

**Attachment VIII.C.2.a.-13**

**MASTER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR ADELAAR**

**(“MASTER DECLARATION”)**

**Record and Return to:**

**ZARIN & STEINMETZ  
81 Main Street, Suite 415  
White Plains, NY 10601  
Attn: Michael D. Zarin, Esq.**

**THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS and RESTRICTIONS** is made and executed as of the \_\_\_ day of December, 2013 by **EPT CONCORD II, LLC** (“EPT”), a Delaware limited liability company having an address at c/o Entertainment Properties Trust, 909 Walnut Street, Suite 200, Kansas City, Missouri 64106, for itself, its successors, grantees and assigns (“**Declarant**”), and **CONCORD RESORTS MASTER ASSOCIATION, LLC**, a New York limited liability company having an address at \_\_\_\_\_ (the “**Master Association**”).

**WITNESSETH:**

**WHEREAS**, Declarant is the sole owner of approximately 1,700 acres of land within the Town of Thompson, County of Sullivan, State of New York, of which approximately 1,688 acres is bounded and described in Exhibit “A” attached hereto, and made a part hereof by reference (the “**Master Development Site**”); and

**WHEREAS**, Declarant is the initial developer of a planned resort development on the Master Development Site, to be known as Adelaar, as shown on the **Comprehensive Development Plan** (“**CDP**” or “**Master Plan**”) as the EPT Concord Resort, approved by the Town of Thompson Town Board on January 16, 2013 (the “**Project**”); and

**WHEREAS**, in furtherance of development of the Master Development Site, Declarant has entered into that certain Option Agreement with Monticello Raceway Management, Inc., a New York corporation, (“**MRMI**”), dated as of December 21, 2011, as amended from time to time, granting Casino Parcel Developer an option to acquire a leasehold interest in a portion of the Master Development Site, known as the **Casino Parcel**; and

**WHEREAS**, Declarant has also entered into that certain **Master Development Agreement** with Casino Parcel Developer dated December 14, 2012, for the development, construction and operation of the first phase of the Project, consisting of the Casino Project, the Golf Course Project and the Initial Resort Project, all as defined therein, pursuant to which Casino Parcel Developer has agreed to jointly develop and pay for certain portions of the Project; and

**WHEREAS**, in accordance with the CDP, the Project consists of a variety of land uses and building types to support a resort community, including hospitality, entertainment, residential, commercial, retail, golf, recreation, casino, harness racetrack, and civic uses, as well as public and private roadways, open space, trails, infrastructure and other amenities, which will benefit the Project; and

**WHEREAS**, Declarant intends that the Project will be developed in phases, as generally set forth in the CDP, depending upon market conditions; and

**WHEREAS**, it is the intention of Declarant to further the orderly development of the Master Development Site by means of the covenants, conditions, easements and restrictions set forth in this Declaration; and

**WHEREAS**, unless otherwise specified, said covenants, conditions, easements and restrictions are intended to be common to all of the parcels to be developed on the Master Development Site, and to enhance and protect the value, function, desirability, and attractiveness of all such parcels to their mutual benefit; and

**WHEREAS**, Declarant formed Concord Resorts Master Association, LLC, a New York limited liability company, whose purpose is to administer and enforce the covenants, conditions, easements and restrictions and provisions of this Declaration, and to exercise the rights, powers and duties set forth herein, including without limitation: (i) the establishment of procedures for the overall development, administration, maintenance, preservation, use and enjoyment of the Master Development Site; (ii) the establishment of standards and procedures for designing, constructing, maintaining and operating improvements on the Master Development Site; and (iii) the granting of certain reciprocal easements and licenses, all in accordance with this Declaration; and

**WHEREAS**, Declarant is currently the sole **Member** of the Master Association; and

**WHEREAS**, Declarant intends, in due course, to delegate and assign to the Master Association powers of ownership, maintenance and administration of **Common Elements** and the duties of enforcing this Master Declaration, and collection and disbursement of **Assessments** and charges hereinafter created with regard to the operation, repair, maintenance, and replacement of the Common Elements; and

**WHEREAS**, Declarant intends, as part of development of the Project, to convey and/or transfer real property interests in portions of the Master Development Site to various **Parcel Developers**, and to record or cause to be recorded supplemental Declarations (but which shall be subject hereto in all respects) as established by Declarant and Parcel Developers, subject to Master Association approval, which impose, expressly or by reference, additional restrictions and obligations on the land described therein; and

**WHEREAS**, Declarant intends to create or may require certain Parcel Developers to create separate **Associations** covering certain development within the Master Development Site, which will provide for the management and operation of such Association(s), including, without limitation, the power to levy and collect Assessments, including Assessments of the Master Association, and administer and enforce the terms of any separate Declarations established for such Parcels. By way of illustration, and not limitation, a residential condominium development, commercial condominium development, residential planned unit development or a commercial planned unit development might each be designated as separate Associations; and

**WHEREAS**, on or about April 10, 2013, the Town of Thompson Planning Board adopted a Resolution granting Preliminary Site Plan, Subdivision and Lot Improvement Approvals to Declarant, on behalf of the Master Association, for development of the Casino Parcel,

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements herein contained, the Declarant hereby establishes and declares that (i) all or any

portion of the Master Development Site shall henceforth be held, sold, leased and/or conveyed subject to the covenants, conditions, easements and restrictions contained in this Agreement and (ii) such covenants, conditions, easements and restrictions shall run with the Master Development Site in perpetuity and inure to the benefit of, and be binding upon, all parties having any right, title or interest in the Master Development Site or any part thereof, and their respective heirs, personal representatives, administrators, successors and assigns.

## ARTICLE I

### DEFINITIONS

1.1 **Affiliates** shall mean any Person, directly or indirectly controlling, controlled by, or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant is a general partner, managing member or controlling shareholder.

1.2 **Articles** shall mean the Articles of Organization of the Master Association, as such may be amended from time to time.

1.3 **Assessment(s)** shall mean the charge against a Development Parcel, representing that portion of the Common Expenses or other amounts payable under this Master Declaration, which are to be paid by a Member to the Master Association in accordance herewith, including, without limitation, Common Assessments, Specific Assessments and Special Assessments.

1.4 **Assessment Percentage** shall mean the charge against a Development Parcel, representing the percentage portion of the Assessments calculated in accordance herewith, which a Member shall pay to the Master Association.

1.5 **Association** shall mean any incorporated or unincorporated association other than the Concord Resorts Master Association, which is formed to facilitate the management, maintenance and/or operation of one or more Development Parcels within the Master Development Site.

1.6 **Board** shall mean the Board of Directors of the Master Association as same may, from time to time, be constituted in accordance with the By-Laws, Articles of Organization and the Operating Agreement of the Master Association.

1.7 **Building** shall mean any building located on the Master Development Site, whether existing as of the date hereof or hereafter constructed.

1.8 **By-Laws** shall mean the by-laws of the Master Association, as same may be amended from time to time in accordance therewith.

1.9 **Cappelli Leased Parcel** shall mean that real property currently owned by Declarant located within the Master Development Site along the northwest boundary, and subject to a

development program set forth in a previously approved comprehensive development plan and leased to Concord Kiamesha Casino LLC pursuant to that certain lease dated June 19, 2012.

1.10 **Casino Lease** means a Project Lease between Declarant as landlord and Casino Parcel Developer as tenant to lease the Casino Parcel and develop the Casino Project.

1.11 **Casino Parcel** shall mean approximately 186 acres of real property described and as shown on Exhibit "B," attached hereto and any Improvements located thereon.

1.12 **Casino Parcel Developer** shall mean MRMI and its successors and assigns.

1.13 **Casino Parcel Assessment Percentage** shall mean the lesser of (a) the Common Expenses Assessment Percentage applicable to the Casino Parcel determined in accordance with the actual Parking Ratio calculation set forth in clause (b) of the definition of Common Expenses Assessment Percentage and (b) sixty-seven percent (67%).

1.14 **Casino Project** shall mean, collectively, one or more buildings that will include casino gaming facilities and a harness racetrack (which shall be required to be maintained only if, and to the extent, a harness racetrack is required by applicable law in order to maintain the right to operate a Casino), and may include one or more hotels, food and beverage outlets, a spa facility, retail venues, space for conferences, meetings, entertainment and multi-function events, parking facilities (including, without limitation, a parking garage and surface parking), and ancillary facilities to be located on the Casino Parcel.

1.15 **Common Areas** shall include, without limitation, all areas of the Master Development Site that are for the benefit of all Members, and are designated by the Declaration and the Master Association as common areas for the use by all the Members (including the Trails), other than those within Exclusive Building Areas, Exclusive Parking Lots or Special Common Areas and other than those accepted for dedication by a Governmental Authority. The Common Areas may be changed from time to time by the Master Association as necessary or desirable to facilitate development of the Project in accordance herewith. The general location and scope of the areas designated as Common Areas as of the date hereof, is shown on the attached Common Element Maps, attached hereto as Exhibit "C1" through "C6." The Master Association shall have the right to designate Common Areas substantially in accordance with the areas shown on Exhibit "C1" through "C6", provided that the designation of any areas as Common Areas in material deviation from the Common Areas shown as the responsibility of the Master Association on such Exhibits, which would have a Material Adverse Effect shall be a Unanimous Decision.

1.16 **Common Assessment** shall mean the charge against each Member and its associated Development Parcel(s), representing the portion of the Common Expenses, which is to be paid by such Member to the Master Association. The Common Assessment shall equal each respective Member's Common Expenses Assessments Percentage multiplied by the Common Expenses as reduced by the Declarant Subsidy with regard thereto, which shall be paid by Declarant.

1.17 **Common Elements** shall mean the Common Facilities and the Common Areas, collectively, as generally shown on Exhibits "C1" through "C6."

1.18 **Common Expenses** shall mean all customary, reasonable and necessary costs, expenses, fees, and assessments of every kind and nature paid or incurred by the Master Association in connection with fulfilling its duties, including, without limitation: (i) general administrative expenses incurred by the Master Association in accordance with the approved budget, including expenses relating to maintaining appropriate insurance and maintaining, repairing or replacing Common Elements; (ii) any fees or charges payable by the Master Association to any Governmental Authority with respect to any Dedicated Facilities; (iii) all amounts that must be raised and deposited by the Master Association in order to maintain operating reserves as required pursuant to Section 7.6 hereof; (iv) all costs and expenses payable by the Master Association pursuant to this Declaration to reimburse any Member in accordance herewith, and (v) the management fee paid to the Manager in accordance with the approved budget. Common Expenses shall not include any Taxes, or costs or expenses, which are the responsibility of any individual Member pursuant to the terms of this Declaration, or capital expenditures to initially construct any Common Facilities, or to improve or enhance the Common Areas or financing costs related thereto.

1.19 **Common Expenses Assessment Percentage** shall be (a) with respect to the Casino Parcel Developer, the Casino Parcel Assessment Percentage and (b) with respect to any other Parcel Developer, 100 multiplied by a fraction, the numerator of which is the total number of parking spaces provided on a Development Parcel of a Member pursuant to Governmental Approval of the site plan and plat for such Parcel ("Parking Numerator"), and the denominator of which is the Parking Numerator, plus the total number of parking spaces located on the Master Development Site as of the date an Assessment is levied, plus the number of parking spaces provided on any other Development Parcel pursuant to Governmental Approval(s) (the "Parking Ratio"), provided that in the event that the Casino Parcel Assessment Percentage is determined in accordance with clause (b) of the definition thereof, then the remainder of the Common Expenses Assessment Percentage that has not been otherwise allocated to any Parcel Developer in accordance herewith shall be reallocated pro rata among the Parcel Developers other than the Casino Parcel Developer, or if there are no other Parcel Developers, to Declarant.

1.20 **Common Facilities** shall include, without limitation and as applicable, all of the following that are for the benefit of all Members, and regardless by whom owned (collectively, "Systems"): parking areas, streets, driveways, curb cuts, access facilities, drive aisles, sidewalks, malls, landscaped areas, paths, sanitary and storm sewer mains, and appurtenances, stormwater swales, water, gas, electric, telephone, cable, lighting, Utility Trunk Lines, and other utility lines, systems, conduits and facilities and other common and service areas, whether located within or outside a Development Parcel and serving a Development Parcel, except Utility Lateral Lines. The Common Facilities shall be limited to non-commercial facilities designated for the benefit of the Project as a whole for the benefit of all Members and which may be specified on plats and in supplemental Declarations covering various Development Parcels or in other separately recorded documents identifying the Common Facilities or specifying an interest of the Master Association with respect to a portion of the Master Development Site. Common Facilities shall not include land or Improvements, which are constructed and maintained for use by specific Parcel

Developers. The general location and scope of the areas included as Common Facilities is shown on the Common Element Maps, attached hereto as Exhibit "C1" through "C6." The Master Association shall have the right to designate Common Facilities substantially in accordance with Exhibit "C1" through "C6", provided that the designation of any facilities in material deviation from the Common Facilities as shown as the responsibility of the Master Association on such Exhibits shall be a [Major] Decision

1.21 **Declarant** shall mean and refer to EPT Concord II, LLC, a Delaware limited liability corporation, and its Affiliates, successors and assigns.

1.22 **Declarant Subsidy** shall mean the portion of Common Expenses paid by Declarant in accordance with Section 7.14.

1.23 **Dedicated Facilities** shall mean those portions of the Common Facilities that are offered to, and accepted by the Town for dedication.

1.24 **Design Guidelines** shall mean the EPT Concord Resort Commercial and Residential Design Guidelines, each as adopted by the Board in accordance with the Bylaws and this Master Declaration, as may be amended from time to time by the Master Association in accordance herewith. The Commercial Design Guidelines are attached hereto as Exhibit "D."

1.25 **Design Review Committee** shall mean the Design Review Committee for the Project formed and operating pursuant to Article X hereof.

1.26 **Developable Land Area** means the net usable land area of the Master Development Site which is approximately 1009 acres, and which shall not include wetlands and adjacent areas, water bodies and associated setbacks, flood zone areas, slopes greater than thirty percent (30%) and Common Areas.

1.27 **Development Agreement** shall mean any development agreement that now, or in the future, governs any phase of the Project entered into between the Declarant and a Parcel Developer and/or Member, other than the Master Development Agreement.

1.28 **Development Documents** shall mean the Master Development Agreement, any future Development Agreements, and any conditions set forth in any Governmental Approval by a Municipal Authority related to the development of the Master Development Site, and this Master Declaration.

1.29 **Development Parcel** shall mean a Parcel, other than the Cappelli Leased Parcel, Common Areas and Master Association Land designated for the purpose of development in accordance with the CDP, for which Governmental Approval of the site plan and plat for such Parcel has been issued by the Governmental Authority. A Development Parcel may include one or more tax lots, or lots that have been or will be subdivided or merged.

1.30 **Entertainment Village Project** shall mean a mixed-use project containing recreational, commercial, destination retail and dining space, generally adjacent to the Casino

Parcel, and complementary to the Casino Project, as described on Exhibit 11B of the CDP and shown on Exhibit F.

1.31 **Exclusive Building Area** shall mean with respect to any Building, the actual physical improvements constituting such Building, together with any plaza, entryway, loading area, sidewalk, walkway, paved area located or situated on a Development Parcel. An Exclusive Building Area shall also include any adjacent or related landscaped areas or other similar areas, which form an integral part of the exterior of such Building.

1.32 **Exclusive Parking Lots** shall mean any above-grade or below-grade parking garage and any grade-level parking area located or situated on a Development Parcel constructed in accordance with the Statutory Requirements (as defined in the Master Development Agreement).

1.33 **Gaming Operations** means the operation within or from the Casino Parcel of video gaming machines (including video lottery terminals), live and electronic table games (including, but not limited to, poker, blackjack, and internet gaming), and other games of chance, and wagering of any kind (including, without limitation, sports books), and of any and all types, which are now or hereafter permitted by applicable Laws, whether such wagers are made by customers physically located within the Casino Parcel or from outside the Casino Parcel (including, without limitation, via the Internet), but specifically excluding horse racing, pari-mutuel and simulcast wagering on horse racing; provided, in the case of customers not physically located on or within the Casino Parcel, the revenue derived therefrom is reported (in whole or, to the extent so reported, in part) by Casino Parcel Developer to the applicable Governmental Authorities as revenue from Gaming Operations attributable to the Casino Parcel.

1.34 **Golf Course Parcel** shall mean approximately 236 acres of real property generally shown on Exhibit "E," attached hereto and the Improvements located thereon.

1.35 **Golf Course Project** shall mean, collectively, an 18-hole golf course, and one or more Buildings and other Improvements, located on the Golf Course Parcel, which includes a clubhouse and ancillary facilities, including golf maintenance facilities.

1.36 **Governing Documents** shall mean this Master Declaration and Exhibits thereto, any recorded amendments to this Master Declaration, the CDP, the Articles, the Bylaws, the Design Guidelines, the Landscape Master Plan, the Board's resolutions, and all relevant Governmental Approvals, laws, codes and regulations, as each document may be amended from time to time in accordance herewith.

1.37 **Governmental Approvals** shall mean all final and unappealable approval(s) from a Governmental Authority, required for the development of the Master Development Site, the Project, or a particular Parcel, including, but not limited to, final site plan or subdivision approvals, SEQRA Findings, IDA Inducements or other approvals or conditions required in furtherance of developing the Project or any Development Parcel as may be necessary for the development of the Project. For avoidance of doubt, all registrations, gaming approvals or licenses, and/or operating licenses or occupancy or construction permits, registrations or licenses are excluded from the foregoing definition.



1.38 **Governmental Authority** shall mean all federal, state, county, municipal and local departments, commissions, boards, bureaus, agencies, quasi-governmental entities and offices thereof, having jurisdiction over all or any part of the Master Development Site or the Project or the use thereof. For avoidance of doubt the Master Association is not a Governmental Authority.

1.39 **Guests** shall mean invitees of a Parcel Developer, Member, Master Association or Association, Occupant or any other permitted user of a Development Parcel.

1.40 **Hazardous Material** shall mean (a) any substance that is toxic, radioactive, ignitable, flammable, explosive, reactive or corrosive and that is, in the form, quantity, condition and location then found upon or under the Master Development Site, regulated by any Governmental Authority, (b) any and all materials and substances that are defined by Laws relating to environmental matters as "hazardous waste," "hazardous chemical," "pollutant," "contaminant" or "hazardous substance," in the form, quantity, condition and location then found upon the Master Development Site and (c) asbestos, polychlorinated biphenyls and petroleum-based substances, but shall not include Hazardous Material used in non-reportable or negligible amounts in the ordinary course of business and in compliance with all environmental laws.

