Membership Plan

2006 Edition

Vail Mountain Club®
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Vail Mountain Club (the "Club") is a private club located at the base of Vail Mountain in the heart of Vail Village where unmatched parking amenities are coupled with unique skiing, recreational and social privileges for the use and enjoyment of members and their guests. The Club is designed to provide the ultimate in convenience for those desiring to experience the finest that the Vail community has to offer.

This Membership Plan (this “Plan”) describes the membership opportunity at Vail Mountain Club. Memberships in the Club are offered for the purpose of permitting members and their guests to enjoy the use of the Club facilities and the special privileges of membership. Each person desiring a membership in the Club should carefully read this Plan, the Rules and Regulations and the Membership Application (collectively, the “Membership Documents”), and should seek professional advice to evaluate the Membership Documents.

THE MEMBERSHIP DOCUMENTS SET FORTH ALL REPRESENTATIONS AND TERMS CONCERNING MEMBERSHIPS IN THE CLUB. NO PERSON IS AUTHORIZED TO MAKE ANY REPRESENTATION OR TO PROVIDE ANY INFORMATION IN REGARDS TO VAIL MOUNTAIN CLUB CONTRARY TO OR IN ADDITION TO THE INFORMATION CONTAINED IN THIS PLAN AND THE OTHER MEMBERSHIP DOCUMENTS AND, IF PROVIDED, THE REPRESENTATION OR INFORMATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE CLUB OR ITS OWNER. THE CLUB AND ITS OWNER WILL NOT BE BOUND BY ANY TERMS OR REPRESENTATION AS TO THE TERMS OR CONDITIONS OF MEMBERSHIP OTHER THAN AS SET FORTH IN THIS MEMBERSHIP PLAN.

MEMBERSHIPS IN THE CLUB ARE BEING OFFERED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING MEMBERS THE USE OF THE CLUB’S AMENITIES. THE CLUB IS NOT AN EQUITY CLUB AND MEMBERS HAVE NO OWNERSHIP OR OTHER INTEREST IN THE CLUB. MEMBERSHIP IN THE CLUB SHOULD NOT BE VIEWED AS AN INVESTMENT AND NO MEMBER SHOULD EXPECT TO DERIVE ECONOMIC BENEFITS FROM SUCH MEMBERSHIP.

THE CLUB IS OWNED AND OPERATED BY VAIL ASSOCIATES, INC. AS A NON-EQUITY CLUB FOR THE INVESTMENT AND PROFIT OF VAIL ASSOCIATES, INC. AND/OR ITS AFFILIATES ONLY.

NO FEDERAL, STATE OR GOVERNMENTAL AUTHORITY HAS PASSED UPON OR ENDORSED THE MERITS OF THIS MEMBERSHIP PLAN.
Membership Plan

VAIL MOUNTAIN CLUB

ARTICLE 1
MEMBERSHIP FEATURES AND AMENITIES

Section 1.1 Membership Opportunity.

Vail Associates, Inc. (the “Company”) owns and operates the Club. This Plan, together with the Rules and Regulations and the Application for Membership, set forth the rights and privileges of membership for Members and their families and guests to enjoy the amenities available at the Club. As used in this Plan, a “Member” means the holder of a membership in the Club, except that with respect to a membership held by a legal entity or business it means an individual designated by the entity or business to enjoy the privileges of membership.

Section 1.2 Amenities.

The amenities offered by the Club are expected to include the following and such other amenities as may be made available from time to time for use by Members and their guests (collectively, the “Club Amenities”):

• Dedicated valet parking near the Vista Bahn chairlift at the base of Vail Mountain;

• A clubhouse featuring a luxurious lounge offering limited food and beverage services looking out on picturesque Vail Mountain; a private locker room accessible by elevator with showers and individual oversized lockers for each Member; a small business center providing high-speed internet access; and ski storage facilities with valet service;

• Preferential spa services and programs at the renowned Avanyu Spa in the adjacent Lodge at Vail along with use of the Spa’s outdoor pool and hot tubs and its training area with state-of-the-art fitness and cardiovascular equipment, a multi purpose aerobic room and men’s and women’s locker rooms with steam showers; and

• Resourceful and knowledgeable concierge services designed to help Members coordinate their daily activities in the Vail community, including the acquisition of ski passes and lift tickets in the winter, booking guided hikes and fishing trips in the summer, and assisting with Members’ overall entertainment needs year round.
Section 1.3 Construction of Facilities.

