

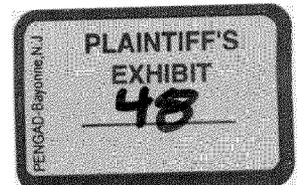
**DECLARATION OF JUAN HINESTROSA**

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Juan Hinestrosa. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.
2. I first heard of Jay Peak in or about 2010 from my immigration lawyers. I was interested in obtaining an EB5 Visa, thus my lawyers introduced me to Jay Peak among a variety of other projects to pick from.
3. My lawyer sent me an email with information about an EB-5 investment project that was being offered at the time called the Jay Peak Hotel Suites Phase II. He provided me with a general description of Phase II the EB-5 Visa program. A copy of the offering materials I received is attached as Exhibit A.
4. My initial contact with William Stenger came when I travelled to Jay Peak accompanied by my immigration lawyers to personally inspect the project sight and speak with Mr. Stenger, who kindly showed us around explaining his whole project and answering all of our questions.
5. Based on my understanding on the project after personally visiting the sight and my lawyers input on Jay Peak, I decided to invest \$500,000 in Jay Peak's Phase II project.
6. In 2011, I initially sent a wired a total of \$550,000, to Jay Peak as per instructions.
7. After investing in Phase II, I began receiving periodic communications from Jay Peak (Bill Stenger and others) updating me on the progress of the Phase II project. An example of the updates I received from Jay Peak is attached as Exhibit B.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith. Executed on this 20 day of November, 2015.

  
\_\_\_\_\_  
Juan Hinestrosa  
Jay Peak Hotel Suites Phase II Limited Partner







# Jay Peak Hotel Suites Phase II L.P. Offering Memorandum

## Section 3 - Limited Partnership Agreement



## AGREEMENT OF LIMITED PARTNERSHIP OF JAY PEAK HOTEL SUITES PHASE II

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**PARTNERSHIP AGREEMENT OF JAY PEAK HOTEL SUITES PHASE II  
L. P., A VERMONT LIMITED PARTNERSHIP**

The parties to this Agreement of Limited Partnership of Jay Peak Hotel Suites Phase II L.P. are:

**Jay Peak Management Inc.**, a Vermont corporation with its principal place of business at 4850 VT Route 242, Jay, Vermont 05859-9621, in its respective capacities as the General Partner and the Initial Limited Partner. As additional persons invest in the Partnership, and take such steps as are required hereunder and under the subscription agreements contained in the Confidential Memorandum (as defined in section 2.06(f)) to become Limited Partners, such additional Limited Partners shall become parties to this Agreement and shall be legally bound by the terms and conditions herein.

**Recitals**

**WHEREAS**, the parties desire to form a limited partnership to acquire title to and lease real estate and buildings from Jay Peak, Inc., a Vermont corporation with its principal place of business in Jay, Vermont (the "Resort Owner") at the Jay Peak Resort in Jay, Vermont (the "Resort"), for the purpose of constructing, operating and managing, as applicable, (a) a multi-storey building (and related improvements), which will comprise (i) one commercial condominium unit to be furnished, fit up and operated as an all suites hotel to be known as Jay Peak Hotel Suites Phase II, or a substantially similar name, to be owned and operated by the Partnership (the "Hotel"); and (ii) one other commercial condominium unit to be conveyed to, and with build-out, furnishing and fit up to be done by, the Resort Owner (the "Hotel Building Resort Owner Unit"), (b) a two-story building (and related improvements), which will comprise one commercial condominium unit to be furnished, fit up and operated as administrative offices and a grocery and deli (the "Administrative Offices Unit" and collectively with the Hotel Building Resort Owner Unit, the "Resort Owner Units"); and (c) a golf clubhouse, indoor ice arena, bowling center and an indoor water park, all of which premises and facilities will be leased for nominal consideration to, and operated by, the Partnership; and to do all other acts which may be necessary, incidental or conducive to the foregoing; and

**WHEREAS**, the parties expect to raise substantial funds from, among other investors, persons who are not United States' citizens or lawful permanent residents of the United States and who desire to become limited partners in the Partnership, and this Partnership may enable such investors to become eligible for admission to the United States of America as lawful permanent residents with their spouses and unmarried, minor children; and

**WHEREAS**, this Agreement sets forth the terms and provisions of the Partnership;

**NOW THEREFORE**, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

**ARTICLE I - Definitions and Rules of Construction**

**Section 1.01. Definitions.**

The following additional defined terms used in this Agreement shall have the meanings specified below:

"Accountants" - Mudgett Jennett & Krogh-Wisner P.C., 141 Main Street, Montpelier, Vermont 05602 (802-229-9193), or such other firm of independent certified public accountants selected by the General Partner that is reasonably acceptable to the Limited Partner.

"Act" - the Vermont Revised Uniform Limited Partnership Act (11 V.S.A. ch. 23) and any corresponding provision or provisions of succeeding law, as it or they may be amended from time to time.

"Adjusted Capital Account Deficit" - with respect to any Limited Partner, the deficit balance, if any,

in the Partner's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) credit to such Capital Account any amounts that such Partner is obligated to restore pursuant to any provision of this Agreement, is otherwise treated as being obligated to restore under Treasury Regulation Section 1.704-1 (b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5); and

(ii) debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulation Section 1.704-1 (b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Capital Contribution" - with respect to each Partner, the aggregate capital contributed to the Partnership by such Partner reduced, from time to time, (i) by any return of a Capital Contribution made pursuant to the Agreement, and (ii) by the aggregate distributions of Net Proceeds from a Capital Transaction made to such Partner pursuant to the Agreement.

"Administrative Building" - the building that will contain the Administrative Offices Unit and be owned by the Resort Owner.

"Admission Date" - the date on which a Limited Partner is admitted to the Partnership, which shall be deemed to be the date of payment by the Limited Partner of its Capital Contribution, which except for the Initial Limited Partner shall be the date each Limited Partner's Capital Contribution is received by the Partnership, thereafter confirmed with a limited partnership certificate (or other evidence of ownership) being issued to the Limited Partner.

"Affiliate" - as to the General Partner, any Person who directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control of the General Partner, including but not limited to the Resort Owner.

"Agreement" - this Agreement of Limited Partnership, including the Recitals and all of the exhibits attached hereto and made a part hereof, as amended and in effect from time to time.

"Available Cash Flow" - funds provided from operation of the Partnership, without deductions for payments made to service Secured Debt and for depreciation, but after deducting funds used to pay all expenses and other debts of the Partnership, including administrative operational expenses, debt payments other than Secured Debt, capital improvements and less the amount set aside by the General Partner, in the exercise of its sole discretion, for reserves.