1.41 **Improvements** shall mean all Buildings, structures, appurtenances and other physical improvements of every type and kind, on, under or to all or a portion of the Master Development Site, including any additions, alterations, repairs or replacements thereto, whether existing as of the date hereof or hereafter constructed, in order to facilitate the development, construction, operation and maintenance of the Project, and the fixtures, equipment and machinery, in each case now or hereafter affixed thereto. For purposes of illustration, and not limitation, Improvements include walkways, garages, roads, curbs, sidewalks driveways, trails, lighting, parking areas, fences, screening walls, retaining walls, stairs, decks, signage landscaping, hedges, and plantings.

1.42 **Improvement Plans** shall mean all relevant structural, mechanical, engineering and landscaping plans and drawings prepared by a licensed architect or engineer with respect to a given Improvement.

1.43 **Initial Phase** shall mean the Casino Project, the Initial Resort Project, the Golf Course Project and the Entertainment Village Project.

1.44 **Initial Resort Project** shall mean the first or series of first projects on the Master Development Site, other than the Casino Project, necessary to satisfy the Statutory Requirement, as such term is defined in the Master Development Agreement.

1.45 **Landscape Master Plan** shall mean the EPT Concord Resort Landscape Master Plan dated February 2013, as adopted by the Board in accordance with the Bylaws and this Master Declaration, as may be amended from time to time by the Master Association.

1.46 **Laws** shall mean all present and future requirements, administrative and judicial orders, laws, statutes, codes, ordinances, rules and regulations of any Governmental Authority applicable to the Master Development Site or operations conducted thereon.

1.47 **Major Decision** shall have the meaning set forth in Section 3.13.

1.48 **Manager** shall mean the managing agent appointed pursuant to the terms of Article IV hereof.

1.49 **Master Association Land** shall mean any Common Areas, together with Improvements thereon, owned in fee by the Master Association.

1.50 **Master Development Agreement** shall mean that certain Master Development Agreement dated as of December 21, 2012, between EPT and Casino Parcel Developer, as amended from time to time.

1.51 **Master Association** shall mean and refer to The Concord Resorts Master Association LLC formed on November 28, 2011, and its successors and assigns, or, upon merger or consolidation with another business entity or corporations, the entity surviving such merger or resulting from such consolidation.

1.52 **Master Association Rules** shall mean the rules and regulations applicable to the Common Areas, Common Facilities, to the exterior of any improvements on an Exclusive Building Area or applicable to any services provided by the Master Association to any Development Parcel as may be promulgated by the Master Association from time to time, in accordance herewith, provided that such rule or regulation may not interfere with the operations or business of any Parcel Developer or Occupant conducted in an Exclusive Building Area except as otherwise expressly permitted under this Master Declaration.

1.53 **Master Development Site** shall mean approximately 1,583 acres of land located within the Town of Thompson, County of Sullivan, State of New York, as described in Exhibit A, together with the Resort Entry Road Parcel, totaling approximately 1,688 acres of land.

1.54 **Material Adverse Effect** shall mean any effect, consequence or result of any action, consent, decision, alteration, modification, amendment, rule or approval authorized or promulgated pursuant to or in connection with this Master Declaration, that when aggregated with all previous actions, consents, decisions, alterations, modifications, amendments or approvals authorized or promulgated in connection with this Master Declaration, would be reasonably likely to (i) materially increase the costs or expenses of any Member or Parcel Developer; (ii) demonstrably and adversely impact the use, ownership, occupancy or operation of any Development Parcel or business thereon by any Parcel Developer in a material manner, provided such use or business is in conformance with the CDP, Governing Documents and all Governmental Approvals; (iii) materially impair access to or availability of utilities or other services to any Development Parcel; (iv) materially diminish the overall four (4) star quality of the development at the Master Development Site (v) adversely impact any licenses, permits or Governmental Approvals that any Parcel Developer and its principals, constituents and other controlling parties

are required to maintain under applicable Laws to own, operate and manage the business conducted on such Development Parcel or any portion thereof or the compliance by the Parcel Developer with any applicable Law to the business conducted on the Development Parcel; or (vi) substantially change the overall mix of uses or modify the dominant use of the Master Development Site away from that of a destination commercial resort with primarily hospitality and recreational usage that includes gaming.

1.55 **Member** shall mean each Class A and Class B Member of the Master Association

1.56 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which any all or any portion of a Development Parcel that is not a Common Area is encumbered as security for the payment of a debt or obligation.

1.57 **Mortgagee** shall mean a Person named as the mortgagee, beneficiary, or holder of an interest under any Mortgage by which the interest of any Parcel Developer in a Development Parcel is encumbered.

1.58 **New Development Expenses** means an increase in the budget of the Master Association resulting solely from the addition of a new Development Parcel, provided that the actual dollar amount payable by any Parcel Developer is not increased as a result of such increase in the overall budget (e.g., the increase in the budget resulting from the addition of the new Development Parcel is completely offset by the Assessments paid by the new Parcel Developer).

1.59 **Occupant** shall mean any Person(s), from time to time, entitled to the use and occupancy of any area located on the Master Development Site under any deed, lease, sublease, license, mortgage or other instrument, including the Development Documents.

1.60 **Operating Standards** means the standards of use, operation, management and maintenance and level of product, services and quality that on the whole (A) are consistent with "four (4) star hotels" (as such designation is commonly understood in the hospitality industry in the United States on the date hereof), including maintenance, staffing, supplying, equipping and operation of the hospitality uses and (B) with respect to ancillary uses, comply with the standards of use, operation, management and maintenance that are consistent with the standards of operation for similar ancillary uses adopted or evidenced by other reputable four (4) star commercial recreational resorts offering amenities and attractions similar in size, setting, and character to those at the Master Development Site and in markets similar to the market in which the Master Development Site is located.

1.61 **Parcel** means a portion of the Master Development Site, which is created as a separate legal parcel through or evidenced by, the recording of a deed, parcel map, lease (or memorandum thereof), subdivision, plat, condominium declaration, easement or other instrument which creates a discrete estate or interest in real property, having locatable dimensions.

1.62 **Parcel Developer** shall mean the Person, who is the record holder of fee simple to any Development Parcel, or, if applicable, the holder of the interest of the tenant in a Project Lease for any Development Parcel (e.g. the lessee shall be the Parcel Developer for any Development

Parcel subject to a Project Lease) who executes a joinder and acknowledgment to this Master Declaration, including, that Declarant shall be deemed a Parcel Developer for all Development Parcels to which it is the fee simple owner that are not subject to a Project Lease; provided, however, that the term Parcel Developer shall not mean or refer to any party holding an interest merely as security for the performance of any obligation, or the current lessee of the Cappelli Leased Parcel.

1.63 **Person** shall mean any individual or entity, including a corporation, partnership, limited partnership, limited liability company, trustee or trust, unincorporated or incorporated association, or any other entity, including without limitation, a Parcel Developer or Member, provided, however, that the term "Person" shall not mean or refer to a Governmental Authority.

1.64 **Plans and Specifications** shall mean the plans and specifications to be submitted to the Design Review Committee as provided in Article VIII.

1.65 **Private Road System** shall mean those roads, boulevards, ramps, curbs, curb cuts, entrance and exit drives, now existing or to be constructed on the Common Areas of the Master Development Site, that may be used by all of the Member(s), Occupants and Guests thereof for ingress and egress to and from the Master Development Site or any portion thereof and for circulation within the Master Development Site, as generally shown on Exhibit "C-5," attached hereto, as may be amended from time to time by the Master Association in accordance herewith.

1.66 **Project** shall mean the Adelaar Project, formerly known as the EPT Concord Resort Project, as shown in Exhibit "H."

1.67 **Project Lease** shall mean any triple net, ground or other similar lease for an entire Development Parcel. Any lease subordinate to and deriving from a Project Lease and space or other leases devising less than all of a Development Parcel shall not be deemed to be a "Project Lease" for purposes of this Declaration.

1.68 **Public Rights** shall mean the rights of the public to use the Trails and Private Road System on the Master Development Site to the extent described in this Master Declaration, the Development Documents or any other recorded instrument reflecting such Public Rights over any portion of the Master Development Site.

1.69 **Reserves** shall mean those customary and reasonable amounts as determined by the Board in its discretion solely for budgeted and permitted Common Expenses, including future periodic maintenance and repair of all or a portion of the Common Elements.

1.70 **Resort Entry Road Parcel** shall mean approximately 105 acres of real property, as generally shown on Exhibit "C6," attached hereto.

1.71 **Special Assessment** shall mean customary and commercially reasonable Assessments, which the Master Association may levy from time to time against Development Parcels, in addition to the Common Assessments, solely for the purpose of paying for customary, reasonable, necessary, non-routine, unexpected and actual unbudgeted Common Expenses in

excess of budgeted Common Expenses, as approved in accordance herewith, to be paid by each Member to the Master Association in accordance with each Member's Common Assessment Percentage of such Special Assessment as reduced by the Declarant Subsidy which shall be paid by Declarant.

1.72 **Special Common Areas** shall mean all areas within the Master Development Site designated by the Master Association as such from time to time, subject to the prior written consent of the Parcel Developer on which such area is located, for exclusive use by certain Members and which are not Common Areas.

1.73 **Special Service Districts** shall mean one or more public or private special service districts, which may be established to provide the Project with, among other things, sanitary sewer conveyance and pump stations, sewer treatment and disposal services, stormwater conveyance and treatment practices, landscaping, fire protection service, road maintenance, emergency services, special lighting facilities, water supply conveyance and facilities (including pump stations and/or storage tanks), snow plowing, and the like.

1.74 **Specific Assessment** shall mean a charge against a particular Development Parcel, directly attributable to services or benefits to such Development Parcel or Parcels as opposed to the Master Development Site as a whole, equal to (i) the charge for particular items, services, administrative fees or benefits actually provided by the Master Association at the written request of the Member affiliated with such Development Parcel, or (ii) the actual costs incurred by the Master Association for corrective action performed pursuant to the provisions of this Master Declaration following a default by a Member hereunder and the expiration of all applicable notice and cure periods, plus interest thereon and actual out of pocket fees (including reasonable attorney's fees) and costs.

1.75 **Taxes** shall mean the total of: (i) all ad valorem real estate taxes and assessments and governmental charges, including without limitation, general, special, or extraordinary, sewer rents, water charges, occupancy taxes, imposed upon the Improvements on, in upon or used in connection with, a Development Parcel for the operation thereof (other than Common Facilities) of any kind or nature whatsoever, imposed by any Governmental Authorities, which are levied on or charged against a Development Parcel and (ii) any tax or assessment or governmental charge imposed or collected by a Governmental Authority in lieu of or in substitution for any such tax, assessment or governmental charge, including without limitation all special assessments, impact fees, development fees or traffic generation fees levied on or charged against a Development Parcel.

1.76 **Trails** shall mean the trail system to be used for hiking and other permitted purposes located on the Master Development Site, and described in the Landscape Master Plan and shown on the Trail Diagram attached hereto as Exhibit "C1," as may be amended from time to time by the Master Association in accordance herewith.

1.77 **Transfer** shall mean the Declarant's conveyance of a legal (fee, leasehold or other possessory) interest in all or a portion of the Master Development Site to an unaffiliated third party for the purpose of developing a Development Parcel, but excluding a conveyance to any third party

holding an interest merely as security for the performance of any obligation or as an Occupant of less than all of a Development Parcel (e.g. a lessee pursuant to a space lease).

1.78 **Uncontrollable and Emergency Expenses** shall mean actual, out-of-pocket expenses of the Master Association (a) required by order of a court; (b) necessary to repair or maintain any portion of the Common Areas to remove a threat to human health and safety; (c) reasonably necessary to defend the Master Association in litigation, arbitration or other legal administrative actions brought against it; (d) real estate taxes, assessments and utility charges for Master Association Land; (e) insurance premiums for insurance policies required hereunder; and (f) the Manager's compensation incurred in accordance with Article IV hereunder.

1.79 **Utility Lateral Lines** shall mean the lateral lines, pipes and cables, including without limitation, water pipes and lines, sewer pipes and lines, telephone conduits and lines, fore lines, gas pipes and lines, drainage pipes, storm lines and ancillary facilities, telecommunications and data systems conduits and electric system conduits, lines and cables, which connect the Buildings with the Utility Trunk Lines running through or under the Master Development Site and the Buildings and Town, County or State roads, now existing or to be constructed. Such Utility Lateral Lines shall be located on the Development Parcel(s) of the Member serviced thereby.

1.80 **Utility Trunk Lines** shall mean the trunk lines, conduits, pipes and cables and ancillary facilities now existing or to be constructed by or on behalf of Declarant, and designed to carry various utility services to the boundary of a Development Parcel. The location of the Utility Trunk Lines as of the date hereof is shown on the Common Element Maps, attached hereto as Exhibit "C4" and "C5," as same may be amended from time to time by the Master Association in accordance with the terms hereof, but if amended there shall be no interruption of business and the costs of any interruption of service shall be borne by the Parcel Developer for whose benefit the same was disturbed.

1.81 **Voting Interests** shall mean the percentage interest of a Member, calculated in accordance with the provisions of Article III hereof, which percentage may change from time to time in accordance herewith.

1.82 **Voting Rights** shall mean one hundred percent (100%) of the Voting Interests of all classes of Members.

## ARTICLE II

### **PROJECT OVERVIEW**

2.1 **General Purposes.** Declarant owns and intends, without obligation, to develop the Master Development Site as a destination commercial resort community to be known as Adelaar in accordance with the Development Documents and this Master Declaration, which Project may include a mixture of commercial, residential and hospitality projects, and recreational and civic uses, as well as public and private roadways, open space, trails and other recreational amenities. Declarant intends that this Master Declaration establish and provide for the continued maintenance

of the Project as an attractive and desirable resort community in accordance with the Operating Standards.

2.2 Densities and Entitlements. The densities and entitlements for the Project are generally established in the town of Thompson, NY's "planned resort development" use and development regulations (the "PRD Law"), and are further defined in the CDP and in this Master Declaration. Declarant reserves the right, and nothing herein shall limit Declarant's right, to develop the Project to include up to the maximum permitted densities and allowances, which have been or may be granted by the appropriate Governmental Authorities, consistent with the PRD Law and CDP in effect at the time of the signing of this Master Declaration. Declarant specifically reserves the right to request, seek and/or petition the Governmental Authorities for increased density or allowances in connection with the Project, provided that the granting of such request and further development of the Project in accordance therewith would not have a Material Adverse Effect. Except as otherwise provided in Section 2.13, each Member hereby agrees and acknowledges that the Declarant may unilaterally increase the density associated with the Project, modify the number, size and type of developments located within the Project, and remove portions of the Master Development Site out of the CDP, provided (a) the removed land remains subject to the restrictions in Article IX (including Section 9.5) and (b) such removal would not have a Material Adverse Effect.

2.3 Inconsistencies. This Master Declaration and the Development Documents and Governing Documents are intended to be consistent with each other, and shall be interpreted to avoid to the extent practicable any inconsistencies between the respective agreements. Except as otherwise provided herein, in the event of any inconsistencies between this Master Declaration and any Project Lease (other than any Project Lease with the Casino Parcel Developer and Approvals obtained prior to the recordation hereof which, in each case, shall control), contract, Development Agreement or Governing Documents, this Master Declaration shall control.

2.4 Master Association and Other Associations. In addition to the Master Association, Declarant intends to create or require, in its discretion, certain Parcel Developers to create separate Associations covering certain Development Parcels located within the Master Development Site. Each such Association and its Declaration shall be subject and subordinate to this Master Declaration. No such Association (or offering made thereunder) shall have any authority to contradict or amend the terms of this Master Declaration. As described in Section 4.17 below, Declarant shall convey fee simple title in and to the Common Elements to the Master Association free and clear of all liens, claims or security interests, and thereafter, the Master Association shall own, maintain and administer the Common Elements in accordance with the terms hereof. The Master Association shall have the duties of administering and enforcing this Master Declaration, and of collecting and disbursing the Assessments and charges as further described in this Master Declaration.

2.5 Dedication. In order to further the general purposes stated above, Declarant hereby declares that, except as otherwise provided herein, all of the land comprising the Master Development Site, shall at all times be owned, held, sold, conveyed, occupied, used, and enjoyed subject to the provisions of this Master Declaration and in accordance with the covenants, conditions, restrictions, equitable servitudes, reservations, easements, Assessments, charges, and

liens provided, referred to or incorporated herein, all of which shall run with the land, and all of which shall burden, benefit, and be binding upon Declarant, all other Persons having any right, title or interest in the Master Development Site, or any portion thereof, including without limitation Parcel Developers, Members, Associations and their respective successors, assigns, heirs, devisees and personal representatives.

2.6 Master Association Land. Other than a Development Parcel, Declarant reserves the right to subdivide and contribute any portion of the Master Development Site which is a Common Area to the Master Association as Master Association Land, provided such contribution would not have a Material Adverse Effect. The Master Association shall have the right to manage and maintain any and all of the Master Association Land in conformance with the CDP and the other Governing Documents. The Master Association shall keep the Master Association Land free and clear of all encumbrances and liens, except for the following: (a) Easements, terms, conditions and reservations set forth in this Master Declaration or any Plat; (b) liens for taxes and Assessments not yet due and payable at the time of conveyance; (c) the terms of other customary easements, and reservation interests in Declarant's chain of title, excluding financial liens or liens relating to the costs of development of any portion of the Master Development Site which are inconsistent or in conflict with the terms of the Development Documents; and (d) the Public Rights.

2.7 Special Service Districts. In connection with the development of the Project, Special Service Districts may be formed for the ease of administration in order to provide the portions of the Project with various services and facilities, including but not limited, to sewer treatment and disposal services, fire protection service, road maintenance, emergency services, stormwater control, special lighting facilities for non-standard street lights, water and facilities including pumping stations, and snowplowing. The Special Service Districts shall have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes; provided that no indebtedness shall be incurred in connection therewith other than IRB or similar public financing. Each Parcel Developer and their respective Mortgagee hereby agrees and acknowledges that the Project, or portions thereof, may become a part of certain Special Service Districts, and that Special Service Districts shall have the right and authority to levy taxes, charges and/or assessments upon owners and lessees of taxable property within such Special Service Districts; provided that no private Special Service District may levy taxes, charges and/or assessments upon owners and lessees of taxable property within such Special Service Districts in excess of the taxes, charges and/or assessments if such Special Service District was public. Each Parcel Developer and Member shall be subject to all charges levied by such Special Service Districts, and shall pay such charges directly to the same. All charges levied by such Special Service Districts against owners and lessees of taxable property are and shall be the personal and individual obligation of each Parcel Developer and Member, and such charges shall not constitute a Common Expense. For avoidance of doubt, the initial cost of construction of Common Areas or Common Facilities, including those which become part of a Special Service District, shall not constitute a Common Expense.