(a) Members will be notified when the clubhouse and parking facilities (collectively, the “Initial Facilities”) are completed. All membership deposits received from the sale of memberships will be deposited in an escrow account at a financial institution selected by the Company until the Initial Facilities are available for use, at which time the escrow deposits and any interest thereon will be released to the Company. The Club may obtain the release of the membership deposits from escrow at an earlier date by posting a performance bond, a letter of credit or other form of security for the completion of the Initial Facilities. Neither the Company nor the Club shall have any liability whatsoever to any Member in the event the Initial Facilities are not constructed, other than the return of the Member’s membership deposit, without interest.

(b) The Company does not make any representations with respect to the design, location, timing of completion, size or amount of the Initial Facilities or any other facilities made available to Members from time to time. The Company reserves the right to determine the date each of the Club Amenities will be made available. The obligation to pay dues is not dependent on the availability of all the Club Amenities or the frequency of use. Repair and maintenance of facilities or acts of God and other occurrences may make it necessary for the Company to change hours of use or restrict the use of the Club Amenities or to close the Club temporarily. The Company will not reduce or suspend dues during the time when the Club Amenities, in whole or in part, are not available.

Section 1.4 Rules and Policies.

To enhance the recreational and social pleasure of Members and their families and guests, the Company will establish from time to time rules, regulations, policies, guidelines, or systems governing access to or reservation of the Club Amenities (the “Rules and Regulations”). The Rules and Regulations are binding on all Members as if incorporated in and forming part of this Plan. In the event of any conflict or inconsistency between this Plan and the Rules and Regulations, the provisions of this Plan shall prevail. In order to meet the changing needs and desires of the Club, the Company reserves the right, in its sole discretion, to modify, amend or add to the Rules and Regulations, the membership classes and categories, the right to use the Club and its amenities and the guest privileges.
ARTICLE 2
MEMBERSHIPS

Section 2.1 General.

Club membership shall be evidenced by an application for membership (the “Application for Membership”) completed and signed by the Member and the Company indicating approval of the candidate for membership. All memberships are subject to and all Members are bound by the terms and conditions of this Plan, the Rules and Regulations and the Application for Membership.

Section 2.2 Eligibility.

Application and selection for membership in the Club shall be in accordance with the procedures and criteria and the Rules and Regulations established from time to time by the Company. Invitations to membership shall be extended without regard to age, race, national origin, gender, religion or disability. Acceptance decisions shall be at the sole discretion of the Company. Candidates accepted for membership are entitled to Membership privileges in the selected membership class.

Section 2.3 Membership Classes.

The membership of the Club will consist of the Full Membership, Social Membership, Clubhouse Membership and Founder Membership classes set forth in this Article 2 and such classes (and categories) as the Company may establish from time to time. Each Member shall have a nonexclusive, revocable license to use the Club Amenities in accordance with the terms and conditions of the Member’s membership class and category as outlined in this Plan and the Rules and Regulations.

Section 2.4 Full Memberships.

A “Full Membership” allows the Member (the “Full Member”) to enjoy valet parking services and all other Club Amenities. Full Memberships are eligible for reissuance as provided in this Plan.

Section 2.5 Social Memberships.

A “Social Membership” allows the Member (the “Social Member”) to enjoy all Club Amenities other than the valet parking services. Social memberships are eligible for reissuance as provided in this Plan.
Section 2.6 Clubhouse Memberships.

“Clubhouse Memberships” will be available to certain owners of properties located in the vicinity of the Club, pursuant to certain Development and Use agreements entered into by the Company and/or its affiliates (“Clubhouse Members”). Clubhouse Members will enjoy all Club Amenities other than the valet parking services, private lockers and ski storage facilities. Clubhouse Memberships may be transferred to the subsequent purchaser of the Member's residential property in accordance with the applicable Development and Use agreement and/or Application for Membership. Clubhouse Memberships will not count against the total number of Club memberships offered by the Company, as set forth in Section 2.8(b) below.

Section 2.7 Founder Memberships.

