service or other accommodation for a total continuous duration of less than thirty (30) consecutive calendar days. For the purpose of determining such Member's Rental Income, "gross receipts" shall mean the total amount of payments (whether made in cash or by check or credit card charge) actually received by such Member from any such rentals, provided the total amount of such payments shall not include (i) any amounts paid to the Resort Company for Civic Assessments, (ii) any related sales commissions paid to sales agents who are not employees of such Members, or (iii) any sales, use, business, license, occupational or other excise taxes (other than income taxes) imposed upon such Member by any governmental unit which are determined by reference to the amount of sales or gross receipts. Each Member shall pay the Lodging Civic Assessment to the Resort Company on or before the twentieth day of each calendar month covering Rental Income received during the preceding calendar month. Each such Member shall also deliver to the Resort Company, without notice, true and correct copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto, regarding the Member's Rental Income which the Resort Company requires. The Lodging Civic Assessment shall be levied irrespective of the location from which the reservation for the accommodation is actually made.

**5. General Provisions.** Any payment or Report required hereunder to be made to the Resort Company shall be deemed to have been in a timely fashion if sent to the principal office of the Resort Company by first class mail, postage prepaid, and postmarked no later than the date such payment or Report is due, provided the Resort Company thereby actually receives such payment or Report. The Resort Company at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any member which are reasonably related to such member's obligation hereunder to pay assessments or make Reports to the Resort Company. If any portion of any assessment hereunder is not paid when due and payable, such portion shall bear simple interest at the rate of 18 percent per annum from the date due until paid, and the amount of such interest shall for all purposes hereunder (other than the computation of such interest) be added to and become part of the assessment; provided that the Board of Directors may in its discretion waive all or any part of such interest for reasonable cause shown. The Board of Directors shall have power to collect any part of any assessment not paid when due and to enforce any other obligations of any member under this Article IX by any legal means available to it. Each Owner, Regular Member and the Mountain Special Member shall hold harmless and indemnify the Resort Company and its agents and employees from and against any and all costs, losses, obligations, penalties, expenses, liabilities and damages of every kind whatsoever, including court costs and all reasonable attorney's fees, incurred by or imposed upon the Resort Company or any of its agents or employees in the collection of such Owner's or member's assessments hereunder which are not paid when due or otherwise in the enforcement of any of such Owner's or members' obligation under this Article IX. The Board of Directors shall have power to determine any matter and to resolve any dispute arising out of the application, determination, payment and collection of any assessment or the making of any Report provided for in this Article IX, and may promulgate such additional rules and regulations which are consistent with the provisions hereof as the Board of Directors may deem necessary, useful or appropriate to the reasonable and efficient administration of such provision.

**6. Resort Company Budget.** At the first meeting of the Board of Directors following the adoption of the Resort Company's fiscal year, the Board of Directors shall adopt an estimated budget for the remainder of that fiscal year. Such budget shall include: (A) the estimated costs and expenses and proposed capital expenditures which will be chargeable to the Resort Company to fulfill its obligations under the Declaration, the Articles of Incorporation and those bylaws as then in force and effect; (B) the estimated income and other funds which will be received by the Resort Company; and (C) the estimated total amounts required to be raised by Common, Civic and Special Assessments to cover such costs, expenses and capital expenditures of the Resort Company and to provide a reasonable reserve. For each subsequent fiscal year the Board of Directors shall, prior to the beginning of each fiscal year, propose and tentatively adopt a