2.8 Readjustment of Development Parcel Line Boundaries. Declarant hereby reserves the right to effectuate de minimis realignment and adjustment of Development Parcel boundary lines for purposes of proper configuration and final engineering of the Project; provided, that any such realignment and adjustment does not adversely affect any actual or proposed Improvement



(other than landscaping, on the affected Development Parcel; provided Declarant shall bear the cost of repairing, moving or replacing any landscaping disturbed due to the realignment or adjustment) or the use and operation of such Development Parcel. The authority to realign and adjust such Development Parcel boundary lines in a de minimis manner shall be exclusively reserved to the Declarant, in its sole and reasonable discretion, subject to the other provisions of this Section 2.8. All Parcel Developers and Members specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such de minimis realignment and adjustment of their respective Development Parcel boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Development Parcels in relationship to the development of the Project. Further, all Parcel Developers and Members acknowledge and agree that no amendment to this Master Declaration or the CDP shall be required to effectuate any Development Parcel boundary line adjustments.

2.9 Right to Develop. No provision of this Master Declaration is intended or shall be construed to prevent Declarant's rights to develop the Project in conformance with the CDP, and to exercise the rights reserved by Declarant as hereinafter provided, all in accordance with the terms hereof.

2.10 Right to Amend CDP. Except as otherwise provided herein, Declarant shall have the sole and exclusive right to seek amendment of the CDP, including without limitation, amendment of the CDP to: (i) develop the Cappelli Leased Parcel; (ii) include additional land owned by Declarant, provided (a) such added land is subject to the Master Declaration and (b) such addition would not have a Material Adverse Effect; and (iii) remove portions of the Master Development Site from inclusion within the CDP, provided however, (a) such removed land is subject to the restrictions in Article IX and (b) such removal would not have a Material Adverse Effect.

2.11 Required Approvals for Further Property Restrictions. Subject to the relevant Governmental Approvals before further property restrictions are imposed on any Development Parcel or property within the Project, the following approvals must be obtained in writing from the Master Association:

2.11.1 Except as expressly provided herein and for all written approvals obtained from Declarant prior to recordation hereof, all proposed site plans and subdivision plats for any Development Parcel, or any portion thereof must be approved in writing by the Design Review Committee, established hereunder, which approval must be evidenced on the plat or other instrument creating the subdivision, planned unit development, condominium project or other project prior to recordation thereof or commencement of construction on the applicable Development Parcel. Subsequent to the Design Review Committee's written approval of a proposed site plan and/or plat for any Development Parcel, no Parcel Developer or Member shall subdivide, resubdivide or separate such Development Parcel, or any portion thereof, into smaller Parcels or interests without first obtaining the Design Review Committee's written approval;

2.11.2 No applications for Governmental Approvals or for material waivers of or material modifications to existing Governmental Approvals, other than permits or licenses in furtherance of existing Government Approvals with respect to any Development Parcel, shall be

filed with a Governmental Authority without the prior written approval of the Master Association, and then only if such application or petition is in compliance with the CDP, this Master Declaration, and any applicable supplemental Declaration or Governing Documents. Notwithstanding anything herein to the contrary, any Parcel Developer shall notify the Master Association in writing at least ten (10) days prior to any applications for Governmental Approvals or for waivers of or modifications to existing Governmental Approval. Nothing herein shall estop, and the Master Association reserves the right to, object to applications seeking material changes or modifications to any existing Governmental Approvals; and

2.12 As further described in Section 12.2 below, Declarant hereby grants all Members a non-exclusive, perpetual, royalty free license to use the Adelaar name and/or logo, in a customary manner, provided such use is in accordance with the Operating Standards.

2.13 Design Review Fee. As set forth in Article X herein, the Design Review Committee shall have the right to charge any Parcel Developer a nominal fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this Master Declaration as the Master Association shall determine in their reasonable discretion. The design review fee shall be payable at the time the application or request for approval is submitted to the Design Review Committee. Such fee, if established and charged by the Master Association, shall be set at such reasonable level as the Design Review Committee may estimate will be necessary to defray the reasonable costs and expenses of the Design Review Committee in reviewing and evaluating any such request or application, and may include an amount to cover the reasonable costs of professional consultation to the Design Review Committee, by an architect, engineer, attorney or other consultant, but shall in no event be designed to generate a profit to the Master Association. Such design review fees shall be collected by the Design Review Committee, and remitted to the Master Association to help defray the costs and incidental expenses of the Design Review Committee, including, without limitation, the cost of consultants' and attorneys' fees as necessary.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN MASTER ASSOCIATION**

3.1 Formation. Declarant has formed Concord Resorts Master Association, LLC, a New York limited liability company, of which it is the sole Member. Concord Resorts Master Association, LLC shall be the Master Association for the Project. The Master Association shall do such things as are within its powers, and as may reasonably be required to maintain the Project, including, without limitation, its Common Elements, as an attractive and desirable resort community with a dominant commercial entertainment use in accordance with the Operating Standards.

3.2 Membership. Each Parcel Developer and its successors and assigns shall be a Member of the Master Association. Not more than one Membership shall be appurtenant to a Development Parcel, regardless of the number of entities or individuals holding interests in such

Development Parcel. Separate Associations formed as described in Section 3.4 shall also become Members of the Master Association, but in lieu of said Parcel's Parcel Developer, not in addition thereto.

3.3 Membership Classes. The Master Association shall have two (2) classes of Membership: Class A Members and Class B Member. Each Parcel Developer shall be a Class A Member of the Master Association provided, however, that (i) so long as Declarant is the Class B Member, Declarant shall not have any Voting Interests as a Class A Member and (ii) the Sullivan County IDA and any Governmental Authority, which accepts dedication of any portion of the Master Development Site, shall not be a Class A Member. The Declarant shall be the Class B Member in the Master Association, irrespective of its relationship under any lease or other instrument, or any other rights or interests it may grant to or agreements entered into, with the Sullivan County Industrial Development Agency or any other Governmental Authority, regarding any portion of the Master Development Site.

3.4 Formation of Additional Associations. The Master Association reserves the right to authorize the formation of any separate Association(s) for any combination of Development Parcels. The Members of such Association and any development agreement or supplementary declaration for such Association shall be determined by the Master Association and any Parcel Developers of any Development Parcel included in such Association. The duties and powers of the Master Association shall relate to the Master Development Site as a whole, while the duties and powers of a particular Association shall relate only to its particular Development Parcels, including without limitation, the Association's duty to maintain any common areas designated for the use of such Development Parcels at such Association's expense.

3.5 Voting Rights. Each Member shall be entitled to the following Voting Interests, calculated based on the Membership type (Class A or Class B);

3.5.1 Class A. For so long as there is a Class B Member, the totality of Voting Interests of Class A Members shall equal forty percent (40%) of the Voting Rights, and following the termination of the Class B Member in accordance with Section 3.9, the totality of Voting Interests of Class A Members shall equal one hundred percent (100%) of the Voting Rights; and

3.5.2 Class B. The totality of Voting Interests of Class B Members shall equal sixty percent (60)% of the Voting Rights.

3.6 Calculation of Class A Voting Interests. Each Class A Member (other than Declarant or an Affiliate for so long as Declarant or an Affiliate is the Class B Member) shall be allocated a percentage interest, (the totality of which, for so long as there is a Class B Member, shall not exceed 40% of the Voting Rights), which shall be equal to the Parking Ratio applicable to the Development Parcel of such Class A Member multiplied by the total percentage of Voting Rights allocated to Class A Members, which will be 40% until the termination of the Class B Member and 100% of Voting Rights thereafter.

3.7 Allocation of Class A Voting Interests. In connection with the development of each Development Parcel, the balance of the Class A Voting Interests shall be allocated among the Parcel Developers (other than Declarant or an Affiliate for so long as Declarant or an Affiliate is

the Class B Member) in accordance with the Parking Ratio. By way of illustration and not limitation, if there are one thousand (1000) parking spaces existing or proposed on the Master Development Site, there still is a Class B Member and there are two Parcel Developers (other than Declarant or an Affiliate), with 600 parking spaces and 400 parking spaces, respectively, the Voting Interest of the first Class A Member would equal twenty four percent (24%) and the Voting Interest of the second Class A Member would equal sixteen percent (16%), for a total of 40% of the Voting Rights. In the event a third Parcel Developer proposes a program of development with an additional 200 parking spaces on its Development Parcel, the Voting Interests of the Class A Members would be reallocated, as follows: First Class A Member: 20%, Second Class A Member: 13%, Third Class A Member: 7%, for a total of 40% of the Voting Rights.

3.8 Calculation of Class B Voting Interests. The Declarant or its successors and assigns as Declarant pursuant to Section 12.1 shall be the Class B Member until such time as eighty percent (80%) of the Developable Land Area of the Master Development Site is included as either a Development Parcel or Master Association Land.

3.9 Redistribution of Declarant's Voting Interests. At such time as eighty percent (80%) of the Developable Land Area of the Master Development Site is included as either a Development Parcel or Master Association Land, the Class B Voting Interest and Class B Membership shall terminate and shall have no further rights hereunder and all Voting Rights shall be re-distributed pro rata to the Class A Members in accordance with the Parking Ratio.

3.10 Exercise of Voting Rights. The Voting Interests attributed to any given Parcel shall not vest until Governmental Approval of the site plan and plat for the Parcel has been issued by the Governmental Authority (e.g. such parcel is included as a Development Parcel hereunder).

3.11 Membership Rights. Each Member shall have the respective rights, duties and obligations set forth in this Master Declaration and such other rights, duties and obligations as are set forth in the Governing Documents, as the same may be amended from time to time, provided that any such amendment may not have a Material Adverse Effect.

3.12 Action. Unless greater than simple majority of the Membership is specified as being required in the Articles, or unless any decision is specified in the Bylaws or this Master Declaration as requiring the approvals of a particular class of Members, such as, for example, Major Decisions and Unanimous Decisions hereunder, any provision requiring the vote or approval of the Members shall require the approval of a simple majority of the Voting Rights taken at a meeting of the Members at which a quorum is present. Except as expressly provided herein, any provision of this Master Declaration or the Articles or Bylaws requiring the vote or approval of a particular class of Membership shall require the approval of a simple majority of all votes of the class at a required meeting of the Members at which a quorum of the class is present.

3.13 Major Decisions. Major Decisions shall require the affirmative vote of sixty-seven percent (67%) of the Voting Interests of the Class A Members and the vote of the Class B Member. Major Decisions shall include: (i) the first annual budget of the Master Association following the Transfer of the Casino Parcel to the Casino Parcel Developer; (ii) Special Assessments, which in the aggregate exceed five percent (5%) of the budgeted expenses of the

Master Association for that fiscal year; (iii) an increase of more than ten percent (10%) in the total budgeted Common Assessments from the prior fiscal year, or an increase of more than 10% for any single budget line item from the prior fiscal year, exclusive of New Development Expenses and Uncontrollable and Emergency Expenses. Other than the first annual budget of the Master Association following the Transfer of the Casino Parcel to the Casino Parcel Developer, which must be approved by the Casino Parcel Developer, if the majority of the Class A Voting Interests fails for any reason to approve the budget for any year in accordance with this Section 3.13 and Section 7.4, then the budget for the previous year with a maximum increase of the greater of (a) three percent (3%) or (b) the then current Consumer Price Index if so determined by the Board shall continue in effect until a new budget is determined in accordance herewith; provided, however, that the affirmative vote of sixty-seven percent (67%) of the Voting Interests of the Class A Members and the vote of the Class B Member shall not be required for Uncontrollable and Emergency Expenses or New Development Expenses.

3.14 Unanimous Decisions. Unanimous Decisions shall require the affirmative vote of all Members. Unanimous Decisions shall be limited to the following actions: (i) any material change in the Assessment formula as set forth in Section 7.11; (ii) amendment of the CDP, which would have a Material Adverse Effect; (iii) changes to the Prohibited Uses set forth in Article IX (including Section 9.5); (iv) amendments to the Master Declaration, which would have a Material Adverse Effect; (v) decisions not to rebuild or repair Common Elements in the event of casualty or partial condemnation as set forth in Sections 14.6 and 17.2; (vi) a material addition to or deviation from the Common Elements from those shown on Exhibits "C1" through "C6" which would have a Material Adverse Effect and (vii) the transfer of any Common Elements after their dedication to the Master Association which would have a Material Adverse Effect.

3.15 Material Adverse Effect ("MAE") Dispute Procedures. In the event that any Member asserts that a proposed action would have a Material Adverse Effect, and there is a dispute among the Class A Members or between any Class A Member and Class B Member regarding the existence of the asserted MAE (a "MAE Dispute"), the matter shall be decided by an Arbitrator in accordance with the procedures and standards set forth in Section 13. No action shall be taken on any matter where there is a MAE Dispute until the Arbitrator has rendered its decision regarding the validity of the assertion of a MAE, except in the case of an emergency, in which event the Master Association may authorize minimum action reasonably necessary to remedy the urgent situation. The Arbitrator's decision with respect to a MAE Dispute shall be final and binding on the Members.

3.16 Non-Assignability of Voting Rights. Members may not assign their Voting Rights to any Person who is a subtenant of any Development Parcel, unless approved by majority vote of the non-affiliated Members. For avoidance of doubt, any transferee of all or substantially all of the interests of a Parcel Developer in any Development Parcel may become a Class A Member and may vote without the need for any approval required in the preceding sentence.

## **ARTICLE IV**

### **POWERS OF THE MASTER ASSOCIATION**

4.1 Powers and Duties of the Master Association. The Master Association, acting through the Board, shall have the powers and duties provided in this Master Declaration, the Articles and the Bylaws, and such additional customary powers as shall be reasonable and necessary for the Master Association to accomplish the purposes of this Master Declaration.

4.2 Board of Directors and Officers. The affairs of the Master Association shall be conducted by a Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time. The Board may also appoint various committees and appoint a professional, third party Manager, who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Master Association. The Board shall determine the compensation to be paid to the Manager, which shall be a customary and reasonable amount consistent with an arm's length negotiation.

4.3 Appointments to the Board. Each Member shall be entitled to appoint one (1) person who shall be designated in writing to serve on the Board of the Master Association. The vote of each Board member shall be valued at the same Voting Interest percentage assigned to each Member as set forth in Article III hereunder.

4.4 Operation and Maintenance. The Master Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Elements.

4.5 Health and Safety. Subject to the disclaimers of representations set forth in Section 4.15 hereunder, the Master Association may, without obligation, provide services for the maintenance of health and safety within the Project, including, without limitation, providing facilities, services, and/or personnel for security, the collection and disposal of solid waste and refuse, and animal control.

4.6 Board Responsibilities and Powers. The Board's responsibilities and powers shall include, but shall not be limited to, the following rights and authority:

4.6.1 Grant any and all easements or rights-of-way reasonably related to the development of the Project, including without limitation, such easements that (i) are required by utilities to serve the Project; (ii) may be required by (and subject to) the provisions of the Development Documents; (iii) are for the purpose of completing all Improvements contemplated by this Master Declaration; and (iv) are for ingress and egress for pedestrian or vehicular traffic over, through and across the Common Elements, or for any other reasonable purpose, subject to the Board's right to adopt reasonable rules and regulations in connection with the hours of access to, use of, and other reasonable restrictions regarding such easements, provided that no such regulations shall be inconsistent with the Casino Lease. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it deems fit without the consent of any Parcel Developers (but subject to any necessary approvals of the controlling Governmental Authority); provided, however, that in the event such relocation or reconfiguration results in an adverse encroachment on a Development Parcel or has an adverse impact on the use of any Development Parcel, such relocation or reconfiguration shall require the advance written consent of the applicable Parcel Developer, which may not be unreasonably withheld or delayed. Each and

every Parcel Developer hereby agrees and acknowledges that he, she or it will execute such further and additional instruments as may be reasonably requested by the Master Association in accordance with this Agreement, documenting the Master Association's right to grant any and all easements or rights-of-way hereunder in form satisfactory to the Master Association;

4.6.2 Employ or contract with and perform all or any part of the duties and responsibilities of the Master Association, and delegate its powers to committees, officers and employees; and

4.6.3 Take such other actions as may reasonably be necessary or desirable to enforce the terms and provisions of the Governing Documents or any supplemental Declaration, including, without limitation, the power to:

4.6.3.1 In a non-emergency situation, after thirty (30) days' written notice, without being liable to any Parcel Developer, Member or Association, enter upon any Development Parcel, Improvement or Common Area, for the purpose of enforcing by peaceful means the provisions of this Master Declaration, the Design Guidelines, or any supplemental Declaration, or for the purpose of maintaining or repairing any such Development Parcel, Improvement or Common Area if for any reason whatsoever the Association, Parcel Developer thereof or other responsible Person, fails to maintain or repair any such Development Parcel, Improvement or Common Area as required by this Master Declaration;

4.6.3.2 In an emergency situation (i.e. imminent danger to health or safety of people or property) , after reasonable efforts to give notice, without being liable to any Parcel Developer, Member or Association, immediately exercise self-help and enter upon any Development Parcel, Improvement or Common Area, for the purpose of removing any safety, fire hazard or other emergency situation on any Development Parcel, Improvement or Common Area which the Association, Parcel Developer other responsible Person refuses to remove immediately;

4.6.3.3 Take such actions as may reasonably be necessary or desirable to comply with and enforce, to the extent applicable to the Master Association, the terms and provisions of the Governing Documents;

4.6.3.4 Contract with such Persons as may reasonably be necessary or desirable to effectuate the purposes of this Master Declaration, including, without limitation, contractors to collect and dispose of solid waste and refuse, contractors to operate a shuttle or other transportation system within the Project, contractors to provide security services, and the like; and

4.6.3.5 Own and maintain or dedicate roads, and grant and impose restrictive covenants, conditions, restrictions, recreational easements and conservation easements with respect to Trails and other open space areas.