A “Founder Membership” allows the Member (the “Founder Member”) to enjoy Club Amenities as specified by the Club from time to time and is available only to management-level persons of the Company or other individuals as designated by the Company. Founder Members are not required to pay membership deposits or dues, and may only utilize the valet parking privileges during non-peak periods, as designated by the Company. The Company may issue up to twenty (20) Founder Memberships which will not count against the total number of Club memberships offered by the Company, as set forth in Section 2.8(b) below.

Section 2.8 Control of Membership Classes.

(a) Subject to subparagraph (b) below, the number of memberships issued in any class and the privileges accorded each class will be determined by the Company, and the Company has the authority to establish, modify or close any class of membership and any category within such class as the Company from time to time may determine, in its sole discretion, to be in the best interest of the Club. The Company may from time to time, in its sole discretion, prescribe or modify membership deposits, initiation fees, dues, assessments, periodic economic incentives, privileges and restrictions applicable to each class of membership.

(b) In order to provide availability of facilities and services to Members, the total number of Club memberships offered by the Company shall not exceed five hundred eighty (580), exclusive of Founder Memberships and Clubhouse Memberships. Of the five hundred eighty (580) memberships offered, two hundred seventy (270) will be Full Memberships and three hundred ten (310) will be Social Memberships; provided, however, the Company may adjust this allocation if all of the Full Memberships offered are not sold.
ARTICLE 3
MEMBERSHIP POLICIES

Section 3.1 Family and Guest Privileges.

(a) A Member’s current spouse and unmarried children under the age of twenty-three (23) living at home or attending school on a full-time basis will be allowed the same rights to use the Club Amenities as the Member. These immediate family members will be able to use the Club Amenities without being accompanied by the Member; provided, however, children age fourteen (14) and younger must be accompanied by their parent-Member when using the Club Amenities.

(b) An unmarried Member living together with another individual in the same household as a family unit may designate the other individual on a membership year basis, upon payment of the required designee fee, if any, to use the Club Amenities as an immediate family member. The designated individual will be able to use the Club Amenities without being accompanied by the Member. The Member shall be responsible for the payment of all charges and fees incurred by the designated individual. The Company reserves the right to establish such fees and other rules as it deems appropriate.

(c) Members may have accompanied guests use the Club Amenities in accordance with the Rules and Regulations and annual Member Guide, if any. Such usage will be subject to the applicable guest fees. The Company may limit the number of accompanied guests and the number of times a particular guest may use the Club Amenities during each membership year.

(d) Use of the Club Amenities by immediate family members, designated individuals and guests as permitted by this Section 3.1 shall be subject to the terms, conditions and restrictions of this Plan and the Rules and Regulations. While such parties may enjoy the Club Amenities, parking privileges under a Full Membership are limited to one (1) car per Full Membership per day. Other limitations on use of the Club Amenities by such parties may be set forth from time to time in the Rules and Regulations. Unaccompanied guests are not permitted to utilize the Club Amenities at any time.

Section 3.2 Memberships Held in Name of Entity.

For the convenience of Members, a membership may be held in the name of a corporation, partnership, trust or other form of multiple ownership (the “entity”). The duration of entity memberships shall be no longer than thirty (30) years from the membership start date. The Company may, in its sole and absolute discretion, permit the entity to renew the membership for
a subsequent term. The privileges of membership belong to the entity and the entity must designate a single individual (the “Designated User”), who upon approval by the Company, will be entitled to exercise the privileges of membership. Each approved individual will be a “Member” for purposes of this Plan until a new individual is designated by the entity and approved by the Company. The entity will be charged the then-current re-designation fee each time a new Designated User is selected. The Designated User must submit an Application for Membership, which is subject to the approval of the Company. The Designated User must be a bona fide director, officer, partner, shareholder, owner or employee of the entity, or a beneficiary or settlor if the membership is held in the name of a trust, and must pay the required dues and charges. No person other than the Designated User and the user’s immediate family will be entitled to use the membership. The entity shall be jointly and severally liable with each Designated User for all dues and charges under the membership.

Section 3.3 Conduct of Guests and Others.