"Bowling Center" - the multi-lane bowling alley and related services to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period of time not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Bowling Center Lease").

"Buildings" – the improvements to be constructed by the Partnership on the Partnership Property or Resort Land that will include the Hotel Building, Administrative Building, Clubhouse, Bowling Center, Ice Arena and Water Park.

"Capital Account" - the capital account maintained by the Partnership for each Partner, determined in accordance with Section 7.01.

"Capital Contribution" - the total amount of cash or any cash equivalents or property (net of liabilities and commitments secured by such contributed property that the Partnership may have assumed) contributed or agreed to be contributed to the Partnership by each Partner, including all adjustments thereto, as provided in this Agreement.

"Capital Transaction" - the sale or other disposition of all or substantially all of the Partnership Property in a single transaction or a series of related transactions, other than the initial intended conveyance to Resort Owner of the Resort Owner Units.

"Certificate" - the certificate of limited partnership for the Partnership, as it may be amended from time to time, that is prepared and filed in accordance with the Act.

"Clubhouse" – the multi-story golf clubhouse, including such amenities by example as locker room(s), cart storage room, pro shop and eating and drinking facilities, to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period of time not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Clubhouse Lease").

"Code" - the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

"Condominium Regime" – the condominium project at the Resort developed under Vermont law and comprising the Hotel, the Hotel Building Resort Owner Unit and the Administrative Offices Unit (collectively, the "Condominium Units"), together with common elements and limited common elements, as more specifically described in the Declaration of Condominium.

"Consent of the General Partner" - the written consent or approval of the General Partner, which shall be obtained prior to the taking of any action for which it is required hereunder; if there is more than one General Partner, "Consent of the General Partner" shall require the affirmative consent of General Partners holding at least a majority of the aggregate Interests of the General Partners.

"Consent of the Limited Partner" - the written consent or approval of the Limited Partner, which shall be obtained prior to the taking of any action for which it is required hereunder; if there is more than one Limited Partner, "Consent of the Limited Partner" shall require the affirmative consent of sixty-six and two-thirds percent (66.67%) of the Limited Partners.

"Declarant" – Jay Peak Hotel Suites Phase II L.P., as will be set forth more specifically in the Declaration of Condominium.

"Declaration of Condominium" – the legal document that will govern the operation of the Condominium Regime, to be finalized and recorded in the Land Records of the Town of Jay, Vermont once the Condominium Units are substantially completed.

"Environmental Hazard" - any hazardous or toxic substance, waste or material, or any other substance, pollutant, or condition that poses a risk to human health or the environment, including,

but not limited to: (a) any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. as amended, (b) petroleum in any form, lead-based paint, asbestos, urea formaldehyde insulation, methane gas, polychlorinated biphenyls ("PCB's"), radon, or lead in drinking water, except for ordinary and necessary quantities of office supplies, cleaning materials and pest and insect control supplies stored in a safe and lawful manner and petroleum products contained in motor vehicles or otherwise properly stored; (c) any underground storage tanks not properly registered with the appropriate government agencies; or (d) accumulations of debris, mining spoil or spent batteries, except for ordinary trash and garbage stored in receptacles for regular removal.

"Event of Bankruptcy" - with respect to any Person,

(1) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for such Person or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(2) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such person or for any substantial part of its property, or the making by such Person of any assignment for the benefit of creditors, or the taking of action by such Person in furtherance of any of the foregoing;

(3) the commencement against such Person of an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy insolvency or similar laws which has not been vacated, discharged or bonded within sixty (60) consecutive days;

(4) the admission by such Person of its inability to pay its debts as they become due; or

(5) such Person becoming "insolvent" by the taking of any action or the making of any transfer or otherwise, as insolvency is or may be defined pursuant to federal bankruptcy laws, the Uniform Fraudulent Transfer Act, any state or federal act or law, or the ruling of any court.

"Event of Default" - as set forth in Section 9.02(b).

"Final Determination" - with respect to any issue, the earliest to occur of (a) a decision, judgment, decree, or other order being issued by any court of competent jurisdiction, which decision, judgment, decree, or other order has become final (i.e., all allowable appeals filed by the parties to the action have been exhausted or the time for such appeals has expired); (b) the IRS having entered into a binding agreement with the Partnership or having reached a final administrative or judicial determination which, whether by law or agreement, is not subject to appeal; or (c) the expiration of the applicable statute of limitations.

"Fiscal Year" - the calendar year or such other year that the Partnership is required by the Code to use as its taxable year.

"Gain" - the income and gain of the Partnership for federal income tax purposes arising from a sale or other disposition of all or any portion of the Partnership Property.

"General Partner" - Jay Peak Management Inc. and any additional or substitute general partners of the Partnership named in any duly adopted amendment to this Agreement; if there is more than one general partner, "General Partner" shall refer collectively to all such general partners and their successors.

"Hotel Building" – the building that will be constructed by the Partnership on Hotel Land and contain the Hotel and Hotel Building Resort Owner Unit.

"Hotel Land" – the land to be acquired by the Partnership from the Resort Owner and on which the Hotel Building and Administrative Building will be constructed.

"Ice Arena" – the indoor ice rink and related services to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period of time not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Ice Arena Lease").

"Initial Limited Partner" – Jay Peak Management Inc.

"Interest" - as to any Partner, the Partner's right, title, and interest in the Partnership, including any and all assets, distributions, losses, profits and shares of the Partnership, whether cash or otherwise, and any other interests and economic incidents of ownership whatsoever of such Partner in the Partnership.

"IRS" - the Internal Revenue Service of the United States of America.

"Leases" – collectively, the Bowling Center Lease, the Clubhouse Lease, the Ice Arena Lease and the Water Park Lease.

"Limited Partner" - Jay Peak Management Inc., as the Initial Limited Partner, and any additional or substitute limited partner or partners of the Partnership as provided herein, in each such person's capacity as a limited partner. If there is more than one limited partner, "Limited Partner" or "Limited Partners" shall refer collectively to all such limited partners.

"Limited Partnership Interest" - "Interest" or "Limited Partnership Interest" or "Partner Interest" means the ownership interest of a Partner in the Partnership at any particular time including the right of such Partner to any and all benefits to which such Partner may be entitled as provided in the Agreement and under the Act, together with the obligations of such Partner to comply with all the terms and provisions of the Agreement and Act.