4.7 Insurance. The Master Association shall maintain such customary and reasonable policies of liability and casualty insurance, as it deems necessary in its reasonable discretion, with respect to the Master Development Site, Common Elements and personal property owned by the Master Association as provided herein, all as set forth in more detail in Article XIV.

4.8 Assessments. The Master Association shall levy and collect all Assessments as provided herein.

4.9 Master Association Rules. By a majority vote of the Class A Members and the vote of the Class B Member voting separately as distinct classes, the Board may, from time to time and subject to the provisions of this Master Declaration, adopt, amend and repeal customary, commercially reasonable and prudent rules and regulations for the Common Elements and Master Association Land to be known as the Master Association Rules.

4.10 Transportation. The Master Association may provide facilities, services, and/or personnel for the operation of shuttle and other transportation within the Master Development Site.

4.11 Recreation. The Master Association may provide, operate, and maintain periodic and temporary recreational facilities and programs for the Parcel Developers and Occupants as a whole and their respective Guests, including, without limitation, art fairs and festivals, farmers markets, temporary beer gardens, temporary dance and temporary performance stages, provided that no such facilities or programs will materially interfere with the access to or development of any Development Parcel or the operation of the business thereon and shall be open to the public.

4.12 Professional Management. The Master Association may carry out, through the Manager, those of its functions, which are properly subject to delegation. The Manager so engaged shall be a reputable, professional independent contractor with experience in managing similar properties, and not an agent, Affiliate or employee of the Master Association or Declarant, shall be responsible for the day-to-day operations of the Master Association for the benefit of the Master Association and the Members, and shall, to the extent permitted by law and by the terms of the agreement with the Master Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Master Association itself. Any such management agreement may be terminated by the Master Association without cause at any time.

4.13 Implied Rights. The Master Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Master Association may be exercised by a vote of the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Facilities or Common Area, enforcement of the Governing Documents, including, without limitation, the Design Guidelines and Operating Standards, or any other civil claim or action. The Governing Documents shall not be construed, however, as creating any independent legal duty to institute litigation on behalf of or in the name of the Master Association or its Members. In exercising the Master Association's rights and powers, making decisions on behalf of the Master Association, and conducting the Master Association's affairs, the members of the Board shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws. If the Master Association fails to enforce the Development Documents within fifteen (15) days after written notice from a Member or Parcel Developer, any Member shall have the right to enforce the Governing Documents by commencing an action at law or in equity.



4.14 Promotion and Marketing. The Master Association may conduct programs for the promotion of the portions of the Project which have received final site plan approval (but only for the Project as a whole and not for any portion thereof that does not constitute a Development Parcel, including Land which is developable but undeveloped and with no approved site plan) as an attractive and desirable destination commercial resort, and may promote, publicize and conduct special events consistent with and in furtherance of the CDP and benefiting the portions of the Project which have received final site plan approval (but only for the Project as a whole and not any specific Development Parcel or Parcel Developer), provided such promotions and marketing shall not exceed the approved annual budget line item for promotions and marketing and are in compliance with all Laws. The Casino Parcel Developer shall not be obligated to contribute more than four-hundred thousand (\$400,000) dollars to the approved annual budget line item for promotions and marketing during each of the first three (3) years following the Transfer of the Casino Parcel to the Casino Parcel Developer. After three (3) years from the date the first annual budget of the Master Association following the Transfer of the Casino Parcel to the Casino Parcel Developer has been approved as provided hereunder, the Casino Parcel Developer and the Declarant shall agree to an appropriate annual budget line item for promotion and marketing with the expectation that such budget line item will not materially decrease from the promotion and marketing budget from the previous year. The promotion and marketing budget shall be agreed to by all Parcel Developers acting by sixty-seven percent (67%) vote. The Master Association shall not be permitted to incur costs for any promotional events held primarily for the benefit of Declarant, any Parcel Developer or any specific portion of the Master Development Site, as opposed to the Members and Project as a whole.

4.15 Personal Liability. No director or any Member of the Master Association, no officer of the Master Association, and no Manager or employee of the Master Association, shall be personally liable to any Parcel Developer, Guest, resident, Occupant or to any other Person, including the Master Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Master Association, the Board, the Manager, the Design Review Committee, any representative or employee of the Master Association or any committee, committee member or officer of the Master Association; provided, however, the limitations set forth in this Section shall not apply to any Person who has acted in bad faith or with gross negligence or has engaged in willful or intentional misconduct.

4.16 Environmental Matters. The Master Association shall not be responsible to any Member, Parcel Developer, Guest, resident, Occupant or to any other Person, for any environmental conditions, which existed prior to the date of this Declaration, or which were created after the date hereof, whether known or unknown, and including, without limitation, the presence of Hazardous Materials on, at, under or from the Master Development Site.

4.17 Title to the Common Elements. Declarant may convey or assign (where Declarant owns less than fee title) all of its right, title and interest in and to the Common Elements to the Master Association, free and clear of all encumbrances and liens, except for the following:

4.17.1 Easements, terms, conditions and reservations set forth in this Master Declaration or any Plat;

4.17.2 Liens for taxes and Assessments not yet due and payable at the time of conveyance;

4.17.3 The terms of other customary easements, and reservation interests in Declarant's chain of title, excluding financial liens or liens relating to the costs of development of any portion of the Master Development Site which are inconsistent or in conflict with the terms of the Development Documents; and

4.17.4 The Public Rights.

4.18 Taxes on Common Facilities and Common Areas. Until such time as Special Service Districts are established, and begin to assess each Development Parcel, taxes levied or assessed against or upon the Common Elements by any Governmental Authority shall be paid by the Master Association, and shall constitute a portion of Common Expenses. Each Parcel Developer shall execute such instruments and take such action as may be reasonably specified by the Master Association to obtain separate real estate tax Assessments on the Parcel Developer's Development Parcel. If any taxes or assessments may, in the opinion of the Master Association, nevertheless be a lien on more than one Development Parcel, not under common ownership, or any part thereof, they may be paid by the Master Association, and the applicable Parcel Developer Owner shall be obligated to promptly pay or reimburse the Master Association for, as the case may be, the taxes and assessments assessed by the Assessor or other taxing authority against its Development Parcel.

4.19 Damage or Destruction to Common Facilities and Common Areas. Damage to or destruction of all, or any portion of the Common Elements, whether or not located on Master Association Land, shall be handled in the following manner, notwithstanding any provision in this Master Declaration to the contrary:

4.19.1 In the event of damage or destruction to any Common Elements, and if the insurance proceeds are sufficient to effect total restoration, then the Master Association shall cause its prompt repair and reconstruction substantially as it previously existed.

4.19.2 If the insurance proceeds are insufficient to effect total restoration, then the Master Association shall cause such Common Elements to be promptly repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against the Parcel Developers, Members or Associations in accordance with the provisions of this Master Declaration.

4.19.3 Notwithstanding the foregoing, in the event of any damage or destruction due to the willful or grossly negligent act of a Member, Parcel Developer or any tenant of any Member or Parcel Developer or any Guests or Occupant of the foregoing then the applicable Member or Parcel Developer shall be responsible for the replacement or restoration of the applicable Common Element.

4.20 Change of Use of Master Association Land. The Board shall have the power and right to change the use of Master Association Land (and in connection therewith, reconstruct, alter or change the Improvements thereon in any manner deemed necessary by the Board to

accommodate the new use), provided, such change in use (i) shall be for the benefit of all of the Members and the Master Development Site as a whole, (ii) shall be consistent with the Governing Documents, (iii) shall not be inconsistent with the use, operation and/or development of any Development Parcel by a Parcel Developer pursuant to the Governmental Approvals for such Development Parcel's development plans, as approved by the Governmental Authority together with any Plans and Specifications as approved by the Design Review Committee, (iv) shall be as a Common Element and (v) would not have a Material Adverse Effect. Any alteration or change of the Improvements on Master Association Land shall require the approval of the Design Review Committee as provided in Article X hereunder.

4.21 Nothing in this Article IV, or elsewhere in this Master Declaration, shall amend or otherwise restrict the Master Association's broad powers and rights to:

4.21.1 dedicate, release, alienate, lease or transfer all or any part of the Common Elements, which have been dedicated to the Master Association to any public or private entity, agency, authority or utility for such purposes and subject to such conditions as may be agreed to by a majority of the Voting Rights of the Class A Members.

4.21.2 reconstruct, replace or maintain any Improvement or portion thereof of, at or upon the Common Elements, including without limitation, on the Master Association Land.

4.21.3 to plant and maintain trees, shrubs, ground cover and other vegetation upon any portion of the Common Areas in accordance with the Landscape Master Plan.

4.22 Nothing in this Article IV, or elsewhere in this Master Declaration, shall amend or otherwise restrict the Master Association's and/or Declarant's broad powers and rights to execute, grant, transfer, convey, and/or reserve those certain easements, licenses and rights-of-way specifically described in Article VIII below.

## ARTICLE V

### **CONSTRUCTION OF IMPROVEMENTS**

5.1 Construction. The following provisions shall apply to any construction, renovation, maintenance or other work performed upon a Development Parcel.

5.1.1 Once commenced, the work shall be diligently prosecuted to completion.

5.1.2 All work shall be performed in a good and workmanlike manner, shall minimize any inconvenience to the operations on other Development Parcels and shall comply with all applicable laws, ordinances, regulations and Design Guidelines, Governmental Approvals and Operating Standards.

5.1.3 If, as a result of any work, on any part of another's Development Parcel is altered or disturbed, the disturbed area shall be promptly restored to as near its original condition as possible at the cost of the Parcel Developer doing such work.

5.1.4 All work in excess of \$1,000,000.00 involving modifications or changes to the exterior appearance or structure of any Improvements or Development Parcel shall be started only after reasonable advance written notice to the Master Association, and shall be performed in a customary manner so as to minimize disruption to the use and operation of any impacted Development Parcel.

5.1.5 Any Person, including without limitation, Parcel Developers, Members, Association(s) and their contractors and agents, performing the work shall indemnify, defend, and hold harmless the Master Association or other Association on whose Common Area the work is being performed or which is disturbed, or the other Parcel Developer on whose Development Parcel or Improvement, the work is being performed, from any loss or damage to persons or property, and from any expenses associated with any claims arising from any such loss or damage which is related to the performance of the work.

5.2 Common Facilities Construction. Declarant acknowledges that the Common Facilities and various related site preparation work shall be constructed pursuant to various Development Documents, including, without limitation, the Common Infrastructure Work as defined in the Master Development Agreement. The Master Association consents to the performance of the Common Facilities construction, and no further consents or approvals by the Master Association in connection therewith shall be required under this Master Declaration. The costs to construct the Common Elements at the Master Development Site shall be borne solely by Declarant (and/or shared by the applicable Parcel Developer or Parcel Developers pursuant to a Development Agreement), and in no event shall be a Common Expense.

## ARTICLE VI

### **PROPERTY RIGHTS, MAINTENANCE OBLIGATIONS AND OPERATING COVENANTS AND STANDARDS**

6.1 Parcel Easements of Enjoyment. Every Member, Parcel Developer, and their respective Occupants and Guests shall have a non-exclusive right and easement of ingress and egress and of enjoyment, to and over, the Common Elements, which right and easement shall be appurtenant to, and shall pass with, Transfer of a Development Parcel, subject to the following provisions:

6.1.1 The right of the Master Association to establish customary and reasonable uniform rules and regulations pertaining to the use of the Common Elements, in accordance with the terms of the Master Declaration and other Development Documents;

6.1.2 The rights of third Persons under easements and instruments of record; and

6.1.3 The Public Rights.

6.2 Emergency Repairs. In the event of an imminent safety, fire, hazard or other similar emergency posing a risk to health or safety, as reasonably determined by the Board, and subject to

the notice requirements set forth in Section 4.6 above, the Board shall have the right, but not the duty, to immediately enter upon the Development Parcel or Improvement to make such repairs, to perform such work or to take such action, in each case using a high degree of care to minimize interference with and damage to all Development Parcels, necessary to cure or abate such emergency condition. Subject to the duty of the Master Association to provide for maintenance as provided in Section 4.4, it shall be the duty of each Parcel Developer, Member and Association at their sole cost and expense, subject to the provisions of this Master Declaration regarding Design Review Committee approval, to maintain, repair, replace, and restore the Development Parcel (other than any Common Areas or Common Facilities thereon) in a good and sanitary condition (ordinary wear and tear excepted) in accordance with the Operating Standards and comparable to other similarly situated projects. In the event that any Parcel Developer, Member or Association shall permit any Development Parcel or Improvement, which it is the responsibility of such Parcel Developer, Member or Association to maintain, to create a dangerous, unsafe condition, or to otherwise violate this Master Declaration in any material respect, the Board shall have the right, but not the duty, upon thirty (30) days' prior written notice to the Association associated with such Development Parcel (except in the event of an emergency), or the Parcel Developer or Member, as applicable, to correct such condition and to enter upon such Development Parcel or Improvement to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Association or the Parcel Developer that is in default. Said cost shall be a Specific Assessment, and shall create a lien enforceable in the same manner as other Assessments as set forth in this Master Declaration.

6.3 Maintenance and Repairs. Parcel Developers, Members and Associations shall, at their sole cost and expense, maintain their respective Development Parcels in good operating order, repair, condition and appearance (ordinary wear and tear excepted), in accordance with the Operating Standards. In furtherance thereof, Parcel Developers, Members and Associations shall, at their sole cost and expense, make all necessary replacements, restorations, renewals and repairs to the exterior Improvements of its Development Parcel (including all replacements of components, systems, connections, or parts which are a part of, or are incorporated into, the Development Parcel or any part thereof), whether structural or nonstructural, foreseen or unforeseen, ordinary or extraordinary, in all cases ordinary wear and tear excepted, and to all Exclusive Parking Lots and Special Common Areas maintenance including, without limitation, removal of dirt, snow, ice, rubbish and other obstructions and maintenance of sidewalks and landscaping.

6.4 Maintenance of Utilities. In addition to the foregoing, Parcel Developers, Members and Associations shall, at their expense, furnish, install and maintain in good condition and repair, within their respective Development Parcels and to points in the Common Areas, all storm and sanitary sewers, and all gas, water, telephone, electrical facilities and other utilities of such size and type as may be required to provide adequate service for the Development Parcel as required in accordance with this Master Declaration.

6.5 Operating Standards. Each Parcel Developer shall maintain its entire Development Parcel, including all structures, landscaping, and other Improvements comprising the Development Parcel, in a safe, clean, neat, and attractive manner, in good condition and repair, free of trash and debris, and consistent with the Governing Documents and the Operating Standards, unless such

maintenance responsibility is otherwise assumed by or assigned to the Master Association or any other Association pursuant to this Master Declaration, any supplemental Declaration or by law.

6.5.1 Each Parcel Developer acknowledges that certain areas contained within the Parcel boundaries shall be Common Areas, over which the Master Association shall have primary control and maintenance responsibility under this Master Declaration; provided, any wall, fence, or similar Improvement, and any tables, chairs, or displays of any kind, installed or placed by the Parcel Developer within that portion of the Development Parcel designated as a Common Area shall be the maintenance responsibility of the Parcel Developer, unless otherwise designated by the Master Association.

6.5.2 A Parcel Developer is precluded from altering, improving, or otherwise disturbing any portion of the Common Elements contained on its Development Parcel, including as described in this paragraph, except to the extent expressly permitted under this Master Declaration or approval of the Board and/or Design Review Committee, as applicable.

6.6 Master Association Standards. The Master Association shall maintain the Common Areas and Common Facilities in a safe, clean, neat, and attractive manner, in good condition and repair, free of trash and debris, and consistent with the Governing Documents and the Operating Standards. In addition, upon the Board's determination that the level and quality of maintenance then being provided on a Development Parcel by a Parcel Developer is not consistent with the Operating Standards, and after notice and an opportunity to cure as provided in Section 8.2, the Master Association may perform maintenance on a Development Parcel and assess the costs of providing such maintenance against the Parcel Developer.

6.7 No Claim Against Declarant or Master Association. Parcel Developers, Members and Associations shall not make any claim or demand upon or bring any action against the Declarant or the Master Association for any loss, cost, injury, damage or other expense caused by any failure or defect, structural or nonstructural, of their respective Development Parcels or any part thereof, other than Common Facilities or Common Areas.

## **ARTICLE VII**

### **ASSESSMENTS**

7.1 Assessments. The Master Association shall have the right to levy and collect Assessments as provided in this Section. Each Member is deemed to covenant and agree to pay to the Master Association all such Assessments, in a timely manner and in strict accordance with the terms and conditions herein, as the Master Association shall duly authorize and/or levy.

7.2 Purpose of Common Assessments. The intent of the allocation of Common Expenses is to fairly share the burden of the Common Expenses among all of the Members, each of whom utilize and benefit, directly or indirectly, from the activities of the Master Association and the Common Elements. Common Expenses levied by the Master Association shall be based upon advance estimates of the Master Association's cash requirements to provide for payment of

all estimated expenses arising out of or connected with the maintenance and operation of the Common Elements and operating the Master Association. Such estimated expenses may include, without limitation, the following: customary, actual and reasonable expenses to (i) promote the common health, safety, benefit and welfare of the Members; (ii) meet any obligations imposed on, growing out of, connected to, incurred or assumed by the Master Association to cover costs, including overhead and administrative costs, for the operation of the Master Association, expenses to establish accounts as may be required by any Government Authority; the Board's establishment and creation of adequate Reserves, surplus and/or sinking funds for maintenance, repair, and replacement of the Common Elements, and all expenses related to the operation, management, maintenance, repair, and replacement of the Common Elements, which estimates may include, among other things, expenses of snow removal, forest management, trail maintenance, premiums for all insurance which the Master Association is required or permitted to maintain pursuant to this Master Declaration, wages for Master Association employees, compensation of a Manager, legal and accounting fees, and any other expenses and liabilities which may be properly incurred by the Master Association for the benefit of the Members. Such expenses shall constitute the Common Expenses, and all funds received from Assessments under this Section 7.2 shall be part of the Common Expense Fund described in Section 7.5 below. Common Assessments shall be levied against each Development Parcel, and shall be payable in such manner and at such times, including monthly or quarterly installments, as the Board may determine in its discretion pursuant to Section 7.3, 7.4 and 7.5 below.