Each Member shall be responsible for the charges and actions of the Member’s spouse, children, designees (where applicable) and guests and for their adherence to the provisions of this Plan and the Rules and Regulations. Any violation of the provisions of this Plan or the Rules and Regulations by the Member’s spouse, children, designees (where applicable) or guests shall be grounds for disciplinary action by the Company against the Member.

ARTICLE 4
RESIGNATION, REISSUANCE, DEATH AND DIVORCE

Section 4.1 Memberships Nontransferable.

All memberships are personal and no Member may voluntarily or involuntarily sell, transfer, assign, pledge, hypothecate or otherwise encumber a membership. Any such voluntary or involuntary action shall be void and of no force or effect and shall not confer upon any third party any of the privileges of the Member, unless otherwise approved by the Company.

Section 4.2 Resignation.

A Member may resign from the Club at any time by giving written notice to the Company. Once a Member has submitted written notice of resignation, said resignation request is irrevocable unless otherwise authorized by the Company in its sole discretion. A Member resigning from the Club will be obligated to continue to pay dues until the effective date of resignation even if the Club Amenities have not been used by the Member. In the case of Founder and Clubhouse Members the effective date of resignation shall be the last day of the membership year during which
the Club receives such notice, unless otherwise determined by the Company. The effective date of resignation for Full and Social Members shall be the end of the membership year during which the resignation request is received, or the Membership Reissuance Date (as defined in Section 4.3 below), whichever occurs first. A resigning Member will be permitted to use the Club Amenities as long as the Member is obligated and continues to pay dues. The resignation of a Member by the Club shall operate as a full and complete release by the Member of the Company, its parent corporation, subsidiaries, insurance companies, affiliates and their respective officers, directors, shareholders, employees and representatives of any and all liabilities, claims, demands, actions or causes of action arising out of or related to the resigned membership.

**Section 4.3 Reissuance of Full and Social Memberships.**

Upon the resignation of a Member holding a membership eligible for reissuance, the Company shall reissue the membership following the election and qualification of a new active Member to fill the vacancy created by the resigned Member. The Company shall establish and maintain a separate list (each, a “**Resignation List**”) for each class of reissuable membership upon which to record the names of resigned Members (“**Resigning Members**”). A Resigning Member possessing a Property Privilege (as defined in Section 4.4 below) may have a membership reissued by the Company immediately to the purchaser of the Resigning Member’s property, subject to the purchaser’s compliance with the eligibility and approval terms and conditions set forth below. Similarly, a Resigning Member possessing a Child Privilege (as defined in Section 4.5 below) may have a membership reissued by the Company immediately to one of the Member’s adult children, subject to compliance with the eligibility and approval terms and conditions set forth below. All other Resigning Members’ names will be placed on the appropriate Resignation List within thirty (30) days after the Company’s receipt of the Member’s resignation request. A Resigning Member’s membership will be reissuable as follows:

(i) Until the memberships in a given reissuable membership class are fully subscribed, every fourth (4th) membership issued to a new Member in a particular membership class will be the membership of the Resigning Member at the top of the applicable Resignation List.

(ii) If the memberships for a class are fully subscribed, then each membership issued to a new Member in a particular membership class will be the membership of the Resigning Member at the top of the applicable Resignation List.

Subject to Section 2.8, the reissuable memberships in a particular membership class are fully subscribed when the Company, in its sole discretion, determines (if at all) that the number of memberships in that class should no longer be increased.
As conditions precedent to the reissuance of a membership, the membership applicant who will fill the Resigning Member’s vacancy (the “New Member”) must (A) be approved by the Company in the same manner as other applicants for membership and (B) submit the requisite then-current membership deposit as determined by the Company (the “Current Membership Deposit”) by paying (1) to the Resigning Member, the lesser of (x) the membership deposit paid by the Resigning Member (the “Existing Membership Deposit”), or (y) the going rate of the membership as determined by the Company (the “Current Membership Deposit”), and (2) to the Company, the amount if any, by which the Current Membership Deposit exceeds the Existing Membership Deposit (the “Additional Deposit”). The Resigning Member shall then assign (through the Club’s assignment process) to the New Member all rights in and to the Existing Membership Deposit (and therefore the right to receive a refund from the Company) to the extent (and only to the extent) of the amount paid to the Resigning Member. The New Member’s membership privileges will be activated on the date all of the foregoing conditions precedent are satisfied and the assignment process is complete (such date being herein called the “Membership Reissuance Date”). If the amount received by the Resigning Member is less than the full amount of the Existing Membership Deposit, the Resigning Member shall retain rights in and to the Existing Membership Deposit to the extent (and only to the extent) of the difference between such amounts (said difference, the “Incremental Deposit”). The Company will not, in any circumstance, reissue a membership if the payment to the Resigning Member from the New Member exceeds the Resigning Member’s Existing Membership Deposit amount.