"Loss" - the loss of the Partnership for federal income tax purposes arising from a sale or other disposition of all or any portion of the Partnership Property. If the value at which an asset is carried on the books of the Partnership pursuant to the capital account maintenance rules of Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis and loss is recognized from a disposition of such asset, the loss shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

"Net Cash Flow" - the amount, determined for any Fiscal Year or portion thereof, equal to the excess, if any, of Cash Flow over the sum of the amounts payable from Cash Flow in such year described in Section 8.01.

"Net Loss" – the net loss of the Partnership for federal income tax purposes for each Fiscal Year.

"Net Profit" - the taxable income of the Partnership for federal income tax purposes for

each Fiscal Year.

"Notice" - a writing containing the information required by this Agreement and sent by registered or certified mail, postage prepaid, return receipt requested, or sent by commercial delivery service, by hand delivery, or by telecopy, paid for by the sender, to a Partner at the last address or addresses designated for such purpose by such Partner in Section 16.01 or as provided therein, the date of receipt of such registered mail or certified mail or the date of actual receipt of such writing by commercial delivery service, hand delivery or telecopy, being deemed the date of the Notice.

"Partner" or "Partners" - the General Partner and the Limited Partner, either individually or collectively, and their successors.

"Partnership" - Jay Peak Hotel Suites Phase II L.P., a limited partnership formed under and pursuant to the Act, and governed by this Agreement. Also sometimes referred to herein as the Limited Partnership.

"Partnership Property" - the Partnership's interest in real property, including without limitation (i) a condominium ownership interest in the Hotel and (ii) a leasehold interest pursuant to the respective Leases in the Bowling Center, Water Park, Clubhouse and Ice Arena, all located at the Jay Peak Resort in Jay, Vermont.

"Person" - an individual or entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, cooperative, or association and the heirs, executors, administrators, legal representatives, successors, and assigns of the Person where the context so requires.

"Project" - the aggregate of all of the Buildings and other improvements to be constructed, operated and managed, as applicable, by the Partnership on the Hotel Land or Resort Land at the Resort;

"Related Documents" – the Confidential Memorandum and exhibits thereto, as defined in Section 2.06(f).

"Resort Land" – the land owned by the Resort Owner on which the Partnership will construct, manage and operate, as applicable, the Clubhouse, Bowling Center, Water Park and Ice Arena.

"State" - The State of Vermont.

"Term" - The period of time the Partnership shall continue in existence as stated in Section 2.07.

"Treasury Regulations" - the temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Water Park" – the water park and related services to be constructed on Resort Land and leased, together with furniture, equipment and fixtures located or installed therein, for nominal consideration to, and operated by, the Partnership for a period not to exceed ten (10) years as set forth in a separate lease between the Partnership and Resort Owner (the "Water Park Lease"), which Water Park, collectively with the Bowling Center, Clubhouse and Ice Arena shall be known as the "Ancillary Projects" or "Ancillary Buildings".

**Section 1.02. Rules of Construction.**

(a) Unless the context clearly indicates to the contrary, the following rules apply to the construction of

this Agreement:

- (1) words importing the singular number include the plural number and words importing the plural number include the single number;
- (2) words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;
- (3) the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;
- (4) any reference in this Agreement to a particular "Article," "Section" or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;
- (5) Words such as "herein", "hereinafter," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires; each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and
- (6) when any reference is made in this Agreement or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

(b) In the event there is more than one Limited Partner or more than one General Partner, the following additional rules of construction shall apply unless otherwise provided:

- (1) allocations to the General Partner and Limited Partner of Gain, Net Profits, Net Losses and Loss under Article VII, and distributions of Net Cash Flow and Capital Proceeds under Article VIII shall be further allocated and/or distributed between or among the General Partners and/or Limited Partners in proportion to each General or Limited Partner's respective Interest, to be set forth on Exhibit A, as amended. Unless otherwise provided herein, no General Partner shall have a superior right to receive distributions than any other General Partner and no Limited Partner shall have a superior right to receive distributions than any other Limited Partner;
- (2) with respect to any matter on which the approval or ratification of the General Partner or the Limited Partner is required or may be given, such approval or ratification shall not be deemed to have been given unless given by Consent of the General Partner or the Consent of the Limited Partner, as the case may be; and
- (3) with respect to any matter on which the approval or ratification of the General Partner or the Limited Partner is required or may be given, each General Partner or Limited Partner, as the case may be, shall be entitled to vote.

**Section 1.03. Imputation of Knowledge and Notice.**

Notice or knowledge received by the Partnership is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction or event, and in any event from the time when it would have been brought to its or her attention if the Partnership had exercised due diligence. The Partnership exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction or event and there is reasonable compliance with the routines. Due diligence does not require an

individual acting for the Partnership to communicate information unless such communication is part of its or her regular duties or unless he or she has reason to know of the transaction or event and that the transaction or event would be materially affected by the information.

**Section 1.04. Successor Statutes and Agencies.**

Any reference contained in this Agreement to specific statutory or regulatory provisions, including without limitation the Act and the Code, or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

**ARTICLE II - Partnership Business Purpose**

**Section 2.01. Formation of Partnership.**

The General Partner and the Initial Limited Partner hereby form the Partnership.

**Section 2.02. Partnership Name.**

The name of the Partnership is "Jay Peak Hotel Suites Phase II L.P."

**Section 2.03. Principal Place of Business.**

The principal office of the Partnership and the office to be maintained pursuant to the Act shall be located at the offices of Jay Peak Management Inc., 4850 VT Route 242, Jay, VT 05859-9621.

**Section 2.04. Registered Agent.**

The name and address of the registered agent and registered office of the Partnership for service of process are Jay Peak Management Inc., 4850 VT Route 242, Jay, VT 05859-9621.

**Section 2.05. Title to Partnership Property.**

Legal title to or a leasehold interest in Partnership Property shall be in the name of the Partnership, and no Partner, individually, shall have any ownership of or leasehold interest in such Partnership Property, except in its capacity as a Partner.