7.3 Annual Budget and Fiscal Year. Common Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided that the first fiscal year shall commence upon the earlier of the recording of the first Transfer of a Development Parcel, and terminate on December 31 of such year, and thereafter shall be based on the fiscal year of the Master Association as previously described. On or before November 15th of each year thereafter, the Board shall prepare and furnish to each Member, and any Eligible Mortgagee that has requested a copy thereof in writing, or cause to be prepared and furnished to each Member, or any Eligible Mortgagee that has requested a copy thereof in writing, the planned operating budget for the upcoming fiscal year including the estimated Common Expenses and Assessments for the coming fiscal year. The budget shall be prepared based on customary, reasonable and prudent commercial real estate management practices, consistently applied to similarly situated commercial mixed-use resort projects in the Northeastern United States and shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual Common Assessments for the upcoming fiscal year and based upon which the Project shall be operated during such annual period. The Board in its sole discretion from time to time may change the fiscal year by its own resolution.

7.4 Budget Approval. Except for the initial annual budget following the Transfer of the Casino Parcel to the Casino Parcel Developer, which must be approved by the Casino Parcel Developer and an increase to the budget constituting a Major Decision, which must be approved by sixty-seven percent (67%) of the Voting Interests of the Class A Members and the vote of the Class B Member, any annual budget that calls for an increase in the dollar amount from the previous year (exclusive of New Development Expenses and Uncontrollable and Emergency Expenses) of more than the greater of (a) three percent (3%) or (b) the then Consumer Price Index

must be approved by a majority of the Class A Voting Interests. In no event shall the budget increase (exclusive of New Development Expenses and Uncontrollable and Emergency Expenses) by more than ten percent (10%) in the aggregate over the previous five years without the approval of a majority of the Class A Voting Interests.

7.5 Notice and Payment. Each Common Assessment shall be payable in accordance with the budget as the Board shall determine in its sole and exclusive discretion; provided, however, the Board shall notify all Members no less than 45 days in advance of such payment periods and due dates. Assessments shall commence against a Parcel upon the receipt of Governmental Approval of the site plan and the plat for such Parcel has been issued by the Governmental Authority such that it is included as a Development Parcel hereunder. All unpaid installments of any Common Assessment shall bear interest at the rate established by the Board not to exceed nine percent (9%) per annum thirty (30) days after the date of notice of failure to pay until paid and the Member shall be liable for a reasonable late fee as determined by the Board and all actual out of pocket costs, including reasonable attorneys' fees incurred by the Master Association in collecting the same. The failure of the Board to give timely notice of any Common Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Master Declaration, or a release of any Member from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date no less than thirty (30) days after notice of such Assessment shall have been given to the Member in the manner provided in this Master Declaration.

7.6 Common Expense Fund. The Master Association shall establish and maintain two (2) separate and distinct funds, one for operating expenses and one for capital reserve expenses, which funds shall constitute the Reserves. These two (2) funds shall be maintained out of Common Assessments for Common Expenses, which together shall constitute the Common Expense Fund and shall not be commingled with any other accounts or the funds of any other person, including without limitation, Declarant.

7.7 Reserves. Common Assessments shall include customary and reasonable amounts as determined by the Board collected as Reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Elements. All amounts collected as Reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board into the Common Expense Fund.

7.8 Purpose of Specific Assessments. Specific Assessments levied by the Master Association shall be levied against a particular Development Parcel and to each Member associated therewith to cover actual and reasonable costs, including overhead and, administrative costs, for:

7.8.1 Providing particular services, items, or benefits to such Development Parcel or Parcel Developer, at the written request of the Member associated therewith pursuant to a list of special services which the Board may authorize from time to time including, without limitation, snow removal, landscape maintenance, and handyman services, and which Assessments may be levied in advance of providing such special services;



7.8.2 Enforcing any provision of the Governing Documents against any Member or of bringing any Development Parcel or Improvement into compliance with such requirements including without limitation a breach of the provisions hereof; and

7.8.3 Maintenance, repairs, or replacements of or within the Common Elements arising out of or caused by the willful or grossly negligent act or omission of the related Member or Parcel Developer and their respective Occupants and Guests.

7.9 Purpose of Special Assessments. The Board may levy Special Assessments from time to time to cover customary, reasonable, necessary, non-routine, unexpected and actual unbudgeted Common Expenses or actual Common Expenses incurred in excess of those budgeted. The levy of Special Assessments, which in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Master Association for that fiscal year or 10% for any specific budget line item shall be a Major Decision. Special Assessments shall be levied against each Development Parcel and to each Member associated therewith, and shall be payable in such manner and at such times, including installments over time, as the Board may determine. The Board may levy Special Assessments for any Common Expenses, including without limitation Special Assessments for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of the Common Elements, including fixtures and personal property related thereto; provided that Declarant shall be responsible for the costs of the initial design, permitting and construction of all Common Elements (which may be borne or shared with the benefitted Parcel Developer or Parcel Developers in accordance with the relevant Development Documents). All Special Assessments are at all times subject to the standard of commercial reasonableness.

7.10 Creation of the Lien and Personal Obligation of Assessments. Each Member is deemed to covenant and agree, to pay to the Master Association all Assessments levied as provided herein, and each such Assessment together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the applicable Development Parcel and shall be a continuing lien upon such Development Parcel against which such Assessment is made. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Master Association or Board to take some action or perform some function required to be taken or performed by the Master Association or Board under this Master Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any Governmental Authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Member. The Assessments together with interest, costs and reasonable attorneys' fees, shall be a charge on the Development Parcel against which such Assessment is made. Each and every Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Parcel Developer. Such Lien shall be subordinate to any Mortgage made against the applicable Development Parcel.

7.11 Adjustment of Assessments. The Master Association shall phase-in its budget for Assessment purposes during the first three years after the commencement of Assessments under Section 7.4 with approximately equal monthly additions so that the amount of the initial budget (determined based upon assumed full operation of the Casino Project, Golf Course Project and the

first of the other Project developments) collected in the first month will be one-thirty sixth (1/36) of the normal monthly Assessment under the full budget, the amount collected will be two-thirty sixths (2/36) of the normal monthly Assessment in the second month, and so on, until the full normal monthly amount is collected in the thirty-sixth month. The Master Association shall reduce its expenditures to not exceed its collections in these phase-in months. Further, the Board shall have the power to make equitable and reasonable adjustments in the amounts of Assessments (or installments thereto) so as to take into account (i) any increases and decreases in Assessments payable to the Master Association resulting from the addition of new Development Parcels or new Association(s), and (ii) any increases in Common Expenses resulting from the addition of a new Development Parcel or a new Association.

7.12 Assessment Percentage. Except as otherwise provided herein, all Assessments of the Master Association less the Declarant's Subsidy shall be divided among the then existing Development Parcels and the then existing Association(s) utilizing the following Assessment Percentages:

7.12.1 With respect to the Common Expenses and Special Assessments, the Common Expenses Assessment Percentage shall be the basis for all non-specific assessments each Member hereby agrees and acknowledges that the number of parking spaces allocated to each Development Parcel shall be calculated pursuant to the Parking Ratio, as set forth herein.

7.12.2 As Development Parcels receive Governmental Approval providing for an increase or decrease in the number of parking spaces to be located on a Development Parcel, the Assessment Percentage attributable to each Member thereof shall be adjusted by the Master Association in accordance herewith.

7.12.3 As Associations are created, the Assessment Percentage attributable to each Member thereof shall be determined by the members of such Association.

7.12.4 Each Member, other than Declarant, shall be obligated to pay that portion of each Assessment determined by multiplying the total Assessment, less the Declarant Subsidy (defined below) if any, by the Common Expenses Assessment Percentage of said Member.

7.12.5 The Declarant shall be obligated to pay the Declarant Subsidy in accordance with Section 7.14 and as applicable in accordance with the Common Expenses Assessment Percentage applicable to Development Parcels to which Declarant is the Parcel Developer.

7.13 Date of Commencement of Assessments. Assessments shall commence as to each Development Parcel and Parcel Developer after Governmental Approval of the site plan and plat for the Development Parcel has been issued by the Governmental Authority, and shall be due and payable in accordance with this Master Declaration irrespective of the term under any lease agreement for such Development Parcel, or the date that rent, additional rent or any other charges becomes due under any such lease. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Master Association based upon the then effective annual budget. In the event that the amount budgeted to meet Common

Expenses for the then current fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of Common Assessments such that the Common Expenses actually paid do not exceed actual Common Expenses or may abate collection of Common Assessments, as it deems appropriate. Nothing in this Section shall require the Board either to abate or reduce the amount of Common Assessments.

7.14 Declarant Subsidy. Until the Initial Phase of the Project is substantially complete, open to the public and operational, including at least 120,000 square feet of internal commercial, retail and/or dining space within the Entertainment Village Project, except as otherwise provided herein, the Declarant shall pay to the Master Association, twenty-five percent (25%) of the Common Expenses for each fiscal year. After the Initial Phase of the Project is substantially complete; open and operating and until such time as Declarant is no longer the Class B Member, Declarant shall pay to the Master Association fifteen (15%) percent of the Common Expenses for each fiscal year. Upon the termination of the Class B membership, Declarant shall no longer pay the Declarant's Subsidy and shall only pay Assessments as a Class A Member in accordance with the Common Expenses Assessment Percentage. The Declarant Subsidy shall only be increased above 25% in the event that the Casino Parcel Assessment Percentage equals 67% pursuant to this Master Declaration and the remainder of the Common Expenses Assessment Percentage has not been allocated to another Parcel Developer.

7.15 All rights of the Members hereunder are subject to and conditioned upon timely payment of the Declarant Subsidy in the case of the Declarant, and Common Assessment and timely compliance with all other obligations of each Member hereunder.

7.16 Report to Members. The Board shall cause to be prepared quarterly financial statements and an annual balance sheet and operating statement, using generally accepted accounting principles consistently applied and customary in form and content, reflecting income and expenditures of the Master Association for each fiscal quarter or fiscal year, as applicable and shall cause to be distributed a copy of each such statement to each Member. Any Member, Parcel Developer or Mortgagee may upon written request inspect the current copies of the books, records and financial statements pertaining to the Master Association and pertaining to the imposition and reconciliation of Assessments during normal business hours. If a Member demonstrates as a result of any audit or inspection that after annual reconciliation and adjustment the Assessments have been overstated by greater than five percent (5%) then the Master Association shall reimburse the auditing member the reasonable, out-of-pocket expenses incurred in such audit or inspection, not to exceed \$2,500.

7.17 The Board shall prepare and distribute to the Membership of the Master Association at the time of delivery of notice of each proposed Common Assessment pursuant to Section 7.4, a written, itemized estimate of the expenses to be incurred by the Master Association during such year in performing its functions under this Master Declaration, less any expected income and accounting for any surplus from the prior year's Assessments.

7.18 Excess Funds. At the end of each fiscal year of the Master Association, the Board may determine that all excess funds of the Master Association, over and above the amounts used for any purpose, may be returned to the Members proportionately in accordance with the

Allocation Percentage and/or amounts actually paid by Members (if different) for such fiscal year, or may be retained by the Master Association and used for Reserves to reduce the next occurring obligation to fund the following year's Common Assessments, with the upcoming Common Expenses to be reduced accordingly, provided, however, that in no event shall the Master Association maintain Reserves in excess of twenty-five percent (25%) of the total Assessments of the immediately preceding fiscal year.

7.19 Effect of Non-payment of Assessments – Remedies of the Master Association. Any installment of an Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment to the date paid at the rate of nine percent (9%) per annum as further described in Section 7.4. If a Member does not pay any installment of any Assessment when due, ten (10) days after such due date, the Board shall send a written notice of overdue payment to the delinquent Member (a "Late Payment Notice"). If any installment of an Assessment is not paid within thirty (30) days after receiving the Late Payment Notice, unless such Assessment is subject to a bona-fide dispute, the Member responsible therefore may be required further by the Board to pay a late charge of One Thousand Dollars (\$1,000.00) or ten percent (10%) of the amount of the delinquent installment, whichever is greater. If an Assessment is not paid within sixty (60) days after receipt of the Late Payment Notice, unless such Assessment is subject to a bona-fide dispute, then the delinquent Member shall lose its right to vote until such time as the assessment, together with all accrued penalties and interest is paid by the defaulting Member.

7.20 Enforcement. The Master Association may enforce the payment of the Assessments by taking any or all of the following actions, concurrently or separately (and by exercising any of the remedies hereinafter set forth, the Master Association does not prejudice or waive its right to exercise the other remedy):

7.20.1 Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments, including fines and penalties hereunder; and

7.20.2 Record and foreclose a lien against the Member's Development Parcel, subject to any fee or leasehold Mortgage which is then in place.

7.21 Personal Liability. Notwithstanding subordination of an Assessment lien as described in Section 7.22 below, the delinquent Member shall remain personally liable for the Assessments and related costs after its Membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise. No Member may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or by abandonment, conveyance, transfer, subordination or assigning of its rights and/or interests in all or a portion of the Development Parcel.

7.22 Subordination of Assessment Lien to First Mortgage; Priority of Lien. The Assessment lien provided for herein shall be subordinate to any fee or leasehold mortgage on a Development Parcel or Improvement thereon, or part thereof or interest therein, including a mortgage held by Declarant on a Development Parcel, and shall also be subject and subordinate to liens for taxes and other public charges, which by applicable law are expressly made superior.

Except with respect to any Mortgage, the Assessment lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Development Parcel or Improvement. Transfer of any Development Parcel or Improvement shall not affect the Assessment lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage to which the Assessment lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust or other sale, or any grantee taking by deed in lieu of foreclosure, shall take the Development Parcel or Improvement free of the Assessment lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such first mortgage foreclosure sale purchaser or grantee shall take subject to all Assessments and the Assessment lien therefore accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

7.23 Right to Cure. In the event Assessments or other charges payable to the Master Association by a Member pursuant to this Master Declaration may or have become delinquent on the Development Parcel due to the Member's failure to timely pay such Assessments or charges, then the Board shall give notice of the delinquent Assessment or charges to each Member and any Eligible Mortgagee that has requested notice of such delinquency from the Master Association in a reasonable manner as determined by the Board. Such notice shall include a period of no less than forty five (45) days within which the delinquent Member or Eligible Mortgagee may cure the default.

7.24 Cumulative Remedies. The remedies contained in this Article shall be cumulative of all other remedies now or hereinafter provided by law or in equity.

## **ARTICLE VIII**

### **EASEMENTS**

8.1 Due Care and Restoration. All rights and easements described in this Article shall be exercised with due care so as to minimize interference with the affected areas and the activities, business operations, use and enjoyment of the Development Parcel and of the Members conducted on any Development Parcel. All areas and facilities disturbed by the exercise of rights hereunder shall be repaired or restored to their prior condition as soon as possible by the party exercising such rights.

8.2 Nature of and Creation of Easements. Unless otherwise set forth herein, any easement reserved in this Declaration shall be deemed to be non-exclusive, and each easement in favor of a Member shall be deemed to be appurtenant to and for the benefit of the Development Parcel controlled by such Member. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect upon recordation of this Declaration whether or not referred to, reserved and/or granted in any instrument of conveyance.

8.3 Easements on Casino Parcel. Declarant hereby declares non-exclusive perpetual easements on, over, upon, across, above, under and through the Casino Parcel, for the benefit of

itself and the Master Association, regarding the following purposes: (a) establishing a landscape buffer with respect to the Landscape Buffer Easement, (b) non-vertical Improvements in the Horizontal Improvement Easement area, (c) vehicular parking of commercial automobiles and for commercial loading, commercial and pedestrian ingress and egress, with respect to the Parking and Drive Aisle Easement, all as shown on Exhibit "B," attached hereto; and (d) constructing wetland mitigation areas as shown on Exhibit "C2," attached hereto. For avoidance of doubt, none of the easements granted by this section encroach on any Exclusive Building Areas on the Casino Parcel and shall not block access or materially reduce access to any Development Parcel or interfere with any business on any Development Parcel.

8.4 Right of Entry Easements for Benefit of Master Association. Declarant hereby grants to the Master Association a non-exclusive, perpetual easement on, over, upon, across, above, under and through the Master Development Site and each portion thereof to (i) exercise any right held by the Master Association under this Master Declaration or any other association documents, and (ii) perform any obligation imposed upon the Master Association by this Master Declaration or any other association documents. Notwithstanding the foregoing, the Master Association shall not enter upon any Development Parcel or Improvement without reasonable prior notice to the applicable Parcel Developer of the Development Parcel or Improvement and the Parcel Developer shall have the right to be present at any entry of the Master Association, except in cases of emergency involving imminent danger to life or property.

8.5 Wetland Mitigation, Landscaping and Drainage Easements. Declarant hereby declares, grants and conveys for the benefit of itself and the Master Association an easement across Development Parcels designated as Common Areas, except the portions thereof in an Exclusive Building Area, to:

8.5.1 Revegetate, beautify or maintain portions of Development Parcels located in and adjacent to road rights of way;

8.5.2 Revegetate or maintain, disturbed portions of the Master Development Site in order to control erosion, to beautify or restore the Common Areas to a natural condition after damage by natural or man-made causes; and

8.5.3 Preserve, improve, maintain, restore and revegetate natural and man-made storm drainage basins, wetlands and related appurtenances across Development Parcels, including the areas of Development Parcels which include drainage ways, and to convey water in those drainage ways.

8.6 No Guaranty. Nothing herein shall create an obligation on the part of Declarant or Master Association to landscape or revegetate any portion of a Development Parcel. The cost of any landscaping or revegetation conducted by the Master Association on any portion Development Parcel other than a Common Area in accordance with Section 8.5 shall be levied as a Specific Assessment against such Development Parcel. In the event any such landscaping or revegetation is undertaken by Declarant or Master Association, the Declarant or Master Association shall not be obligated to guarantee the survival of or to maintain any landscaping or vegetation installed.

8.7 Trail Easement. Declarant hereby declares, grants and conveys a non-exclusive perpetual easement on, over, upon, across and through the Trails for walking and hiking for the benefit of the Members and their Occupants and Guests and their respective Development Parcels. Minor modification to the Trails shall be made by Declarant without the approval or the vote of the Members by recording an amendment to the Master Plan and to this Master Declaration, if required, which identifies the exact locations and specifications of the Trails.

8.8 Access Easement – Resort Entry Road. In addition to the easements declared, granted and conveyed for the benefit of all Members as set forth in this Article VIII, Declarant hereby declares, grants and conveys to each Parcel Developer for the benefit of its Development Parcel, the non-exclusive right, privilege and easement to use the lands, shown on Exhibit "C6" hereto as "Resort Entry Road," for vehicular and pedestrian traffic, ingress and egress, until such time as Resort Entry Road may be accepted for dedication.