similar budget, which shall also include all long-term or continuing commitments of the Resort Company made in connection with or contemplated under any previously approved budget. However, the tentative budget for each subsequent fiscal year shall not be finally established until after an opportunity for discussion of such budget by the members at a meeting of the combined classes of all members, which may be the same meeting as the annual meeting of members. The Board of Directors shall give notice of the time and place of the meeting for review of the tentative budget to all members at least 30 days prior to such meeting. During such 30-day period the Board of Directors shall make copies of the tentative budget available to all interested members at the principal office of the Resort Company. At such meeting, members shall have the right to be heard concerning the budget; however, the Board of Directors shall retain the sole power to establish the budget. Any Special Assessment proposed in the budget to become effective with final establishment of the budget shall be approved by the member pursuant to Section 4 of this Article IX at such meeting. Special meetings may be held in like manner upon like notice to consider supplementation or revision of any budget. Notice of any such special meeting shall contain a reasonably detailed description of the supplement or revision proposed. Except as emergencies may require, the Resort Company shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Resort Company through assessments, all other sources of income and borrowing.

## **7. Assessment Rates.**

(a) **Common Assessment Rate.** Based on budget estimates and the most recently available Assessed Values of the Sites and improvements thereon, the Board of Directors shall determine and set forth in its annual budget the Common Assessment Rate (referred to in Section 1 of this Article IX) required to produce the total Common Assessments set forth in such budget. However, the Board of Directors may not establish a Common Assessment Rate in excess of 20 mills per dollar of Assessed Value for any period after January 1, 1984 unless such Common Assessment Rate has been approved by at least 75% of the Class A, B, C and D directors. Notwithstanding the foregoing, if the State of Colorado or the County of Eagle, Colorado make any material change in the manner in which real property taxes in Beaver Creek are assessed or collected or if any court of competent jurisdiction renders any judgment or ruling which would affect the manner in which the Resort Company Common Assessments are levied or collected, and such change, judgment or ruling diminishes the amount the Resort Company would raise through Common Assessments, the Board of Directors may establish a Common Assessment Rate in excess of 20 mills to the extent necessary to raise the same amount of money through Common Assessments as would have been raised at the 20 mill levy rate if such change, judgment or ruling had not occurred or been issued.

(b) **Civic Assessment Rate.** The Civic Assessment Rate referred to in Section 2 of this Article IX shall be 5 percent unless and until the Board of Directors shall adopt a different rate. However, in no event shall the Civic Assessment Rate exceed 6 percent.

(c) **Mountain Civic Assessment Rate.** The Mountain Civic Assessment Rate referred to in Section 3 of this Article IX shall be 5 percent. In determining the Mountain Civic Assessment Rate, the Board of Directors shall consider what governmental levies, if any, in the form of sales, use, business, license, occupational or other similar charges or taxes have or may be imposed upon the Mountain Special Member with regard to Mountain Special Member Assessable Income. However, in no event shall the Mountain Civic Assessment Rate be more than 6 percent.

(d) **Real Estate Transfer Assessment Rate.** The Real Estate Transfer Assessment Rate referred to in Section 4(c) of this Article IX shall be 2.375 percent unless and until the Board of Directors shall adopt a different rate. However, in no event shall the Real Estate Transfer Assessment Rate exceed 2.50 percent without the Affirmative Vote of a Majority of the Classes at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to all members at least 30 days in advance (unless each member waives such notice).

(e) **Lodging Civic Assessment Rate.** The Lodging Civic Assessment Rate referred to in Section 4(e) of this Article IX shall be 0.96 percent unless and until the Board of Directors shall adopt a different rate, provided that any increase above such 0.96 percent rate shall be approved by the Affirmative Vote of a Majority of the Classes at a meeting duly called for such purpose upon written notice

which sets forth the purpose of the meeting and is sent to all members at least 30 days in advance (unless each member waives such notice).

8. **Amendments.** This Article IX may not be altered, amended or repealed except by the Affirmative Vote of a Majority of the Classes.