Section 4.4 Property Privilege.

The Company may offer a “Property Privilege” to Full Members and Social Members who own property in Eagle County, Colorado. The Property Privilege will not be available for fractional ownership interests, including, but not limited to, timeshares. A Member acquiring a Property Privilege has the one time right to arrange for the Company to reissue the Member’s membership to the subsequent purchaser of the Member’s Eagle County property, regardless of any Resignation List or waitlist for membership. Reissuance of the seller’s membership shall be subject to the Club’s application, approval and reissuance processes set forth in Section 4.3 above. The holder of the Property Privilege shall be deemed to be a Resigning Member for purposes of such processes, except that the effective date of resignation for such holder shall be the Membership Reissuance Date and the membership rights of the holder shall cease on such date. The Company shall not be required to participate in any real estate closing in connection with this process. A Property Privilege may be acquired by a Member at any time during his or her membership, and the Club reserves the right to charge a fee for the Property Privilege (the “Property Privilege Fee”). The Property Privilege Fee, if any, is non-refundable. The Company shall determine the terms and conditions for acquiring a Property Privilege and may at any time cease offering Property Privileges or limit the number of Property Privileges made available.
Section 4.5 Child Privilege.

The Company may offer a **Child Privilege** to Full Members and Social Members who wish to resign their memberships. The holder of a “Child Privilege” has the one time right to arrange for the Company to reissue the Member’s membership to one of the Member’s adult children, regardless of any Resignation List or waitlist for membership. Reissuance of the membership shall be subject to the Club’s application, approval and reissuance processes set forth in Section 4.3 above. The holder of the Child Privilege shall be deemed to be a Resigning Member for purposes of such processes, except that the effective date of resignation for such holder shall be the Membership Reissuance Date and the membership rights of the holder shall cease on such date. For purposes of this provision, “adult child” shall mean the natural born or adopted child of a Member or the Member’s spouse age twenty-one (21) or older, not to include stepchildren or grandchildren.

Section 4.6 Resignation of a Deceased Member’s Membership.

The death of a Member and the continued use of the membership by the surviving spouse shall not be deemed a transfer of the membership in violation of the provisions of this Plan. If there is no surviving spouse, or the surviving spouse does not wish to continue the membership, the membership is deemed to be resigned. If offered by the Club, the estate of the deceased Member is eligible to acquire a Property Privilege, so that the membership can be reissued to a purchaser of the deceased Member’s property, if any, in Eagle County. The heirs, successors, assigns and estate of the deceased Member shall be liable, to the extent permitted by law, for any dues accrued and charges incurred by the Member until the Member’s death. If the membership is eligible for reissuance, the Company will reissue the membership on the same basis as any other resigned membership.

Section 4.7 Legal Separation or Divorce of Married Members.

If a membership is held by persons in a spousal relationship and the couple is subsequently separated or divorced, all rights, benefits, and obligations of the Club membership shall be awarded to one (1) spouse as set forth in the separation agreement, divorce decree or equivalent. A membership is not divisible. In the absence of a written separation agreement, court order or divorce decree, the membership shall continue in the name of the spouse set forth as the Primary Member in the Application for Membership unless the Primary Member indicates otherwise in writing. The other spouse can apply for membership in the same manner as any new candidate for membership once the existing membership has been awarded as set forth herein, but such Application for Membership shall be subject to acceptance by the Company. During the pendency of any divorce or separation, the Company, in its sole discretion, can suspend charging privileges of the Member and the Member’s spouse, children, designees and family members.
ARTICLE 5
GENERAL CONDITIONS OF MEMBERSHIP

Section 5.1 Ownership Rights.