8.9 Construction Easement. Declarant hereby declares, grants and conveys an easement for the benefit of Declarant, Parcel Developers and any Occupants of a Development Parcel and their respective employees, agents and contractors in connection with the construction of Improvements in accordance with the CDP and the applicable Governmental Approvals and Laws, the location of construction equipment and materials, the erection of protective barricades, the use of airspace by overhead cranes during construction, installation of scaffolding and fencing and access for construction vehicles and personnel in, on and over any undeveloped portions of the Master Development Site.

8.10 Easements to be Established by Declarant. Declarant hereby reserves for the benefit of itself, Parcel Developers, and the Master Association the rights to utilize the easements provided in this Section 8.9, and reserves the right to grant the easements described in this Section 8.9 to:

8.10.1 Establish easements to permit construction, maintenance, repair and replacement of any Improvements necessary or required for the full development of the Project on the Development Parcels as necessary;

8.10.2 Establish easements, of access, ingress and egress over the Development Parcel and Common Areas for the purpose of maintaining, repair and installing water, gas, electric and other utility lines, sewer pipelines and laterals, if necessary, in accordance with the provisions of this Master Declaration, the Development Documents and as otherwise provided by law;

8.10.3 Establish non-exclusive perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Facilities for uses including, but not limited to, access roads and other limited access roads, paths, sidewalks and trails; any facilities necessary or useful for transit purposes, including means of transportation to, from and within the Project; shuttle stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, Improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary Governmental Authority approvals); ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls and other road supports; lighting; signage;

and

8.10.4 Grant and create other interests, reservations, exceptions and exclusions for the best interest of the Master Association and for the benefit of all Members, provided that any such action taken and any easement, lease, permit or license, interest, reservation, exception or exclusion established does not impair the use of the Common Facilities or the building areas designated on the plat for their respective intended purposes, does not encroach on any Exclusive Building Area and so long as it does not violate the terms hereof or interfere with the business of any Parcel Developer or the use, operation or business conducted on any Development Parcel or otherwise have a Material Adverse Effect.

8.11 Easements for the Benefit of Members. Declarant hereby reserves for the benefit of all the Member and their Occupants and Guests, the following described perpetual non-exclusive easements over all unimproved portions of the Common Areas for the use and enjoyment of the Development Parcels and Improvements in accordance with this Master Declaration, including any necessary access rights for the installation, maintenance and repair of utilities and services, whether publicly or privately supplied, for (i) drainage over, across and upon adjacent Development Parcels and Improvements for water from normal use of adjoining Development Parcels and Improvements, and (ii) construction, maintenance and repair of earth walls, slopes and retaining walls. Such easements may be used by Declarant, and the Master Association for such purposes reasonably necessary for the use and enjoyment of the Development Parcels, Improvements and the Common Elements, so long as it does not violate the terms hereof or interfere with the business of any Parcel Developer or the use, operation or business conducted on any Development Parcel.

8.12 Other Easements. The Master Development Site shall be subject to the following easements in addition to those specifically created in this Master Declaration.

8.12.1 Easements on Plats and of Record. The Master Development Site shall be subject to all easements shown on a plat, and all easements of record shown on Exhibit B attached hereto.

8.12.2 Easements for Parking. Temporary Guest or recreational parking shall be permitted within the Common Areas only within spaces and areas clearly marked for this purpose. Signs or markings on the paved area shall show spaces. The Master Association is hereby empowered to establish "parking" and "no parking" areas within the Common Areas, as well as to enforce these parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

8.13 Pedestrian Easement. A non-exclusive easement is hereby created over all sidewalks, plaza areas, walkways, stairways, and any other means intended or designated for pedestrian access at any time located within the Common Areas of the Project for pedestrian ingress and egress for the benefit of all Members, Occupants and their respective Guests, subject to the Master Association Rules.



8.14 Easements for Municipal and County Public Service Use. Declarant hereby reserves the right to grant, for the benefit of all future Members, easements for city, county, state and federal public services, and for public utilities provided such easement does not encroach on any Exclusive Building Area and so long as it does not violate the terms hereof or interfere with the business of any Parcel Developer or the use, operation or business conducted on any Development Parcel.

8.15 Non-Exclusive License. Declarant hereby grants a perpetual, royalty-free, non-exclusive license to Members to utilize “Adelaar”™ or “Adelaar NY” or abbreviation or reference thereof in accordance with design and use standards to be established by the Master Association.

8.16 No easement granted under this section may be altered by the Declarant or the Master Association in a manner which would have a Material Adverse Effect on the use of any Development Parcel benefited by such easement without the written approval of the benefited Parcel Developer.

## **ARTICLE IX**

### **RESTRICTIONS ON ALL PROPERTY**

9.1 Zoning Regulations. No portion of the Master Development Site shall ever be occupied or used by or for any building or purpose or in any manner, which is contrary to the Development Documents, Government Approvals, the zoning regulations applicable thereto validly in force from time to time, or the other Governing Documents, except in accordance with written approvals and variances obtained from the Board, the Master Association, or, prior to the recordation hereof, Declarant.

9.2 Architectural Control. Except in accordance with written approvals and variances obtained from the Declarant prior to the recordation hereof, all Improvements (whether temporary or permanent), alterations, repairs, excavation, grading, landscaping or other work, which in any way alters the exterior appearance of any Buildings, Improvements or property on any Development Parcel, or any Common Area, must comply with the Design Guidelines, and are subject to the prior written approval of the Design Review Committee; provided, however, that no approval is required for work done to the interior of any structure; however, interior modifications to a structure that are visible from outside of the structure and are a material change in the exterior appearance of the structure do require prior approval of the Design Review Committee. No material changes or deviations in or from the Plans and Specifications once approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. For avoidance of doubt any such Improvements made substantially in accordance with plans and specifications approved by the Board, the Master Association or, prior to the recordation hereof, Declarant may be made without approval of any kind.

9.3 Master Association Rules. No Member shall violate the Master Association Rules, if any, adopted from time to time by the Master Association.

9.4 Equal Treatment. Except as may be set forth in this Master Declaration (either initially or by amendment), any amendment or modification to the Master Declaration and all Master Association Rules shall comply with the following provisions: (a) *Similar Treatment.* Similarly situated Development Parcels shall be treated similarly; however, the Master Association Rules may vary by location, use, or other distinct characteristics of areas within the Master Development Site. (b) *Activities Within Parcels.* No Rule shall unreasonably interfere with any permitted use of a Development Parcel, except that the Master Declaration may prohibit activities which are prohibited by the CDP, Governing Documents, Governmental Approvals and Laws, that create monetary costs for the Master Association or other Parcel Developers, that create a danger to anyone's health or safety or that create unsightly conditions visible from outside of a structure,. (c) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Members or rights to use the Common Areas to the detriment of any Parcel Developer over that Parcel Developer's objection expressed in writing to the Master Association. Nothing in this provision shall prevent the Master Association from adopting generally applicable rules for use of Common Areas or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Areas or violate the Governing Documents. (d) *Leasing and Transfer of Parcels.* No Rule shall prohibit leasing or transfer of all or any portion of any Development Parcel or require approval prior to leasing or transferring all or any portion of a Development Parcel. (e) *Abridging Existing Rights.* No Rule shall interfere with the permitted use or operation of a Development Parcel which is in compliance with this Master Declaration, Governing Documents, Governmental Approvals and the Laws and rules in effect immediately prior to the enactment of such Rule. (f) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with the Declarant's ability to develop, market, and sell property described in the CDP, as permitted.

9.5 Gambling and Racing. The operation of a casino or other gambling facility or a harness racetrack on any portion of the Master Development Site or on any property owned or controlled by Declarant within Sullivan County in the State of New York shall be prohibited, except in connection with the Cappelli Leased Parcel pursuant to any existing agreements in effect as of the date hereof, and except in the event that the Casino Developer abandons its use of the Casino Parcel as a casino or other gambling facility or a harness racetrack for a period of one (1) year or more.

9.6 No Mining, Drilling or Quarrying. No Parcel Developer shall conduct mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, on the surface of the Master Development Site.

9.7 Restriction of Signs. No exterior signs or advertising devices, including, without limitation, commercial, political, informational or directional signs or devices, shall be erected or maintained on any of the Development Parcels or Common Areas, unless approved in writing by the Design Review Committee in accordance with the Design Guidelines as to size, materials, color and location, provided, however, that the following exterior signs may be erected without Design Review Committee approval: (a) to advise of rules and regulations; (b) to caution or warn of danger; (c) as required by a Governmental Authority in its approval of subsequent developments; and (d) as required by law. Any approved signs shall be located as approved by the Design Review Committee. The Design Review Committee may develop comprehensive sign regulations, provided that no such regulation may restrict any sign or advertising device for which prior

approval was granted by the Master Association, Board or Declarant prior to recordation hereof.

9.8 Underground Utility Lines. All water, gas, electrical, telephone, and other permanent utility lines within the limits of the Master Development Site must be buried underground and may not be exposed above the surface of the ground. Notwithstanding the forgoing, certain ancillary utility improvements such as meter readers, transformers, switch gear electrical boxes and service facilities may be constructed above ground as the Master Association, in conjunction with a Member and the appropriate utility service provider may reasonably determine. The location and screening of such above ground equipment must be approved by the Design Review Committee. No Improvement may be established above or below any Utility Trunk Line if such Improvement would prevent or materially interfere with the maintenance of the Utility Trunk Lines.

9.9 Service Yards. All equipment, service yards or storage piles on any Development Parcel or Common Area shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring Development Parcels, access roads and area surrounding such Parcel. The Design Review Committee in accordance with any applicable provision of the Design Guidelines shall approve all service yards in advance.

9.10 Maintenance of Property. All Development Parcels, and all Improvements on any Development Parcel, shall be kept and maintained by the Parcel Developer thereof in clean and safe condition and in good repair, ordinary wear and tear excepted. The Master Association shall keep all Common Areas, Common Facilities and Master Association Land in clean and safe condition and in good repair, ordinary wear and tear excepted.

9.11 No Noxious Activity. No noxious activity shall be carried on upon any Development Parcel or Common Area, nor shall anything be done or placed on any Development Parcel or Common Area, which is or may become a nuisance or cause significant disturbance to others, provided that usual and customary operations of a casino, racetrack and related amenities operating in accordance with the Operating Standards shall in no event be deemed a violation of this Section 9.11 or any other provision of this Declaration.

9.11.1 Declarant, each Member and the Master Association and any user of the Master Development Site, acknowledges that the Master Development Site shall include various public attractions and resort-related activities, and that events such as fireworks, concerts, festivals, and similar resort-related events may be held within the Master Development Site and acknowledges that such events and activities may result in nuisances, inconveniences, or hazards to persons and property on or in the vicinity of such events and activities which shall in no event be deemed a violation of this Declaration provided that such activities comply with the Operating Standards and rules for public health and safety.

9.11.2 Each Parcel Owner covenants, on behalf of itself, its heirs, successors, and successors-in-title, that it shall assume all risks associated with its use and ownership of property in the Community, including but not limited to, the risk of property damage or personal injury arising from or incidental to such resort-related activities.

9.12 No Hazardous Activities. No activities shall be conducted on any Development Parcel or Common Area, and no Improvements shall be constructed on any Development Parcel or Common Area, which are hazardous to any person or property.

9.13 No Unsightliness. Unsightly structures, facilities, equipment, tools, vehicles, shall be enclosed within an approved building or appropriately screened from view in accordance with the Operating Standards and customary practices at other similar mixed-use recreational development, except equipment and tools when in actual use for construction, maintenance or repairs, excepting boats (and their trailers) which may be parked in private driveways subject to any rules or regulations promulgated by the Board regarding the same; no trailers (other than boat and horse trailers), mobile homes, tractors, truck campers or trucks, other than pickup trucks, shall be kept or permitted to remain upon the Master Development Site, (except in the Recreational Vehicle Park or in other designated areas so designated by a Parcel Developer for its Occupants or Guests); provided that this Section 9.13 shall not apply to commercial vehicles providing pick-up or delivery services or ancillary to any other permitted use at the Master Development Site; no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials, or scrap shall be kept, stored or allowed to accumulate on the Master Development Site, except in approved service yards meeting the requirements of Section 9.9, and any requirements of the Design Guidelines, the Master Association or the Design Review Committee; refuse, garbage and trash shall be placed and kept at all times in a customarily utilized container, such containers to be kept within an enclosed structure or appropriately screened from view; hanging, drying or airing of clothing or household fabrics shall not be permitted on Development Parcels or Common Areas, if visible from buildings, other Development Parcels, or areas surrounding the Master Development Site.

9.14 No Annoying Lights, Sounds or Odors. Subject to Section 9.11, no light shall be emitted from any Development Parcel or Common Area, which is unreasonably bright or causes unreasonable glare or does not comply with the Design Guidelines. Subject to Section 9.11, no sound shall be emitted from any Development Parcel or Common Area, which is unreasonably loud or annoying, including, without limitation, speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively to protect the Master Development Site or Improvements thereon. Subject to Section 9.11, no odors shall be emitted from any Development Parcel or Common Area, which are noxious to others. Notwithstanding anything contained herein to the contrary, uses or activities on any Development Parcel utilized as a racetrack or casino or hotel operation and any usual and customary ancillary or attendant use, including lights, sound and odors of any kind, shall in no event constitute a violation of this Master Declaration, including this Section 9.14.

9.15 No Cesspools or Septic Tanks. No cesspools or septic tanks shall be permitted on the Master Development Site. Any other type of sewage disposal system shall be installed only upon approval by the Master Association or the Design Review Committee, and the appropriate Municipal Authority.

9.16 Trails. No Member shall have the right to alter or obstruct the maintenance, use or enjoyment of any Trail on or adjacent to any Development Parcel or Common Area. All Members and their Occupants, Guests or invitees, or other public users of the Trails, must abide by the rules and regulations and use restrictions governing the Trails as promulgated and enforced by the

Master Association in a uniform and non-discriminatory manner.

9.17 Protection of Vegetation. No trees of four (4) inches or greater in diameter (measured at breast height) shall be removed without the prior approval of the Design Review Committee pursuant to the Design Guidelines. Vegetation shall be placed and maintained on all Development Parcels and Common Areas as provided in the Landscaping Master Plan or as otherwise approved by the Board, Master Association or, prior to the recordation hereof, Declarant.

9.18 Antennas and Satellite Dishes. Except as otherwise permitted by law or by the Board, the Master Association or, prior to the recordation hereof, Declarant, antennas and satellite dishes other than for commercial uses are prohibited at the Master Development Site, unless the Design Review Committee specifically approves such antennas or satellite dishes in writing.

9.19 No Fences. No fences, walls, or other barriers shall be permitted for the purpose of enclosing or demarcating any property line boundaries without the prior written approval of the Design Review Committee, which approval may be withheld in the Design Review Committee's sole and exclusive discretion.

9.20 Temporary Residential Occupancy and Buildings. Except in the Recreational Vehicle Park and in accordance with the CDP and this Master Declaration, no trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary Improvements or structures of any kind, shall be used at any time for a residence, either temporary or permanent. The Design Review Committee may approve temporary Improvements for use during the construction of any structure on any Development Parcel, provided, such temporary Improvements shall be removed immediately after the completion of construction. Nothing herein shall limit the power of the Master Association to provide, operate and maintain temporary recreational facilities as set forth in Section 4.11 herein.

9.21 Installation of Landscaping. The Parcel Developer of a Development Parcel shall install (if not already installed) grass, trees, plants and other landscaping Improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements), on all portions of the Development Parcel, which require landscaping, in accordance with the CDP and the Landscaping Master Plan, and the Plans and Specifications approved in writing by the Design Review Committee, and/or the Governmental Approvals for that Development Parcel. If landscaping and an irrigation system are not installed on a Development Parcel in the manner and by the applicable date provided for in this Section, the Master Association shall have the right, but not the obligation, to enter upon such Development Parcel to install such landscaping Improvements as the Master Association deems appropriate in accordance with the approved Plans and Specifications for such Development Parcel (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Master Association by the Member associated with the Development Parcel upon demand from the Master Association. Any amounts payable by such Member to the Master Association pursuant to this Section shall be the personal obligation of such Member, and the Master Association may enforce collection of such amounts in the same manner and to the same extent as the collection and enforcement of Assessments hereunder.

9.22 Diseases and Insects. No Member shall permit any condition to exist upon its Development Parcel or on a Common Area or Improvement, which shall induce, breed or harbor infectious plant diseases or noxious insects.

9.23 Trash Containers and Collection. Unless screened by approved planting or fencing so as to conceal them from the view of neighboring Development Parcels, access roads and area surrounding such Parcel, no garbage or trash shall be placed or kept on any Development Parcel, Common Element, or Improvement, except in containers of a type, size and style, which are approved by the Design Review Committee or required by the Governmental Authority with jurisdiction over the Project. All rubbish, trash and garbage shall be removed from the Development Parcels, Common Elements, and Improvements in a timely manner, and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Development Parcel, Common Area, or Improvement.

9.24 Compliance With the Law. No Development Parcel or Common Area or Improvement shall be used, occupied, altered, changed, improved, or repaired, except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of New York, and the applicable Governmental Authority.