**Section 2.06. Purposes of the Partnership.**

The purposes, nature, and general character of the business of the Partnership shall consist of:

(a) acquiring, owning, constructing, developing, leasing, subletting, managing, operating, holding for economic gain, and, if appropriate and desirable, selling or otherwise disposing of the Partnership Property or any substantial part thereof;

(b) operating a Hotel using a portion of the Partnership Property and hiring such managers, consultants and other advisers, including without limitation the General Partner or its designee, as the Partnership deems necessary to run such Hotel;

(c) operating the Bowling Center, Clubhouse, Ice Arena and Water Park under the terms of the Leases and hiring such managers, consultants and other advisers, including without limitation the General Partner or its designee as the Partnership deems necessary to run the Bowling Center, Clubhouse, Ice Arena and Water Park;

(d) carrying on any and all activities, to enter into, perform and carry out contracts of any kind necessary to, incidental to or related to the foregoing in accordance with this Agreement;

(e) mortgaging, selling, leasing, transferring, exchanging or otherwise conveying or encumbering all or part of the Partnership Property in furtherance of any and all of the objectives of the Partnership business;

(f) assisting in enabling no more than one hundred and fifty (150) qualified foreign investors at any

one time (each a "Qualified Investor") to make qualifying "at risk" investments in a commercial enterprise (each a "Qualifying Investment"), which, though not restricted to such investments, is intended to also meet the requirements under 8 U.S.C. § 1153 (b)(5)(A) - (D); INA § 203 (b)(5)(A) - (D) of the Immigration & Nationality Act (the "IN Act") and qualify under this program (the "EB-5 Program") as an "Alien Entrepreneur", as more fully described in the Jay Peak Hotel Suites Phase II Private Offering Memorandum, a copy of which has been distributed to each Limited Partner in connection with the offering of Limited Partnership Interests hereunder (the "Offering") and each Limited Partner acknowledges receiving (the "Confidential Memorandum"); and

(g) as to those Qualified Investors who are not United States' citizens or lawful permanent residents of the United States (each an "EB-5 Investor" and collectively, the "EB-5 Investors"), using its reasonable best efforts to assist independent legal counsel acting for EB-5 Investors with the filing of each of the EB-5 Investors' petitions with USCIS, and of verifying required direct and indirect employment until removal of each of the EB-5 Investors' conditions to obtaining permanent residency.

**Section 2.07. Partnership Term and Dissolution.**

The Partnership shall continue in full force and effect until December 31, 2058 unless sooner terminated in accordance with Article XII. Upon termination of the Partnership, the General Partner shall take all actions necessary to terminate the Partnership in accordance with requirements of this Agreement and the Act.

**Section 2.08. Filing of Certificate.**

Immediately after the execution of this Agreement by the Partners, the General Partner shall cause the Certificate to be filed with the State in accordance with the Act.

**ARTICLE III - Partnership Interests and Sources of Funds**

**Section 3.01. Identity of Partners and Interests.**

The names and business addresses of the General Partner and the Limited Partner are as identified on Exhibit A, as such Exhibit may be amended from time to time in accordance with this Agreement, and each such Partner has the Interest indicated next to its name on Exhibit A. The failure of the General Partner to periodically amend Exhibit A and list each new Limited Partner, however, shall not act to limit or detract in any way from each Limited Partner being considered a Limited Partner once its Capital Contribution is made.

**Section 3.02. Capital Contributions.**

(a) General Partner. Subject to the provisions of this Section, the General Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership the cash or property set forth after the General Partner's name on Exhibit A. The General Partner shall be obligated or permitted to make additional Capital Contributions to the Partnership only in accordance with this Agreement. The General Partner at its sole option may make an additional voluntary Capital Contribution to the Partnership at any time. A portion of the General Partner's Capital Contribution may arise from loan proceeds borrowed to fund construction costs in excess of the Partnership's equity capital, using the Project as security for the loan (the "Secured Debt"). To the extent Secured Debt proceeds cause the Partnership's capital to increase, each Partner's Interest in the Partnership shall be recalculated as a percentage of the sum of the Secured Debt proceeds plus existing General and Limited Partner equity Capital Contributions. The Limited Partners hereby acknowledge, consent and approve of the General Partner granting one or more security interests encumbering the Project and Hotel Land. The General Partner shall be responsible for repaying the Secured Debt according to its terms from the General Partner's allocation of Available Cash Flow and net proceeds from a Capital Transaction, from the sums

distributed to the General Partner upon dissolution of the Partnership, and/or from the General Partner's own funds. In addition, the General Partner intends to use Capital Contributions provided by newly admitted Limited Partners to pay down the principal balance of the Secured Debt. The Limited Partners shall have no obligation or liability for retiring the Secured Debt.

(b) Limited Partner. Subject to the provisions of this Section, each Limited Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership, by wire transfer or other form of available funds, the aggregate amount set forth herein. The subscription amount of each Limited Partner shall equal \$550,000 in cash (the "Subscription Amount"), of which \$500,000 shall be applied as a Capital Contribution to the Project as investor funds (the "Investment") and \$50,000 will be applied to cover administration, syndication and other expenses in the preparation and distribution of the Confidential Memorandum, including but not limited to accounting fees, legal expenses and miscellaneous expenses incurred by the Partnership and the General Partner (the "Administration Fees"). As further set forth in the Confidential Memorandum, after reserving an interest in the Limited Partnership by making an escrow deposit of \$10,000 with Chittenden Trust Company, FSB subject to the terms of an Investor Escrow Agreement – Initial Deposit Only, each Limited Partner shall have forty-five (45) days to conduct his due diligence, and an additional sixty (60) days thereafter to complete his investment into the Project by paying the rest of the Subscription Amount, which time periods may be extended by the General Partner at its sole discretion.

The Limited Partner shall not be obligated to make any additional Capital Contributions to the Partnership. All required Capital Contributions shall be subject to any applicable adjustments if otherwise permitted by this Agreement. Investment as a Limited Partner is available as a means of financing the planning, Hotel Land acquisition, construction and start-up of the Buildings and infrastructure at the Project. This investment may be beneficial, but is not limited, to investors who seek lawful permanent residence pursuant to the EB-5 Program under the IN Act, as more fully described in the Confidential Memorandum. There are other requirements of the EB-5 Program and other relevant immigration laws which the investor must observe or risk denial of lawful permanent residence pursuant to the EB-5 Program.

Investors shall begin the process to purchase a Limited Partnership Interest by completing the subscription procedure mandated by the Partnership, including depositing the Investment into the Partnership Account and depositing the Administration Fees into a designated Administrative Fees Account. Upon acceptance by the General Partner, closing shall occur and the investor will be issued an Interest in the Partnership (at which time each Limited Partner will be deemed to confirm its acceptance of all of the provisions and terms in this Agreement) and the investor's Investment will be final and irrevocable.

In the event of denial of a Limited Partner's I-526 Petition, other than based on the fraud or material misrepresentation of the investor, the Limited Partnership shall pay back the Investment within ninety (90) days of written request by the Limited Partner and the Interest of such Limited Partner shall automatically be terminated upon such repayment without the necessity for such Limited Partner to take such steps as are required under Section 10.01. The Limited Partner's rights in this case are limited solely to the return of the \$500,000 Investment and once the Investment is returned the Limited Partner shall no longer have any of the rights and benefits of ownership of an Interest or any right to participate in any manner whatsoever in the affairs of the Partnership. The Investment is separate from any previously paid or currently due distribution of profits.