9. **Assessment Reduction Provision.** In the event that the Board of Directors determines, in its sole discretion, that it is necessary or appropriate for the Resort Company to reduce the rates of any Assessments, the Board of Directors shall reduce both the 2002 Assessment Increases (as hereinafter defined) and Additional Civic Assessment Increases (as hereinafter defined), if any, in equal percentages prior to reducing the rates of any other Assessments. The term "2002 Assessment Increases" shall mean collectively, (a) the Lodging Civic Assessment Rate of 0.96 percent, which was approved by the Affirmative Vote of a Majority of the Classes at a special meeting of the Members called for that purpose on April 5, 2002, (b) the increase in the Real Estate Transfer Assessment Rate from 2.00 percent to 2.50 percent, which was approved by the Affirmative Vote of a Majority of the Classes at a special meeting of the Members called for that purpose on April 5, 2002, and (c) the increase in the Civic Assessment Rate from 5.00 percent to 5.35 percent which was approved by the Board of Directors held on February 14, 2002. The term "Additional Civic Assessment Increase" shall mean any increase in the Civic Assessment Rate from 5.35 percent up to and including the 6.00 percent cap, which was approved by the Affirmative Vote of a Majority of the Classes at a special meeting of the Members called for that purpose on July 18, 2001. For purposes of illustration and not by way of limitation, if the Board of Directors decides to decrease the Lodging Civic Assessment Rate by fifty percent, which would decrease the Lodging Civic Assessment Rate from 0.96 percent to 0.48 percent and the Civic Assessment Rate has been increased to 6.00 percent pursuant to one or more Additional Civic Assessment Increases, then the 2002 Assessment Increase in the Real Estate Transfer Assessment Rate would also be decreased by 50 percent, such that the Real Estate Transfer Assessment Rate would be reduced from 2.50 percent to 2.25 percent, and the combination of the 2002 Assessment Increase in the Civic Assessment Rate and the Additional Civic Assessment Increase(s) would also be decreased by 50 percent, such that the Civic Assessment Rate would be reduced from 6.0 to 5.5 percent. The foregoing reductions shall not apply in the event the Board of Directors reduces the Real Estate Transfer Assessment Rate mentioned in Section 7(d) of this Article IX below 2.375 percent as a result of a financial emergency or substantial decline in tourism, as determined by a majority of the members of the Board of Directors.

**ARTICLE X.  
Evidence and Determination of Membership,  
Registration of Mailing Address and Lien Holders.**

1. **Evidence of Membership and Registration of Mailing Address.** Any party on becoming a member shall furnish to the Resort Company a photocopy or a certified copy of the recorded instrument, or a copy of a lease or sublease, vesting that party with the interest required to make it a member of the Resort Company. Each such member shall at the same time give a single name and address to which notices to such member may be sent. The member shall state in such notice the class of membership to which it believes it is entitled, the number of votes to which it believes it is entitled and the basis for such determinations. In the event of any change in the facts reported in the original written notice, including any change of ownership, the member shall give a new written notice to the Resort Company containing all the information required to be covered by the original notice. As against any member, and any party claiming by, through, or under such member, the Resort Company may, but shall not be obligated to, rely, for any and all purposes, on the information reflected in the most recent written notice furnished with respect to such member. The Resort Company shall keep and preserve the most recent written notice received by the Resort Company with respect to each member.

2. **Resort Company Determination as to Membership.** The Resort Company, based upon written notices furnished by members as aforesaid and based upon its own investigation, shall have the right, authority and obligation to fix and determine the number and class of votes existing with respect to each member. The Resort Company shall make such determination at least annually and, in any event, as of any

record date and shall make supplemental determinations from time to time as may be necessary after any record date in the light of changes which may come to its attention. The Resort Company shall keep records of its determinations hereunder which shall be used and may be relied upon by it for any and all purposes. No party shall be entitled to any notice or the right to vote until it has been determined by the Resort Company that such party is a member. Any party aggrieved by any determination of the Resort Company with respect to its voting rights may contest such action within 45 days after it has notice thereof by commencing a legal action in the District Court of Eagle County, Colorado, within such 45-day period. If such action is not commenced in such period, the determination of the Resort Company shall be final.