9.25 Prohibited Uses. The following operations and uses shall not be permitted on any Development Parcel:

- (a) any use or purpose which is not permitted by, or which results in a violation of, applicable Law;
- (b) "pawn" shop;
- (c) fire, bankruptcy, auction, "closeout," "going out of business" or similar sale;
- (d) warehouse operation (an operation engaged in the retail sale of merchandise to the general public, but utilizing a "rack style" or "wholesale" concept of merchandising, shall not constitute a warehouse for this purpose);
- (e) assembling, manufacturing, refining, smelting, industrial, drilling or mining operation;
- (f) permanent trailer court or mobile home park (it being understood that the operation of any transient trailer court or mobile home park serving Guests or customers of the Project will be permitted, subject to the provisions of this Master Declaration);
- (g) automobile body work or other automotive repair work (other than machine and repair shops incidental to the Permitted Uses), or any lot or showroom for the sale of new or used motor vehicles;
- (h) labor camp, junk yard, or stockyard;
- (i) dumping, disposal, incineration or reduction of garbage or refuse, other than handling or reducing such waste produced on a Development Parcel from authorized uses and if handled in a clean and sanitary manner and in accordance with applicable Law and the restrictions hereunder;
- (j) commercial laundry or dry cleaning plant (but this shall not be deemed to prohibit supportive facilities for on-site service-oriented pickup and delivery

- by the ultimate consumer or laundry facilities ancillary to the business at the Project, including any casino, hotel, spa and/or lodging facility on the Master Development Site, which exclusively services such facilities and the Guests of such facility), or laundromat open to the general public;
- (k) veterinary hospital, provided, that this shall not be deemed to prohibit customary supportive veterinary facilities for the Casino Racetrack, demonstration farms and petting zoos;
  - (l) retail car washing establishment (but this shall not be deemed to prohibit supportive facilities for such services offered to the ultimate consumer ancillary to the business at the Project, including any casino, hotel, spa and/or lodging facility on the Master Development Site, which exclusively services such facilities and the Guests of such facility);
  - (m) mortuary, funeral home, or similar service establishment;
  - (n) hospitals, provided that this shall not be deemed to prohibit a medical or dental clinic or medical offices, or the employment of ancillary medical staff for operation of a "sick room" for employees or as may be required for the operation of the Casino Project;
  - (o) thrift store, swap shop, liquidation outlet, consignment store, or store, which primarily sells used, damaged, or discontinued merchandise provided, that this shall not be deemed to prohibit art and craft markets, food markets, flea markets, green markets or similar open air events;
  - (p) brothel or for any prostitution (whether or not the same is permitted by applicable Law); and
  - (q) "sex" or "head" shop, so-called "peep shows" or other vulgar, lewd or pornographic uses, provided.

## ARTICLE X

### DESIGN CONTROL

10.1 Purpose. The Declarant hereby establishes a Commercial Design Review Committee and a Residential Design Review Committee collectively, the Design Review Committees in connection with the Project and the orderly development of the Master Development Site. The Design Review Committees shall review, study and either approve, reject or request resubmittal of proposed developments and improvements to a Development Parcel or Improvement, all in compliance with this Master Declaration, and as further set forth in the Design Guidelines.

10.2 Design Guidelines. Each Parcel Developer, Member and Association, which has not received final site plan approval as of the date this Master Declaration is recorded, shall demonstrate to the Design Review Committees that its proposed development complies with the applicable Design Guidelines (Commercial or Residential), as may be amended from time to time by the Master Association. The Commercial Design Guidelines are attached hereto as Exhibit "D." The Master Association, acting through the Board, shall enforce the Design Guidelines in its reasonable discretion. Design Committee review shall commence, and the Design Guidelines shall

govern, all proposed development on any portion of the Master Development Site, regardless of whether the Development Parcel upon which such development is proposed has been Transferred by Declarant to the Parcel Developer. Subject to this Section 10.2 and Section 10.3, the Design Guidelines shall control proposed development of the Master Development Site subject to Design Committee review hereunder.

10.3 No Retroactive Effect. If final site plan approvals or other Governmental Approvals have been obtained by a Parcel Developer prior to the date this Master Declaration is recorded, then construction and maintenance of Improvements and operation of the business on the related Development Parcel, in each case, substantially in accordance with such approval shall constitute compliance with the applicable Design Guidelines pursuant to this Declaration, regardless of any conflict or inconsistency with such items. No future amendments of the Design Guidelines, which would be inconsistent or conflict with such final approval, shall prohibit or restrict such construction, operation, maintenance or restoration or rebuilding, substantially in accordance herewith.

10.4 Membership. The Design Review Committees shall be composed of individuals or entities, which need not be representatives of Members or Parcel Developers, provided that, so long as the Declarant is paying the Declarant's Subsidy, one regular member shall be appointed by the Declarant and one representative by the Casino Parcel Developer. Unless Declarant determines otherwise, so long as the Declarant owns at least twenty percent (20%) of the land area of Master Development Site, the Design Review Committees shall consist of two (2) regular members and one (1) alternate member, one of whom shall be appointed, removed and replaced by, and serve at the pleasure of the Declarant in its sole and exclusive discretion and one of whom shall be appointed removed and replaced by, and serve at the pleasure of the Casino Parcel Developer. At such time as the Declarant no longer pays the Declarant's Subsidy, the Design Review Committees shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than five (5) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by, and serve at the pleasure of, the Board. The Declarant may at any time voluntarily surrender in writing its right, as the Declarant, to appoint and remove the members of the Design Review Committees pursuant to this Section.

#### 10.5 Organization and Operation of the Design Review Committee.

10.5.1 The term of office of each member of each Design Review Committee shall be three (3) years, commencing January 1 of each year, and continuing until his or her successor is appointed, which terms shall be staggered as determined by the Board. Should a Design Review Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 10.3 above. The Declarant may remove any member of a Design Review Committee so long as it is paying the Declarant's Subsidy at any time for any cause without notice or explanation, provided that such member shall be replaced in accordance with Section 10.4.

10.5.2 So long as Declarant pays the Declarant Subsidy, the Declarant shall appoint the chairperson of the Design Review Committee. Thereafter, the chairperson shall be



elected annually from among the members of the Design Review Committee by majority vote of said members.

10.5.3 The chairperson shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Design Review Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairperson, the party responsible for appointing or electing the chairperson may appoint or elect a successor, or if the absence is temporary, a temporary successor.

10.5.4 The affirmative vote of a majority of the members of the Design Review Committee shall govern its actions, and constitute the act of the Design Review Committee. A quorum shall consist of a majority of the members at a duly called meeting.

10.5.5 Meetings of the design Review committee may be called on 7 days prior written notice to all members of the Design Review Committee.

10.5.6 The Design Review Committee may avail itself of technical and professional advice and consultants as it deems appropriate in exercise of its reasonable judgment taking into account prudent and customary procedures of developers.

10.5.7 The Design Review Committee may require that an Association, if one exists having jurisdiction, first approve all Plans and Specifications.

10.6 Expenses. All reasonable and necessary out-of-pocket expenses of the Design Review Committees shall be paid by the Master Association, subject to the Master Association's right to charge a reasonable design review fee to reimburse itself for such actual, out-of-pocket expenses as provided for in Section 10.7 below.

10.7 Approval by Design Review Committees. Except as otherwise provided herein, no improvements (as such term is defined in the Design Guidelines) subject to review by the Design Review Committee pursuant to the Design Guidelines, including, without limitation, dwelling houses, swimming pools, ponds, parking areas, fences, walls, tennis courts, garages, driveways, antennae, flag poles, curbs, and covered walks shall ever be erected, altered, or permitted to remain on any lands within the Master Development Site, nor shall any excavating, clearing, removal of trees or shrubs, landscaping or other alteration of existing site conditions be done on, any lands within the Master Development Site other than in connection with routine maintenance and landscaping, unless complete Plans and Specifications therefore are approved by the Design Review Committee prior to the commencement of such work in its sole and exclusive discretion. In the event Plans and Specifications submitted to the Design Review Committee are disapproved, the Parcel Developer, may appeal such disapproval in writing to the Board as further described in the Bylaws.

10.8 Fee. The Design Review Committees may charge such fee or fees for its reviews of Plans and Specifications as shall be determined from time to time by the Board, or as provided in the Design Guidelines. Such fee or fees shall be reasonable in relation to the cost of the work

performed, and shall be applied uniformly.

10.9 Inspection by Design Review Committees. The Design Review Committees shall have the authority and right at any time and from time to time at any reasonable hour to inspect Improvements under construction for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.

10.10 Variances. The Design Review Committees may in writing excuse compliance with such Design Guidelines and may permit compliance with different or alternative requirements. An affirmative vote of two-thirds (2/3) of the members of the Design Review Committee must be obtained for a variance to be granted. No variance may diminish the overall quality of the design of the Master Development Site or adversely impact other Parcel Developers. The Design Review Committee does not, however, have authority to allow deviation from the requirements of the Development Documents or the Uniform Building or Fire Code, or any other applicable Law, of the Governmental Authority having jurisdiction, except as to approvals obtained prior to the recordation hereof which shall be grandfathered.

10.11 General Requirements. The Design Review Committee shall exercise its best judgment to see that all Improvements, construction, landscaping, and alterations on the lands within the Project conform and harmonize with the natural surroundings, and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines, this Master Declaration and any applicable supplemental Declaration or Governmental Approval.

10.12 Ultimate Responsibility. Each Parcel Developer, Member and Association shall at all times conform and comply with all approved Plan and Specifications for the Improvements on his or her Development Parcel, and otherwise conform and comply in all respects with the Design Guidelines, this Master Declaration, any applicable supplemental Declaration, and Governmental Approvals, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of the applicable Governmental Authority, except as to approvals obtained prior to the recordation hereof which shall be grandfathered in all respects. Each Parcel Developer, Member and Association is responsible for obtaining all Governmental Approvals as may be required to obtain approval of any Improvements from the Design Review Committee and prior to commencing construction.

10.13 Written Records. The Design Review Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all Plans and Specifications so submitted), and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument which records shall be maintained for a minimum of five years after approval or disapproval at the Master Association's principal place of business as set forth in the Bylaws.

10.14 Non-Liability of Design Review Committee Members. Neither Declarant, the Design Review Committees, any member thereof, nor any duly authorized representative thereof, shall be liable to the Master Association, Association, Member or Parcel Developer for any loss,

damage or injury arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to the gross negligence, willful misconduct or bad faith of the Design Review Committee as a whole, or any particular member thereof. The Design Review Committees shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of compliance with the Design Guidelines, this Master Declaration, any applicable supplemental Declaration, aesthetic considerations, Governmental Approval, and the overall benefit or detriment that would result to the immediate vicinity, the Project, or the Master Development Site generally. The Design Review Committee shall take into consideration the aesthetic aspects of the design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. This clause shall be inapplicable to the extent necessary, if any, to actually obtain insurance coverage required by Article XIV.

10.15 Variance in Exterior Appearance and Design in Event of Reconstruction. Any Parcel Developer or Member whose Development Parcel or Improvement has suffered damage, or any Association whose Common Area has suffered damage, may apply for approval to the Design Review Committee for reconstruction, rebuilding or repair of the Parcel Developer's or Development Parcel or Improvement, or the Common Area, in a manner that will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete Plans and Specifications, showing the proposed reconstruction and the end result thereof. The Design Review Committee shall grant such approval only if the design proposed would result in a finished structure in compliance with the then applicable Design Guidelines, or is consistent with the prior approved final site plan approval for such Development Parcel or other Governmental Approvals, in the case of Members who received such approval(s) prior to the date this Master Declaration was recorded. For avoidance of doubt, no approval is required to rebuild or reconstruct any Improvements substantially in accordance with the Approved Plans and Specifications existing at the affected Parcel immediately prior to such damage.

## **ARTICLE XI**

### **AMENDMENTS**

11.1 Amendment. Subject to the other provisions of this Master Declaration, including without limitation, the rights of Eligible Mortgagees pursuant to Article XVI, this Master Declaration may be revoked or amended, as follows:

11.1.1 Prior to Declarant's Transfer of the first Development Parcel that is not to an Affiliate this Master Declaration may be amended or revoked by Declarant's execution of an instrument amending or revoking same.

11.1.2 This Master Declaration and any amendments thereto may be amended solely by majority vote of the Voting Interests of the Members unless (1) stated explicitly

otherwise in the Master Declaration or (2) such change, amendment, modification or revocation would have or would reasonably be expected to have a Material Adverse Effect on any Parcel Developer, in which case the affirmative vote of any such impacted Parcel Developer shall be required for the change, amendment, modification or revocation.

11.1.3 No amendment shall be effective until executed by the President or Secretary of the Master Association, and recorded in the office of the Sullivan County Clerk.

11.1.4 Notwithstanding the foregoing, any provision of the Articles, the Bylaws, or this Master Declaration, which expressly requires the approval of a specified percentage or specified percentages of the Voting Interests of the Master Association for action to be taken under said provision can be amended only with the affirmative vote or written consent of not less than the same percentage or percentages of the voting power of the Master Association. Any amendment subject to this provision shall be effective after the specified approval has been given and that fact has been certified in a writing executed by the President and the Secretary of the Master Association.

11.2 Unilateral Amendments. Notwithstanding anything contained in this Master Declaration to the contrary, this Master Declaration may be amended unilaterally at any time (including prior to the Transfer of the first Development Parcel), and from time to time, by Declarant if such amendment is (i) necessary to correct typographical errors, (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith and (iii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Development Parcels, Common Areas or Improvements subject to this Master Declaration, so long as such amendment or modification has no Material Adverse Effect.

11.3 Right of Amendment if Requested by Governmental Agency. Notwithstanding anything herein to the contrary, Declarant reserves the unilateral right to amend all or any part of this Master Declaration to such extent and with such language as may be required by a Governmental Authority, which requests such an amendment as a condition precedent to such agency's approval or implementation of this Master Declaration. Any such amendment shall be effected by the Declarant's recordation of an amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency requesting the amendment and setting forth the amendatory language requested by such agency or institution.

## **ARTICLE XII**

### **DECLARANT'S RIGHTS**

12.1 Transfer of Declarant's Rights. The special rights and obligations of the Declarant may be transferred to any other Person, provided that (a) the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Master Declaration and (b) such Person acquires all or substantially all of Declarant's interest in the Master Development Site, (c) such Person assumes all of the obligations of Declarant hereunder and (c) no such transfer shall be effective

unless it is in a written instrument signed by Declarant, and duly recorded in the Office of the Clerk for Sullivan County.

12.2 Sales Material. Declarant shall retain all copyright, trademark and other intellectual property in the name "Adelaar"<sup>TM</sup> or "Adelaar NY", subject to the license granted in Section 8.15 hereof, until such time as Declarant divests itself of all right, title and interest in and to any portion of the Master Development Site.

12.3 Modifications. Subject to the terms of this Master Declaration, including without limitation the Operating Standards, the Governing Documents and the Development Documents, Declarant reserves the right to vary the timing, mix, type, use, style and numbers of Development Parcels and Improvements, the materials and other such details of construction or modifications with respect to the Master Development Site.

12.4 Amendment. This Article may not be amended or waived without the express written consent of the Declarant.

### ARTICLE XIII

#### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

13.1 Agreement to Avoid Costs of Litigation. The Master Association, Declarant, Members and all Persons subject to this Master Declaration, and any Person not otherwise subject to this Master Declaration (collectively, "Bound Parties"), agree to encourage the amicable resolution of disputes involving the properties within the Project, and to avoid the emotional and financial costs of litigation if at all possible. Each Bound Party hereby covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving properties within the Project, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Master Declaration or the Governing Documents (collectively, "Claim"), except for those Exempt Claims authorized under Section 13.3 below, shall be subject to the procedures set forth in Section 13.2.

13.2 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has fully complied with the following procedures:

13.2.1 Notice. The Claimant shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely:

13.2.1.1 The nature of the Claim, including date, time, location, person involved, Respondent's role in the Claim;

13.2.1.2 The basis of the Claim (i.e., the provision of the Master Declaration, Governing Documents, or other authority out of which the Claim arises);

13.2.1.3 What Claimant wants Respondent to do or not to do to resolve the Claim; and

13.2.1.4 That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

13.2.2 Good Faith Negotiation.

13.2.2.1 Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet promptly in person, and confer for the purpose of resolving the Claim by good faith negotiation.

13.2.2.2 Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the overall Master Association and Project community.

13.2.3 Allocation of Costs of Resolving Claims.

13.2.3.1 Each Party shall bear its own costs incurred prior to and during the proceedings described in this Section 13.2, including the fees of its attorney or other representative.

13.2.4 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Section 13.2.2 above and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the award following mediation and any Party thereafter fails to comply with such award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or award without the need to again comply with the procedures set forth in this Section.

13.2.5 In such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

13.3 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 13.2:

13.3.1 Any suit by Declarant against any Bound Party to enforce the provisions of this Master Declaration or to enforce any of Declarant's developmental rights set forth in this Master Declaration, including any defensive or responsive actions by the party against whom the action is taken;

13.3.2 Any suit by the Master Association against any Bound Party to enforce the

provisions of this Master Declaration, including any defensive or responsive actions by the party against whom the action is taken;

13.3.3 Any suit by the Master Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Master Association's ability to enforce the provisions of this Master Declaration, including any defensive or responsive actions by the party against whom the action is taken;

13.3.4 Any suit between Members seeking redress on the basis of a Claim or by a Member to enforce the terms of this Agreement, which would constitute a cause of action under the law of the State of New York in the absence of a claim based on the Governing Documents, if the amount in controversy exceeds \$25,000.00; and

13.3.5 Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage.

13.3.6 Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 13.2, but there shall be no obligation to do so.

13.4 MAE Dispute Resolution. Any Member who in good faith objects (an "Objecting Member") to another Member's assertion that an action would have a Material Adverse Effect, (the "Asserting Member") may invoke the MAE Dispute Resolution procedures hereunder, provided that the Objecting Member notifies the Master Association, in writing, within five (5) business days from the date the Objecting Member has actual knowledge of the Asserting Member's claim that an action would have a Material Adverse Effect. If no Members timely object to an Asserting Member's claim of a Material Adverse Effect, the action shall be deemed to have a Material Adverse Effect on the Asserting Member.

13.4.1 In the event that an Objecting Member timely objects to an Asserting Member's claim that an action would have a Material Adverse Effect, the Members shall endeavor to resolve amicably by negotiation any MAE Dispute. The Members shall meet within five (5) days of the Objecting Member's written objection notice to the Master Association in an effort to resolve the MAE Dispute.

13.4.2 Any MAE Dispute that is not resolved within ten (10) days following the Meeting, or within such other period as the parties may agree in writing, shall be finally settled by arbitration administered by the Judicial Arbitration and Mediation Service ("JAMS"), in accordance with the Expedited Procedures provisions of the JAMS Comprehensive Arbitration Rules and Procedures, in effect at the time of the arbitration (the "JAMS Rules"), provided, however that with respect to any such arbitration, the Arbitrator (i) shall apply the standards set forth in Section 13.4.5. The award rendered shall be final and binding on the parties. Judgment on the award may be entered in any court of competent jurisdiction.

13.4.3 The place of arbitration shall be New York, New York, and the proceedings shall be conducted in the English language.

13.4.4 The arbitration shall be conducted by a sole arbitrator. An arbitration timely submitted in accordance with this Section shall be held before a single Arbitrator, selected by mutual agreement of the Class A and Class B Members. The Arbitrator shall be a qualified, disinterested and impartial person, who shall have at least ten (10) years' experience in the development, construction, and/or operation, as applicable, of commercial resort or similar large-scale integrated commercial resort development projects. In the event that the Class A and Class B Members are unable to reach agreement on the mutually selected arbitrator, an arbitrator shall be designated through application to JAMS.