Upon subscribing to the Offering and becoming a Limited Partner, it is at the sole responsibility and risk of each EB-5 Investor to file their I-526 petition. There is no refund of the Investment or the Administration Fees for failure to file an EB-5 Investor's I-526 petition.

If the regional center pilot program, created in support of the EB-5 Program and further described in the Confidential Memorandum (the "Pilot Program"), lapses on September 30, 2008, for each EB-5 Investor whose case is filed with USCIS prior to that date their \$500,000 Investment shall remain invested in the Partnership provided:

1. the Pilot Program is reauthorized retroactively or is pending reauthorization within a twelve (12) month period following its lapse, and the EB-5 Investor's I-526 petition is in due course adjudicated; or
2. legislation is enacted or pending providing substantially similar immigration benefits to EB-5 Investors as under the lapsed Pilot Program and the EB-5 Program within a twelve month period following the Pilot Program's lapse, and the EB-5 Investor's I-526 petition is in due course adjudicated.

If neither of the events described under 1 and 2 above occur, the EB-5 Investor at his option may either remain invested in the Project, or request in writing a refund of his Investment of \$500,000. Upon receipt of a request of refund to the General Partner, the Investment will be refunded to the requesting EB-5 Investor by the Limited Partnership within a period of ninety (90) days from receipt of such request, and the EB-5 Investor's Interest as a Limited Partner shall automatically be terminated as set forth above with respect to the termination of a Limited Partner's Interest. The EB-5 Investor's rights upon termination of his Interest are limited solely to the return of their Investment of \$500,000.

Notwithstanding anything herein to the contrary, in the event that the Resort Owner or an Affiliate invests funds or makes financial commitments, other than by the use of Secured Debt, to complete the Project, the Resort Owner or its Affiliate will be issued the remaining unsold Interests in the Partnership for no additional consideration and thereafter hold its Interest(s) subject to the terms of this Agreement.

### **Section 3.03 Interest on Capital Contributions**

No interest shall be paid to a Partner on Capital Contributions. Interest will be credited by the Partnership to a Partner on the sum of any deemed distributions charged to such Partner's Capital Account from obligations owed to the Partnership by a General Partner arising under section 5.03(b) concerning federal income tax withholding. The interest charged will be computed on a calendar year compounded basis at a rate equal to two percent above the rate of interest from time to time announced by Chittenden Bank to be its "prime rate" or "base rate", such interest to be collected by reduction of any distributions payable to the Partnership immediately following the calculation of the years interest by the General Partner. To the extent that there are no distributions against the interest that can be applied, then the interest will be charged to the Partner's Capital Account. This section 3.03(a) will survive the termination of a Partner's status as a Partner.

### **Section 3.04 Service of Secured Debt**

Payments to service the Secured Debt shall be made by the General Partner out of its share of Available Cash Flow, net proceeds from a Capital Transaction and sums distributed upon dissolution of the Partnership. For the security of the Limited Partners, the Partnership will service the Secured Debt directly out of the General Partner's share of these items including the General Partner's share of distributions to the Partners as set forth in section 8.01. If amounts required for the service of the Secured Debt are in excess of the General Partner's share of these items, then the General Partner will timely pay such amounts from its own funds. In the event that the General Partner fails to repay the Secured Debt according to its terms, any or all of the Limited Partners may, at their option, pay the unpaid amount and the amount paid shall be converted to equity for the benefit of the Limited Partners who made such payment, with the effect that the Interest of the General Partner will be pro-rata diluted and the Interest of the Limited Partners who paid pro-rata increased. The dilution will not affect the Interest of any other Limited Partner who did not make such payments.

**Section 3.05. Right to Require Repayment of Capital.**

No Partner shall have the right to withdraw from the Partnership all or any part of its Capital Contribution. No Partner shall have any right to demand and receive property of the Partnership in return for its Capital Contribution or in respect of its Interest, except as provided in this Agreement. No Limited Partner shall have priority over any other Limited Partner as to any return of Capital Contributions or as to any distributions made by the Partnership pursuant to Article VIII.

**Section 3.06. Deficit Restoration.**

If, upon liquidation of

(a) the General Partner's Interest (whether or not in connection with the liquidation of the Partnership), the General Partner has a negative balance in its Capital Account (as determined after taking into account Capital Account adjustments pursuant to Section 7.01 as well as adjustments for the Partnership Fiscal Year during which the liquidation of the General Partner's Interest occurs, other than those for contributions made pursuant to this Section), then the General Partner shall be required to contribute to the capital of the Partnership, immediately prior to the liquidation of its General Partner's Interest, the amount necessary to restore its Capital Account to zero. Such contributions shall be receipts of the Partnership available for payment of operating expenses and debts of the Partnership or distribution to the Partners, in accordance with the terms of this Agreement; and

(b) the Limited Partner's Interest (whether or not in connection with the liquidation of the Partnership), the Limited Partner has a negative balance in its Capital Account, the Limited Partner shall have no obligation to make any contribution to the capital of the Partnership and the negative balance of the Limited Partner's Capital Account shall not be considered a debt owed by the Limited Partner to the Partnership or any other Person for any reason whatsoever.

**Section 3.07. No Third-Party Beneficiary.**

None of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of the Partnership or for the benefit of any creditor of the Partners, and no provision shall be enforceable by a party not a Partner.

**ARTICLE IV - Right to Mortgage**

**Section 4.01. Right to Mortgage.**

(a) In the General Partner's sole reasonable discretion and to facilitate the purposes of the Partnership, the General Partner may, in the name and on behalf of the Partnership, borrow money (including but not limited to Secured Debt) and issue evidences of indebtedness and secure the same by granting mortgages and security interests pledging all or any portion of the Partnership Property including without limitation collateral assignments of leasehold interests in the Ancillary Buildings, and to pay, prepay, extend, amend or otherwise modify the terms of any such borrowing and to sign any documents required on behalf of the Partnership in connection with said transaction(s), without the consent and signatures of the Limited Partners. The Limited Partners hereby acknowledge, consent and approve of same transaction(s).

(b) Except to the extent required by any lender and agreed to by the General Partner, no General Partner shall have any personal liability to such lender(s) or to the Partnership for the payment of all or any part of borrowed money or Secured Debt of the Partnership, except for customary exclusions for fraud, misappropriation of funds or waste.