3. **Liens.** Any member who mortgages or grants a deed of trust covering his Site shall notify the Board of Directors of the name and address of the mortgagee or beneficiary of the deed of trust and shall file conformed copies of the note and security instrument with the Board of Directors. Such notice shall include an agreement by the lending institution that it will notify the Resort Company when its lien has been released. The Board of Directors, when giving notice to a member of default in paying an assessment or other default, shall send a copy of such notice to each mortgagee or beneficiary of a deed of trust covering such member's Site whose name and address has theretofore been filed with the Resort Company, and which has not been removed by appropriate notice that the lien has been released. However, failure to give such notice to a mortgagee shall not invalidate the notice to a member.

4. **Address Of The Resort Company.** The address of the Resort Company shall be P.O. Box 1297, Avon, Colorado 81620. Such address may be changed from time to time upon written notice to all members and all mortgagees or beneficiaries of deeds of trust whose names have been previously filed with the Resort Company.

#### **ARTICLE XI Security Interest in Membership.**

Members shall have the right irrevocably to constitute and appoint the mortgagee or the beneficiary of a trust deed their true and lawful attorney-in-fact to vote in the Resort Company at any and all meetings of the Resort Company and to vest in the mortgagee or the beneficiary any and all rights, privileges and powers that they have as members under the Articles of Incorporation and these bylaws or by the virtue of the Declaration as from time to time in force and effect. Such proxy and vesting shall become effective upon the filing of notice by the mortgagee or the beneficiary with the secretary of the Resort Company at such time or times as the mortgagee or the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Resort Company, the Board of Directors or the members to carry out their duties as set forth in the Declaration. A release of the mortgage or the beneficiary's deed of trust shall operate to revoke such proxy and vesting. Nothing contained in this Article XI shall be construed to relieve members, as mortgagors, of their duties and obligations as members or to impose upon the mortgagee or the beneficiary of the deed of trust the duties and obligations of an Owner.

#### **ARTICLE XII. Design Review Board.**

The Board of Directors shall establish a Design Review Board consisting of 5 persons in accordance with the Declaration as from time to time in force and effect which shall have the duties and perform the functions described therein. Each member and the Resort Company shall be bound by the Design Review Board's rules and regulations, a copy of which shall be maintained in the records of the Resort Company and available for inspection by members of the Resort Company at all reasonable times.

**ARTICLE XIII.  
Amendments.**

1. **By Directors.** Except as by law, the Articles of Incorporation, the Declaration or these bylaws limited or committed to action by the members, the Board of Directors shall have sole power to make, amend and repeal the bylaws of the Resort Company at any regular meeting of the board or at any special meeting called for that purpose; provided, however, that the Board of Directors shall not amend or repeal any provision of these bylaws the effect of which would be to materially adversely affect only the benefits, rights and protections afforded to the Class E and Class F members, and not those afforded to other members, under these bylaws. However, if the members shall make, amend and repeal any bylaw, the Board of Directors shall not thereafter amend the same in such manner as to defeat or impair the object of the members in taking such action.

2. **Members.** The members may, by the Affirmative Vote of a Majority of the Classes, unless expressly made subject to a higher voting requirement by law, the Articles of Incorporation, the Declaration or these bylaws, make, alter, amend and repeal the bylaws of the Resort Company at any annual meeting or at any special meeting called for that purpose at which a combined quorum shall be represented; provided, however, that the members shall not amend or repeal any provision of these bylaws the effect of which would be to materially adversely affect only the benefits, rights and protections afforded to the Class E and Class F members, and not those afforded to other members, under these bylaws.

**ARTICLE XIV.  
Miscellaneous.**

1. **Seal.** The corporate seal of the Resort Company shall be circular in form and shall contain the name of the corporation, the year of its organization and the words "Seal, Colorado".

2. **Fiscal Year.** The fiscal year of the Resort Company shall be such as may from time to time be established by the Board of Directors.