13.4.5 In evaluating whether a particular action would have a Material Adverse Effect on a Member or Parcel Developer, the Arbitrator shall consider (i) the increase in costs to the Member or Parcel Developer claiming such Material Adverse Effect in relation to the expected monetary benefits of any action (including whether such costs will be incurred in the short-term, while the monetary benefits will only accrue over a long period of time) to such Member or Parcel Developer and (ii) the probability that the action will actually accrue the expected benefits to the Parcel Developer claiming such Material Adverse Effect in relation to the adverse impact to the affected Parcel Developer. The Arbitrator shall exclude from consideration any effect, consequence or result due to general economic or regulatory conditions affecting a Parcel Developer or the industry in which it operates, and any effect, consequence or result, which is not measurable or demonstrable by commercially reasonable and accepted standards.

13.4.6 The costs of arbitration shall be paid by the unsuccessful party(ies), as determined by the arbitrator. The unsuccessful party(ies) shall pay to the successful party(ies) all reasonable out-of-pocket fees and expenses, including reasonable attorneys' fees, incurred by the successful party(ies) in connection with the arbitration, and the fees and expenses of the arbitrator conducting the arbitration. Except with respect to a successful claim by one party that the other party has unreasonably withheld its consent in bad faith, the arbitrator may not award or recommend any damages to be paid by either party.

13.4.7 Waiver of Litigation. The provisions specified in this Section 13.4 are and shall be the exclusive remedy for the resolution of any MAE Dispute. The Members waive the right to commence litigation relating to a MAE Dispute, except that if any Party thereafter fails to comply with the decision of the Arbitrator of any MAE Dispute, then any other Party may file suit or initiate administrative proceedings to enforce such decision.

## **ARTICLE XIV**

### **INSURANCE**

14.1 Common Elements. The Master Association shall maintain fire and extended coverage insurance for no less than one-hundred percent (100%) of the maximum insurable value of insurable Improvements in a Common Area, including without limitation all Common



Elements. The insurance coverage shall name as the insured the Master Association for the benefit of the Members. Premiums for all insurance carried by the Master Association are Common Expenses, and shall be included in the Common Assessment made by the Master Association.

14.2 Fidelity Coverage. The Master Association shall maintain fidelity coverage against dishonest acts on the part of Managers, trustees, employees, agents or volunteers responsible for handling funds collected and held for the benefit of the Members, including without limitation members of the Design Review Committee. The fidelity bond or insurance must name the Master Association as the named insured, and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1½) times the Master Association's estimated annual operating expenses and total reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. Additionally, the Master Association shall maintain director's and officer's liability coverage for the Board and officers of the Master Association, with limits of liability of not less than \$1,000,000.

14.3 Waiver of Subrogation. The Master Association hereby waives and releases all claims against the Board, the Members, the Declarant, Parcel Developers and the Guests, Occupants, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

14.4 Liability Insurance. The Master Association shall maintain a comprehensive policy of public liability insurance, covering all of the Common Elements. Such insurance policy shall contain a "severability of interest" clause or endorsement that shall preclude the insurer from denying the claim of a Member because of negligent acts of the Master Association or other Members. Coverage shall have limits of liability of not less than \$2,000,000.00 per occurrence for personal injury and/or property damage.

14.5 Other Insurance and General. The Master Association shall also maintain Worker's Compensation Insurance as required by law, and may maintain other liability insurance as it may deem desirable, insuring each Member and Owner and the Master Association, Board and any Manager, from liability in connection with the Common Elements, the premiums for which are Common Expenses included in the Common Assessments made against the Members. Such insurance policies shall have severability of interest clauses or endorsements that shall preclude the insurer from denying the claim of a Member because of the negligent acts of the Master Association or other Member. Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Master Association, and open for inspection by the Members at any reasonable time.

14.6 Members' Fire and Extended Coverage. Each Parcel Developer and Member shall keep the Buildings and other structures and Improvements on its respective Development Parcel(s) other than any Common Elements, insured against loss or damage by fire and the perils commonly covered in an amount sufficient to restore the Development Parcel to its condition prior to the damage.

14.7 Members' Public Liability Coverage. Each Parcel Developer and Member shall maintain a policy of comprehensive public liability insurance, naming itself as the insured and its Mortgagees if required by a Mortgagee, the Master Association and Declarant as additional insureds against claims on account of bodily injury and property damage incurred upon or about its Development Parcel, such insurance to be written with limits of not less than \$1,000,000 in respect of bodily injury to or death of any number of persons arising out of any one occurrence, \$1,000,000 per occurrence in respect of any property damage and \$2,000,000 in the aggregate in respect of bodily injury, death or property damage. Each Parcel Developer and Member shall maintain umbrella liability coverage of not less than \$10,000,000.

14.8 Mutual Indemnification. Each Parcel Developer and Member shall indemnify and save harmless the Master Association, each other Parcel Developer and Declarant from and against all claims, actions, damages, liabilities and expenses in connection with actions by third parties for bodily injury, death or property damage arising out of accidents occurring on any part of the indemnitor's Development Parcel occasioned or alleged to have been occasioned wholly or in part by an act or omission of the indemnitor or indemnitor's employees, agents or contractors, provided the indemnitee in question and its employees, agents and contractors are free of gross negligence, breach of contract and willful misconduct.

14.9 Members' Policies of Insurance. Each Parcel Developer and Member shall deliver to the Master Association and upon request, to the other Parcel Developers and Mortgagees, a certificate of insurance for the policies requested to be maintained under this Article and evidence of the renewal of such insurance as from time to time may be required. Each Parcel Developer and Member shall not reduce or cancel any policies required hereunder unless prior written notice shall have been given to the Master Association, Declarant and Mortgagees. Each policy shall name the Master Association, other Parcel Developers, Declarant and Manager as additional insureds thereunder.

## **ARTICLE XV**

### **ENFORCEMENT**

15.1 Remedies and Enforcement. Declarant and the Master Association shall have the right to enforce this Master Declaration, by appropriate proceedings at law or in equity, including the right to enjoin any violation hereof or thereof; provided, that the Master Association shall have the exclusive right to enforce the Design Guidelines and Operating Standards and to enforce liens and remedies provided herein with respect to the levy, collection, and enforcement of liens for Assessments. No violation or breach of this Master Declaration shall be deemed a default hereof, unless such breach or violation continues for 30 days following the date such the applicable Member receives written notice from the Board of such violation or breach, provided that such cure period shall extend to 60 days if such Member is diligently prosecuting cure of the same.

15.2 Penalties. The Master Association may assess penalties against a Parcel Developer Member for a breach of the Design Guidelines or Operating Standards, such penalty not to exceed \$1,000.00 per day for each such breach. Penalties hereunder shall be levied against the respective

Member as a Specific Assessment in accordance with Article VII.

15.3 Attorneys Fees and Costs. Any judgment, rendered in any action or proceeding to enforce this Master Declaration or any of the other Governing Documents, shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the Prevailing Party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

15.4 Nuisance. Any act or omission resulting in a material breach of this Master Declaration or the other Governing Documents is hereby declared to be and constitute a nuisance that constitutes a default hereunder and subject to the cure rights provided for in Section 15.1, every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such act or omission and may be exercised by Declarant, the Master Association, or any Member, except as otherwise provided herein.

15.5 Cumulative Remedies. All rights, options, and remedies of Declarant, the Master Association, or any Member for the enforcement of the Governing Documents shall be deemed cumulative and none of such rights, options, or remedies shall be deemed exclusive.

15.6 Waiver. The failure to enforce any of the covenants contained in the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter.

15.7 Indemnification. The noncompliant Member whose Development Parcel is in violation of the use restrictions and covenants described in this Master Declaration, shall indemnify the Master Association, or Declarant or Declarant Affiliate, or its agents or employees, from any loss or damage to persons or property, and from any expenses associated with any claims arising from any such loss or damage which is related to the performance of the work to bring such Development Parcel into compliance with this Master Declaration.

15.8 Limitation on Liability. Notwithstanding any other terms of this Master Declaration, whether express or implied, or obligation or duty at law or in equity, to the fullest extent permitted by applicable law as the same exists or may hereafter be amended, no direct or indirect partners, members, trustees, directors, officers, shareholders, employees, incorporators, agents, affiliates or controlling persons of the Board, the Members, the Declarant, Parcel Developers (each, an "Indemnified Person") shall be liable to the Board, Declarant or any Member for any loss, damage or claim incurred by reason of any act or omission taken or omitted by such Indemnified Person, provided that such act or omissions does not constitute willful misconduct or gross negligence of such Indemnified Person. Any amendment or repeal of this Section shall be a Major Decision.

## **ARTICLE XVI**

### **MORTGAGE PROTECTION CLAUSE**

16.1 Mortgage Protection. The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein. To be considered an Eligible Mortgagee, a Mortgagee shall provide the Board with a certified copy of its recorded Mortgage,

the name and address of the Mortgagee and a statement that the Mortgage is a Mortgage, together with a written request that it receive notice of the matters and actions described below. The Eligible Mortgagee shall be stricken from the roster upon request by such Eligible Mortgagee or upon receipt by the Board of a certified copy of a recorded full release or satisfaction of the Eligible Mortgage. Notice of such removal shall be given to the Eligible Mortgagee unless the Eligible Mortgagee requests the removal. Upon the Master Association's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

16.1.1 Any condemnation loss or any casualty loss, which affects a material portion of the Project or the Common Elements on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

16.1.2 Any delinquency in the payment of Assessments or charges owed by a Member whose Development Parcel is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

16.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Master Association; and

16.1.4 Any default by a Member in the performance of such Member's obligations under this Master Declaration, the Articles, or the Bylaws, which default is not cured within sixty (60) days.

16.1.4.1 Mortgagee shall have forty five (45) days from receipt of such notice to cure any default, provided that if such cure cannot be exercised without possession or control of the applicable Development Parcel, Mortgagee shall have the amount of time reasonably necessary using diligent efforts to obtain such possession or control whether by foreclosure or otherwise and cure such default.

16.2 Estoppel. Mortgagee has a right to obtain estoppels from all the Master Association and Declarant containing customary information, including that the Declaration is in full force and effect, that there is no default by any Member, the Assessments payable by such Member and any other matter reasonably requested by Mortgagee.

16.3 Subordination of Lien. The Assessment or claim against a Development Parcel, or part thereof or interest therein, for unpaid Assessments or charges levied by the Master Association pursuant to this Master Declaration, shall be subordinate to any Mortgage affecting such Development Parcel, or part thereof or interest therein, and the Mortgagee thereunder, which comes into possession of or obtains title to such Development Parcel, or part thereof or interest therein, shall take the same free of such lien or claim for unpaid Assessment or charges, but only to the extent of Assessments or charges that accrue prior to foreclosure by the Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment lien, or claim, which is described in the preceding sentence as being subordinate to a Mortgage so as not to burden a Mortgagee that comes into possession or which obtains title, shall be collected or enforced by the Master Association from or against any

Mortgagee, a successor in title to Mortgagee, or the Development Parcel, or part thereof or interest therein, affected or previously affected by the Mortgage concerned.

## ARTICLE XVII

### CONDEMNATION

17.1 Notice. Whenever all or any part of the Common Elements shall be taken or conveyed in lieu of and under threat of condemnation by a Governmental Authority, each Member shall be entitled to notice of the taking, but the Master Association shall act as attorney-in-fact for all Members in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

17.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Master Association as trustee for all Members to be disbursed, as follows:

(i) if the taking involves a portion of the Common Elements on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Members representing at least sixty-seven percent (67%) of the votes in the Master Association shall otherwise agree, the Master Association shall restore or replace such Improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefore, in accordance with plans approved by the Board and the Design Review Committee;

(ii) if such Improvements are to be repaired or restored, the provisions above regarding the disbursement of funds in respect to casualty damage or destruction, which is to be repaired, shall apply; and

(iii) if the taking does not involve any Improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed to Members in proportion to their respective Assessment, first to the Mortgagees and then to the Members.

17.3 Complete Condemnation. If all of the Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Master Declaration shall terminate, and the condemnation award shall be distributed to the Master Association as trustee for all Members to be distributed in accordance with this Declaration and the Bylaws.

## ARTICLE XVIII

### COMPLIANCE WITH LAW

18.1 Compliance By Master Association. The Master Association shall perform its obligations hereunder in accordance with all applicable Laws.

18.2 Compliance By Parcel Developers. Each Association, Member and Parcel Developer shall be responsible for compliance with all Laws with respect to their Development Parcel, and use of the Master Development Site by such Association, Member and Parcel Developer, and its agents, successors, assigns, Guests and Occupants.

## ARTICLE XIX

### **GENERAL PROVISIONS**

19.1 Protection of Lenders. A breach of this Master Declaration or the Articles or Bylaws shall not affect or impair the lien or charge of any First Mortgage made in good faith and for value on any Development Parcel, provided, that any subsequent holder of a property interest in such property shall be bound by the Governing Documents, regardless of how such property interest was acquired.

19.2 Successors and Assigns. Except as otherwise provided herein, this Master Declaration shall be binding upon and shall inure to the benefit of Declarant, the Master Association, and each Member and their respective heirs, personal representatives, successors and assigns.

19.3 Leases. Any agreement for the leasing or rental of a Development Parcel or Improvement (hereinafter in this Section referred to as a "Lease"), shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Master Declaration, together with all other Governing Documents. Said Lease (excluding immaterial space leases and licenses for kiosks and similar spaces, which shall in all instances comply with the Operating Standards) shall further provide that the lessee thereunder shall comply with the terms of the Master Declaration and the other Governing Documents. All Leases shall be in writing. Any Parcel Developer who shall lease the Parcel Developer's Development Parcel or Improvement shall be responsible for assuring compliance with this Master Declaration and the other Governing Documents.

19.4 Use of Funds Collected by the Master Association. All funds collected by the Master Association, including Assessments, reserves and contributions to the Master Association paid by Members, if any, shall be held by the Master Association in a fiduciary capacity to be expended in their entirety for the purpose of the managing, maintaining, caring for, preserving and architecturally controlling the Master Development Site and for other permitted purposes as set forth in this Master Declaration. No part of said funds shall inure to the benefit of any Member (other than as a result of the Master Association managing, maintaining, caring for, preserving and architecturally controlling a Development Parcel and other than as a result of expenditures made for other permitted purposes as set forth in this Master Declaration). Contributions to the Master Association paid by Members, if any, shall be maintained in a segregated account.

19.5 No Perimeter Fencing: Public Use of Trails. Declarant does not propose to enclose the entire perimeter of the Master Development Site with fencing. Members, Guests and Occupants of the Master Development Site are therefore hereby placed on notice of the Public Rights.

19.6 No Public Right or Dedication. Nothing contained in this Master Declaration shall be deemed to be a gift or dedication of all or any part of the Project or the Master Development Site to the public, or for any public use, unless expressly provided otherwise herein.

19.7 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any, right, title, estate or interest in any Development Parcel and/or the Master Development Site does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and, covenant contained, referred to or incorporated herein, whether or not any reference to his Master Declaration is contained in the instrument, which such Person acquired an interest in said Development Parcel.

19.8 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to any Person at the address given by such Person to the Master Association for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Master Association. Such address may be changed from time to time by notice in writing to the Master Association. All notices to the Master Association may be sent to the following address, subject to the Board's right to change such address from time to time by notice in writing to the Members:

Concord Resorts Master Association, LLC

[ intentionally left blank ]

19.9 Interpretation. Except for judicial construction, the Master Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Master Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Master Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants, conditions, easements, restrictions and provisions hereof. All such construction and interpretation shall be consistent with the other terms and provisions of the Governing Documents, and shall reflect the intent of this Master Declaration and the overall Comprehensive Development Plan for the Project as embodied in the Governing Documents. The provisions of this Master Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a mixed-use commercial resort community within the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter

shall each include the masculine, feminine and neuter. The terms "recorded and recordation" shall refer to recording as the official records of the Sullivan County Clerk's Office.

19.10 Severability. Invalidity or unenforceability of any provision of this Master Declaration in whole or in part shall not affect the validity or enforceability of any other provision of this Master Declaration.

19.11 Change of Circumstances. Except as otherwise expressly provided in this Master Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Master Declaration.

19.12 Interpretation. This Master Declaration shall be interpreted and construed in accordance with the laws of the State of New York.

19.13 No Waiver. No delay or omission by the Declarant, Master Association, or any Member in exercising any right accruing under the provisions of this Master Declaration shall impair any such right or be construed to be a waiver thereof.

19.14 No Joint Venture. Nothing contained in this Master Declaration shall be construed to create a partnership or joint venture.

EPT CONCORD II, LLC

By: EPT Concord, LLC

By: EPR Properties, LLC

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

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

Title: \_\_\_\_\_

**Gregory K. Silvers**  
**Vice President**



CONCORD RESORTS MASTER ASSOCIATION, LLC

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

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

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, EPT Concord II, LLC has executed this Master Declaration this 6<sup>th</sup> day of December, 2013

STATE OF MISSOURI     )  
  )     SS:  
COUNTY OF JACKSON    )

On the 6<sup>th</sup> day of December, 2013, before me, the undersigned, a notary public in and for said state, personally appeared GREGORY K. SILVERS

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_

**SARAH E. NEWHAM**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Jackson County  
My Commission Expires: June 14, 2017  
Commission # 13728582

IN WITNESS WHEREOF, Concord Resorts Master Association, LLC has executed this Master Declaration this \_\_\_ day of \_\_\_\_\_, 2013

STATE OF NEW YORK    )  
  )    SS:  
COUNTY OF SULLIVAN )

On the \_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a notary public in and for said state, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## **LIST OF EXHIBITS**

|           |  |
|-----------|--|
| Exhibit A | Master Development Site Description and Parcel Map |
| Exhibit B | Casino Parcel Description                          |
| Exhibit C | Common Element Maps                                |
|           | C1 – Trails  |
|           | C2 – Forest and Wetland Management Area            |
|           | C3 – Stormwater                                    |
|           | C4 – Water Service                                 |
|           | C5 – Sewer   |
|           | C6 – Roadways                                      |
| Exhibit D | Commercial Design Guidelines                       |
| Exhibit E | Illustrative Map of Golf Parcel                    |
| Exhibit F | Illustrative Master Plan                           |