The Club is not an equity club and no Member shall, by virtue of a membership, be an owner or partner of the Club or the Company, or have any ownership or equity or other interest in the Club or any assets or income of the Club or the Company. No Member shall have any right to share in or designate the use of revenues, receipts, income or profits from the operation of the Club. Members are not liable for the debts or other obligations of the Club or the Company.

Section 5.2 Liability for Injuries.

In consideration of the privileges described in this Plan, each Member and each person using the facilities, equipment and amenities of the Club through a Member's membership, expressly agrees that (a) all use of the Club's facilities, equipment and amenities is undertaken at the sole risk of the user and the Company, its parent corporation, subsidiaries, insurance companies, affiliates and their respective officers, directors, shareholders, agents and employees shall not be liable for any injuries or damages to any Member or other persons and (b) the Company, its parent corporation, subsidiaries, insurance companies, affiliates, and their respective officers, directors, shareholders, agents and employees shall not be subject to and are hereby released and forever discharged from any claims or demands whatsoever, including, without any limitation, those claims or demands resulting from acts or omissions of active or passive negligence on the part of the Company, its parent corporation, subsidiaries, affiliates, or their respective officers, directors, shareholders, partners, agents or employees.

Section 5.3 Personal Property.

Due to the number of guests and other persons granted access to the Club, the Company cannot guarantee the security of personal property. Therefore, each Member and each person using the facilities, equipment and amenities of the Club is required to take precautions against theft and not to encourage theft by failing to properly secure all articles of personal property. In consideration of the privileges described in this Plan, each Member and each person using the facilities, equipment and amenities agrees that the Company is not responsible or liable for articles damaged, lost or stolen in or about the Club, or left in lockers, or for loss or damage to any property, including, but not limited to, automobiles and the contents thereof. Any storage facilities or lockers provided at the Club are offered as a convenience to Members and others and the Company does not represent or warrant that the lockers or storage facilities are safe and secure, nor does it guarantee that any items placed therein are or will be secure and accepts no liability for anything removed from such lockers.
Section 5.4 Cancellation Right.

In the event of a dispute between a Member and the Company, the Company, in its sole discretion, shall have the right (but not the obligation) to cancel the Member’s membership by refunding the Member’s membership deposit in full (without interest). Upon payment, the Member’s rights and interests in the Club will immediately cease, and the Member shall automatically relinquish any and all claims associated with the membership and the Member’s entitlements under the membership.

ARTICLE 6
FINANCIAL OBLIGATIONS

Section 6.1 Dues.

A Member’s right to use the Club Amenities is contingent upon the payment of annual dues. The Club will determine the amount of dues, deposits, fees and charges to be payable by Members. Dues shall be payable on an annual basis on or before the first day of each membership year, unless otherwise determined by the Club from time to time. The Club’s membership year shall begin on August 1 and end on July 31, unless otherwise determined by the Club. The dues, fees and charges for use of the Club Amenities will be established by the Company and are subject to change from time to time.

Section 6.2 Dues Increase Limit.

Annual increases in dues will, at a minimum, be equal to the percentage increase in the Consumer Price Index (as hereinafter defined); provided, however, annual dues may be increased by a greater percentage if the Company determines, in its sole discretion, that a greater increase in dues is justified, due to increased costs in providing Club services and facilities, the incurring of extraordinary expenses, or changes in underlying service levels and operating conditions. For purposes hereof, the “Consumer Price Index” shall mean the Consumer Price Index for Urban Wage Earners as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. In the event that such Consumer Price Index (or such successor index) is not available, a reliable governmental or other non-partisan publication evaluating information used in determining the Consumer Price Index shall be used.

Section 6.3 Membership Deposit.

Full, Social, and such other classes of membership as designated by the Company from time to time, will be required to keep a membership deposit on file with the Club. Membership deposits,
including Incremental Deposits, are refundable as provided in the Application for Membership. Memberships conclude upon the refund of the membership deposit unless the Member elects to renew the membership, as set forth in the Member’s Application for Membership.

Section 6.4 Operating and Capital Assessments.