**ARTICLE V - Rights, Powers and Obligations of the General Partner**

**Section 5.01. Authority of General Partner.**

(a) Subject to the terms of this Agreement, the General Partner shall be further responsible for the overall management and control of the business assets and affairs of the Partnership, and the General Partner shall have the right, power, and authority, acting for and on behalf of and in the name of the Partnership, to: (i) execute and deliver on behalf of the Partnership any contract, agreement, or other instrument or document required or otherwise appropriate to acquire, construct, lease, operate, encumber, mortgage or refinance the Partnership Property (or any part thereof); (ii) convey Partnership Property by deed, mortgage, certificate, bill of sale, agreement, or otherwise, as appropriate; (iii) bring, compromise, settle, and defend actions at law or in equity; (iv) delegate its authority, power, and right to manage the Partnership Property provided, however, that any such delegation shall not relieve the General Partner of its obligations and responsibilities to ensure the proper management of the Partnership Property unless it finds a suitable replacement General Partner as governed by Section 9.01; and (v) use Partnership funds in performance of its rights, duties and powers, and reimburse itself for its incurred costs to exercise its rights and perform its duties.

(b) The General Partner shall

(i) cause the Partnership to do all things necessary to maintain its status as a limited partnership in good standing and to enable the Partnership to engage in its business;

(ii) not act in any manner that will cause the Partnership to fail to qualify as a limited partnership under the Act, or the Limited Partner to be liable for Partnership obligations;

(iii) cause the Partnership to take all commercially reasonable actions under the laws of the State and any other applicable jurisdiction that are necessary to protect the limited liability of the Limited Partner under the Act;

(iv) during and after the period in which he is a Partner, provide the Partnership with such information and sign such documents as are reasonably necessary for the Partnership to make timely, accurate and complete submissions of federal and state income tax returns;

(v) furnish to counsel for the Limited Partner promptly as and when requested in connection with the rendering of any legal opinion concerning federal income tax relating to the Limited Partner's investment in the Partnership all documents reasonably requested by counsel for the Limited Partner;

(vi) promptly inform the Limited Partner of any litigation, action, investigation, event, or proceeding that is pending which, if adversely resolved, would have a material adverse effect on the Partnership or the Partnership Property; have a material adverse effect on the ability of the General Partner to perform its obligations under this Agreement; or have a material adverse effect on the financial condition of the General Partner;

(vii) promptly inform the Limited Partner if it receives notice of any violation with respect to the Partnership Property of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction, which would have a material adverse effect on the Partnership Property or the use, occupancy, or operation thereof;

(viii) develop, manage and operate the Partnership Property, together with the Ancillary Projects, in compliance with all applicable federal, state and local governmental regulations,

ordinances, laws and rules, and this Agreement;

(ix) cause the Partnership to maintain necessary insurance against risks that are of a character usually insured by Persons engaged in a similar business and in form and amount and covering such risks as is usually carried by such Persons;

(x) take all actions necessary to ensure that the Partnership Property contains no, and is not affected by the presence of, any Environmental Hazard, and to ensure that the Partnership Property is not in violation of any federal, or local statute, law, regulation, rule, or ordinance. It shall promptly deliver to the Limited Partner a copy of any notice received from any source whatsoever of the existence of any Environmental Hazard on the Partnership Property or of a violation of any federal, state, or local statute law, regulation, rule or ordinance, including any Environmental Law with respect to the Partnership Property. If any Environmental Hazard is found to exist or be present, it shall commence promptly the taking of action to assure it will be either removed from the Partnership Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state and local statutes, laws, regulations, rules and ordinances;

(xi) investigate and report to the Limited Partner any bona fide proposal or offer of any Person, including any Partner, to acquire the Partnership Property or any part thereof;

(xii) set up one or more reserve fund accounts with Partnership funds and disburse funds from such accounts in an amount sufficient, so far as it is able, to insure the daily operation of the Hotel and the Ancillary Projects and meet the obligations of the Partnership.

(xiii) identify additional Limited Partners and provide information on the Project and the Partnership to them;

(xiv) perform services in connection with the acquisition, sale and leasing of the Partnership Property, including negotiating the purchase and sale agreement with the Resort Owner for the purchase of the Land on which the Hotel Building and Administrative Building will be built, for a purchase price not to exceed \$7,800,000 (which shall be paid in a combination of cash in the amount of \$4,200,000 and the Resort Owner Units as conveyed to be valued collectively at \$3,600,000). Upon the conveyance of the Resort Owner Units, all obligations and liability of the Partnership for the value of the Resort Owner Units, specifically \$3,600,000, shall be extinguished. The cash portion of the Hotel Land purchase may be structured as an installment sale or staged purchase or similar arrangement if required by the Resort Owner, on terms to be negotiated by the General Partner. Further services of the General Partner shall include, but not be limited to, the conveyance of the Resort Owner Units to the Resort Owner, when such Resort Owner Units are ready to be conveyed, and which said conveyance is hereby approved by the Limited Partners; act on behalf of the Partnership with federal, state and local authorities with respect to the Project; monitor compliance with zoning, land use and other requirements; and prepare or cause to be prepared such third party studies as it deems necessary in connection with the acquisition, sale and leasing of the Partnership Property and construction of the Buildings and other necessary improvements on the Partnership Property and Resort Land;

(xv) deal with and, if appropriate, use Partnership funds to purchase or otherwise redeem a Limited Partner Interest that is the subject of an insolvency or bankruptcy proceeding;

(xvi) oversee construction of the Hotel Building and operate and manage the Hotel, using its reasonable best efforts to maximize occupancy rates and income in the Hotel, including at its sole discretion leasing out any part of the Hotel or rooms in the Hotel, and overseeing any third parties' operation of the Hotel under management agreements, and negotiate third party agreements to construct the Hotel Building and to submit the Hotel Building and Hotel Land underneath to

condominium ownership, and to complete and file the Declaration of Condominium and any affiliated documents with the appropriate government authorities;

(xvii) to landscape the property adjoining the Buildings, and contribute Partnership funds to the costs thereof (pursuant to a Grant of Easement and Maintenance Agreement, among the Resort Owner, Partnership and other necessary parties thereto);

(xviii) oversee construction of the Ancillary Buildings, including negotiating third party agreements to construct the Ancillary Buildings, and operate and manage the Ancillary Projects, using its reasonable best efforts to maximize income, and overseeing any third parties' operation of the Ancillary Projects; and

(xix) Expenses: The Partnership shall promptly pay all costs and expenses of the Project which may include, but is not limited to:

1) Printing and all other expenses incurred in connection with insurance, distribution, transfer, registration and recording documents evidencing ownership of an interest in the Partnership in connection and with the business of the Partnership.