With the exception of membership deposits, dues, surcharges, taxes, service charges, personal and other charges as the Company may establish from time to time, Members will not, without their approval as set forth below, be subject to any special assessment for the costs of operating the Club Amenities or any capital assessment for the costs of constructing or maintaining the Club facilities. The Club’s operating budget may include a reserve for capital repairs and replacements, which shall not be considered an assessment. The Company can make improvements to the Club facilities or add additional facilities to the Club at its expense without a vote of the Members. Members may, however, request to add additional facilities or to pay for alterations or improvements to existing facilities by a two-thirds (2/3) vote of the membership. The Company will have the right to approve such request. Upon approval, the Company will assess the Members for such capital improvements. If the Members and the Company approve capital improvements, the Company will adjust the dues, fees and charges accordingly for the additional Club Amenities, and all Members shall be required to pay the adjusted dues and charges. The Company will be responsible for all deficits, and will be entitled to retain all profits from the operation of the Club Amenities.

Section 6.5 Personal Liability.

Each Member shall be personally liable for payment of all of the membership deposits, dues, and assessments with regard to the Member’s membership. Each Member shall also be liable for any charges which that Member or the Member’s designees, family members and guests incur with regard to any products purchased from or services provided by the Club.

Section 6.6 Charges.

A Member shall pay all money owing to the Company when due. Each Member must furnish the Company with at least one valid commercial credit card number and authorize its use by the Company for goods and services provided to the Member. The Member accepts responsibility for payment for all goods and services it requests and authorizes the Company to charge such goods or services to the Member’s credit card. If the Member’s credit card provider does not make the payment or subsequently requires the Company to credit back the payment, the Member will immediately make the payment directly to the Company and the Company may assess a late charge as set out in the Rules and Regulations. In the event the amount charged is in excess of
the maximum amount provided for under applicable law, the Company may refund the overpayment without penalty and the applicable provision of the Rules and Regulations shall be deemed to be modified to comply with applicable law. The Member will be solely responsible for ensuring that the Company has a current credit card number and expiration date on file at all times.

Section 6.7 Fees and Costs.

A Member shall be liable to pay any losses, damages, costs or expenses (including legal fees and applicable administrative fees) incurred by the Company in relation to (a) its efforts to collect any fees, dues, assessments, charges, late charges, or interest, or in enforcing or defending its rights under this Plan or otherwise; (b) any breach of this Plan by the Member; or (c) any damage caused by the Member to any property of the Company or any other person.

Section 6.8 Other Rights.

The Company, or its agents or assigns, shall have the right to institute such legal remedies against any Member for collection of any fees, dues, assessments, charges, late charges, interest, legal fees or costs as it deems appropriate. The remedies provided herein are not exclusive and the Company shall have such other remedies as may be provided to it by law. The Company may exercise its rights in such order as it deems appropriate and the exercise of one right or remedy shall not constitute the waiver of any other.

Section 6.9 Setoff.

At any time and from time to time the Company may setoff any and all amounts due and owing a Member by the Company against any and all amounts due and owing the Company by such Member or the Member's successors or assigns. In addition to the foregoing and to all liens upon and rights of setoff against the monies or other property of a Member by law or under this Plan, the Company shall have, with respect to a Member's obligations to the Company under this Plan or otherwise, and to the extent permitted by law, a contractual possessory security interest in and right of setoff against, and each Member hereby assigns, conveys, delivers, pledges and transfers to the Company all of the Member's right, title and interest in and to, the Member's membership in the Club and all deposits, monies, and other property of such Member now or hereafter in the possession of or on deposit with the Company, whether held jointly with someone else, or held for safekeeping or otherwise.
Section 6.10 Non-Use.

Waiver of the use or enjoyment of any of the Club Amenities by a Member does not exempt the Member from liability for the payment of fees, dues and assessments.

ARTICLE 7
DISCIPLINARY ACTION

Section 7.1 Grounds.

The Company shall have power to reprimand, suspend, expel, terminate the membership of or otherwise discipline any Member for committing any violation of this Plan or the Rules and Regulations; or for conduct unbecoming of a Member; or for any offense against the best interests of the Club or Club property or any other person; or for other good and sufficient cause determined by the Company. The Company shall, in its sole discretion, also have the power to reprimand, suspend, expel, terminate the membership of or otherwise discipline any Member for nonpayment of dues and accounts as discussed in this Plan.

Section 7.2 Delinquent Accounts.

When the account of any Member of the Club shall remain unpaid for a period of thirty (30) days after the billing date, the Company may, by notice to the Member, suspend indefinitely the Member’s privileges and the use of the Club by the Member. Such notice of suspension may be included with the statement of account mailed to the Member or sent under separate cover. If payment is not made within ten (10) days after depositing the notice of suspension in the mail, such Member’s membership will automatically be terminated by the Company without further notice to the Member or action by the Company. A membership terminated for nonpayment may be reinstated, if at all, at the sole discretion of the Company and upon such terms as the Company may determine.

Section 7.3 Notification of Termination.

In the event of termination of membership, the Member shall be notified by an authorized representative of the Company. Notice by any means directed to the Member’s last known address shall be sufficient. Such notice of termination may be included with the statement of account mailed to the Member or sent under separate cover.
Section 7.4 Consequences of Suspension or Termination.

(a) In the event a Member is temporarily suspended from the Club, such Member, and any other person who would also be entitled to the rights and privileges of such membership, shall be temporarily barred during the period of suspension, from admittance to the Club and the Club Amenities both under the Member’s own membership and as a guest of another Member.

(b) In the event that a membership is terminated, the Member and any other person who would also be entitled to the rights and privileges of such membership, shall be permanently barred from admittance to the Club and the Club Amenities, both under the Member’s own membership and as a guest of another Member. The membership shall come to an end and the Member shall have no right to the return of any part of the membership deposit or dues and the membership shall not be transferable.

ARTICLE 8
CLUB OPERATIONS

Section 8.1 Management and Operations.

The Company owns the Club facilities and will manage and operate the Club facilities. As a result, the Company is solely responsible for the government and administration of the Club facilities and the Club and will have the exclusive authority to accept Members, create or eliminate classes or categories of membership, set dues and charges, adjust the number of memberships in a particular membership class or category, establish rules and regulations, set dates and hours of Club operation, close the Club on a temporary basis, and control the management and affairs of the Club Amenities and the Club. The Company also reserves the right to engage a professional management company to operate the Club or portions thereof.

Section 8.2 Advisory Board.

The Company may establish an advisory board for the Club (the “Advisory Board”). The Advisory Board shall be comprised of Members, including one Member representative from the Lodge Apartment Condominium Association, Inc. (“LACA”) for so long as LACA holds Club memberships pursuant to that certain Development and Use Agreement dated July 27, 2006, as may be amended from time to time. The Advisory Board shall, upon request by the Company, provide advice and counsel as to the Rules and Regulations and the operation of the Club. The Company, through its representatives, may appoint the members of the Advisory Board, or set out different methods for the election of the Advisory Board in the Rules and Regulations. Committees of the Advisory Board may be formed as well as provided for in the Rules and Regulations. The Advisory Board and its committees and members
cannot give any direction or orders to the Company or employees of the Club. The Company as owner of the Club retains full discretion as to the regulation and operation of the Club.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Notices.

Except where otherwise clearly specified herein, whenever any notice, statement, billing or other communication is required or permitted to be given a Member under this Plan, it shall be given in writing and shall be sent by mail, postage prepaid, addressed to such Member’s last known address on file in the office of the Club. Any notice, statement, billing or other communication so sent shall be deemed to have been given and received on the third (3rd) business day following the date of its deposit in United States mail.

Section 9.2 Amendments.

The Company shall have the right to modify or amend this Plan and/or the Rules and Regulations at any time and from time to time. Modifications or amendments to this Plan and/or the Rules and Regulations shall become effective immediately upon the posting of a copy thereof, in a conspicuous place at the Club or on the Club’s website or upon the mailing of the amendments to the Members.

Section 9.3 Membership Binding.

(a) By applying for membership each Member agrees to be bound by the terms of this Plan, the Rules and Regulations and the Application for Membership.

(b) Each Member agrees that this Plan, the Rules and Regulations and the Member’s Application for Membership record the whole of the agreement between the Member and the Company relating to the subject matter of this Plan, the Rules and Regulations, the Application for Membership and the Club Amenities, including the Member’s right to use the Club Amenities.

Section 9.4 Relationship of Parties.

The relationship between the Company and a Member is one of contract, regulating, primarily, a Member’s personal use of the Club Amenities from time to time only, is personal between the parties and does not constitute any other relationship, connection or arrangement of any other nature whatsoever between the Company, the Member and any other person.