2) Fees and expenses paid to contractors, bankers for financing facilities, brokers and services, leasing agents, consultants, on site managers, real estate brokers, insurance brokers and other agents, including Affiliates of the Partnership, or any General Partner or its officers.

3) Expenses in connection with the acquisition, preparation, operation, improvement, development, disposition, replacement, alteration, repair, remodeling, refurbishment, leasing, renting, costs of insurance, financing and refinancing of Partnership Property

4) All costs of personnel directly employed by the Partnership or performing services for the Partnership;

5) All costs of borrowed money (except the Secured Debt) including repayment of advances to the Partnership made by a Partner, which shall be paid monthly, interest only at a rate equal to two percent above the rate of interest from time to time announced by Chittenden Bank to be its "prime rate" or "base rate", and repaid in one lump sum five years after the date of the initial advance;

6) Legal, audit, accounting, brokerage and other fees including expenses of organizing, revising, amending, converting, modifying or terminating the Partnership.

7) Expenses in connection with distributions made by the Partnership to, the communications and book keeping and clerical work necessary in maintaining relations with, Limited Partners.

8) Expenses in connection with preparing and mailing reports required to be furnished to Partners for required tax reporting or other purposes which the General Partner deems appropriate, cost incurred in connection with any litigation, including any examination or audits by regulatory agencies, and costs of preparation and dissemination of informational material and documentation relating potential sale, refinancing or other disposition of Partnership Property.

In consideration for its services set forth in this Agreement, the General Partner has received its Interest.

(c) Except for matters for which Consent of the Limited Partner is required as set forth in Section 5.02(b), all decisions made for and on behalf of the Partnership by the General Partner shall be binding upon the Partnership. Except as expressly otherwise set forth in this Agreement, the General Partner (acting for and in the name and on behalf of the Partnership), in extension and not in limitation of the rights and powers given it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Partnership's day-to-day business, to do any and all acts and things necessary, proper, ordinary, customary or advisable to effectuate the purposes and to conduct the business of the Partnership.

**Section 5.02. Limitations on the Authority of the General Partner.**

(a) Notwithstanding any other provision of this Agreement, the General Partner shall have no authority to perform any act in violation of any applicable law or regulations; to do any act required to be approved, consented to, voted on, or ratified by the Limited Partner under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained; to cause the Partnership to engage in any business other than as set forth in Section 2.06; or do any act that would make it impossible to carry out the business of the Partnership as contemplated herein.

(b) In addition, the prior Consent of the Limited Partner is required before the General Partner may:

(i) sell, mortgage or convey all or any substantial portion of the Partnership Property, other than (a) the conveyance of the Resort Owner Units to the Resort Owner or (b) as otherwise set forth in Section 3.02(a) or Section 4.01(a);

(ii) lease as an entirety the Partnership Property, or lease or rent out any portion of the Partnership Property, except in the Partnership's normal course of business, which shall be defined as operating the Hotel and Ancillary Projects;

(iii) acquire any real property in addition to the Partnership Property (other than land, easements, rights of way or similar rights required by governmental rule or regulations, or necessary or convenient for the development of the Partnership Property, the operation of the Hotel, the operation of the Ancillary Projects and the interrelationship between the Hotel, Ancillary Projects, Partnership Property and Resort);

(iv) voluntarily file a bankruptcy petition on behalf of the Partnership;

(v) dissolve or wind up the Partnership except as set forth in Article 12;

(vi) confess any judgment;

(vii) modify or amend this Agreement except as expressly provided in this Agreement;

(viii) admit any Person as a Partner, except as otherwise provided in this Agreement;

(ix) borrow from the Partnership or commingle Partnership funds with the funds of any Person; or

(x) receive any rebates or give-ups or participate in any reciprocal business relationships in circumvention of this Agreement.

(c) In addition, the General Partner may be replaced by the Limited Partner pursuant to Section 9.02.

**Section 5.03. Tax Matters Partner.**

(a) Jay Peak Management Inc., in its capacity as General Partner, is hereby designated as the tax matters partner and shall maintain the books and records of the Partnership, and shall be responsible, on a timely basis, for (i) preparing all required tax returns and related information, (ii) making all tax elections, if appropriate, and (iii) preparing all financial information, all in accordance with this Agreement. It shall keep the Partners informed of all administrative and judicial proceedings, shall furnish to each Partner (within five days after receipt) a copy of each notice or other communication received by it from the IRS, and shall not respond to any notice or other communication from the IRS which questions or challenges any item which has been or may be reported on a Partnership tax return until after notice of the proposed response is given to the Limited Partner. It shall have no authority, without the Consent of the Limited Partner, to (i) enter into a settlement agreement with the IRS which purports to bind Partners other than the General Partner,

(ii) file a petition as contemplated in Section 6226(a) or 6228 of the Code, (iii) intervene in any action as contemplated in Section 6226(b) of the Code, (iv) file any request contemplated in Section 6227(b) of the Code, (v) enter into an agreement extending the period of limitations as contemplated in Section 6229(b)(1)(B) of the Code, (vi) to file any tax related litigation in a court other than the United States Tax Court, or (vii) submit any report to the IRS.

(b) Federal Income Tax Withholding: In the event any of the Partners are subject to federal income tax withholding, the General Partner is authorized to withhold any sums required by the Internal Revenue Code even if such withholding conflicts with any of the terms and conditions of this Agreement or otherwise affects distributions, allocations or payments to the Partners. In the event that the General Partner learns of withholding obligations subsequent to the distribution to which the withholding obligations relate, the General Partner will issue an invoice to the Partner. If the invoice is not paid within sixty (60) days, the General Partner will charge the amount against the Partner's Capital Account. This section will survive the termination of a Partner's status as a Partner.

#### **Section 5.04. Outside Activities.**

The General Partner shall devote to the management of the business of the Partnership so much of its time as it deems reasonably necessary to the efficient operation of the Ancillary Projects, the Hotel and any other Partnership Property in order to comply with this Agreement. The General Partner and its Affiliates, and their officers, directors, agents, employees, representatives, attorneys, accountants and other persons operating on its behalf, may engage in and possess any interest in other business ventures (including limited partnerships) of every kind, nature, and description whatsoever, independently or with others, whether existing at the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships that own, directly or through interests in other partnerships, hotels and conference center projects similar to, or in competition with, the Hotel or Ancillary Projects, including without limitation other hotels and conference center projects located at the Resort. Neither the Partnership nor the Partners shall have any rights by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

#### **Section 5.05. Liability to Partnership and Limited Partner.**

The General Partner, and its Affiliates, and their officers, directors, agents, employees, representatives, attorneys, accountants and other persons operating on its behalf shall not be liable, responsible, or accountable in damages or otherwise (including attorneys fees and expenses) to the Limited Partner or to the Partnership for any acts performed in good faith and within the scope of authority of the General Partner, or its Affiliates if any of the General Partner's duties have been contractually delegated to them, pursuant to this Agreement.

#### **Section 5.06. Indemnification of General Partner.**

(a) To the maximum extent permitted by law, the Partnership shall indemnify, defend, and hold harmless each General Partner and its Affiliates, and their officers, directors, agents, employees, representatives, attorneys, accountants, consultants and other persons operating on its behalf from and against any loss, liability, damage, cost, or expense (including reasonable attorney's fees) arising out of or alleged to arise out of any demands, claims, suits, actions, or proceedings against the General Partner, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Partnership and within the scope of the authority of the General Partner pursuant to this Agreement, and any amount expended in any settlement of any such claim of liability, loss, or damage; provided, however, that (i) the General Partner must have in good faith believed that such action was in the best interests of the Partnership, and such course of action or inaction must not have constituted breach of its fiduciary duty; and (ii) any such indemnification shall be recoverable from the assets of the Partnership, not from the assets of the

Limited Partner, and no Partner shall be personally liable therefore. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by any Partner or any Affiliate thereof against another Partner. In no event, however, shall a Limited Partner bring suit against the General Partner, or recover damages from the General Partner, in an amount that exceeds the amount invested by the Limited Partner in the Partnership.

(b) Notwithstanding anything contained in this Section, the General Partner shall not be indemnified or saved harmless from any liability, loss, damage, cost, or expense incurred by it in connection with: (i) any civil or criminal fines or penalties imposed by law; (ii) any claim or settlement involving the allegation that federal or state securities laws were violated by the General Partner or the Partnership, except as to a claim asserted by the Limited Partner; or (iii) any claim involving breach of a fiduciary duty, unless (A) the General Partner is successful in defending such action on the merits, or (B) such claims have been dismissed in favor of the General Partner with prejudice on the merits by a court of competent jurisdiction, or (C) a court of competent jurisdiction approves a settlement and determines that the General Partner is entitled to costs.

(c) The General Partner, when entitled to indemnification pursuant to this Section, shall be entitled to receive, upon application therefore, reasonable advances to cover the costs of defending any proceedings against it but only if (i) the action relates to the performance of the duties or services by the General Partner on behalf of the Partnership; (ii) the action is commenced by a third party who is not a Partner or Affiliate thereof; and (iii) the General Partner covenants in advance to repay the advance of funds to the Partnership in accordance with this Section in the event it is determined that the General Partner is not entitled to indemnification hereunder. All rights of the General Partner to indemnification shall survive the dissolution of the Partnership and the death, retirement, incompetency, insolvency, bankruptcy, or withdrawal of the General Partner.

**Section 5.07. Dealing with Affiliates: Fees.**

The General Partner may, in the name and on behalf of the Partnership, enter into agreements or contracts for performance of services for the Partnership with an Affiliate of the General Partner, including without limitation services necessary to construct the Building and other improvements and for the operation of the Hotel and the Ancillary Projects, and the General Partner may obligate the Partnership to pay compensation for and on account of any such services; provided, however, such compensation and services shall be at costs to the Partnership not in excess of those disclosed in the Confidential Memorandum. In addition, the General Partner shall pay the Resort Owner its development fees disclosed in the Confidential Memorandum.

**ARTICLE VI - Rights and Obligations of the Limited Partner**

**Section 6.01. Management of the Partnership.**

To the full extent permitted by the Act and without being deemed a general partner, the Limited Partner shall participate in the management of the business of the Partnership by making suggestions or recommendations to the General Partner on issues of policy important to the Partnership, by participating in one or more of the activities set forth in 11 V.S.A. §3423(b), and as otherwise set forth in Section 5.02(b) and Section 9.02. The Limited Partner shall not have the power or authority, however, to bind the Partnership or to sign any agreement or document in the name of the Partnership.

**Section 6.02. Limitation on Liability of the Limited Partner.**

Notwithstanding any other provision of this Agreement, the liability of the Limited Partner shall be limited to its Capital Contributions at any given time as and when payable under the provisions of this Agreement. The Limited Partner shall not have any other liability to contribute money to or in

respect of the liabilities, obligations, debts or contracts of the Partnership, nor shall the Limited Partner be personally liable for any liabilities, obligations, debts or contracts of the Partnership. A Limited Partner shall be liable to the Partnership only to make payment of its Capital Contribution as and when due and, after its Capital Contribution shall be fully paid, no Limited Partner shall, except as otherwise required by the Act, be required to make any further Capital Contributions or lend any funds to the Partnership.

**Section 6.03. Outside Activities.**

Nothing herein contained in this Agreement shall be construed to constitute the Limited Partner the agent of any other Partner hereof or to limit in any manner the Limited Partner in the carrying on of its own businesses or activities. The Limited Partner may engage in and possess any interest in other business ventures (including limited partnerships) of every kind, nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships which own, directly or through interests in other partnerships, hotel and conference center projects similar to, or in competition with, the Project. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in or to any such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

**Section 6.04. Inspection of the Project.**

The Limited Partner and/or its agent or designee shall have the right to inspect the Project upon reasonable notice to the General Partner and the General Partner shall provide all reasonable assistance to the Limited Partner in such effort.

**Section 6.05. Representations.**

The Limited Partner represents, warrants, and covenants to the Partnership and the General Partner as follows:

- (a) He is an "accredited investor" within the meaning of the definition in Rule 501(a), promulgated under the Securities Act of 1933 (the "Securities Act");
- (b) He is responsible for obtaining his own advice, including without limitation income tax advice, regarding the Investment, can bear the economic risk of his Investment, and has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the Investment in an Interest in the Partnership;
- (c) He is acquiring his Interest in the Partnership for investment for his own account, and not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that he has no present intention to sell, grant any participation in, or otherwise distribute the same;
- (d) None of the Interests in the Partnership have been registered under the Securities Act or any applicable state securities laws on the basis that the sale provided for in this Agreement and the issuance of the Interests hereunder are exempt from registration under the Securities Act and any applicable state securities laws;
- (e) He has received and reviewed, and understands and is fully satisfied with, all of the information and documentation he considers necessary or appropriate when deciding whether to purchase an Interest in the Partnership, including but not limited to the Confidential Memorandum, all exhibits thereto and all financial information disclosed therein or under this Agreement; has had the opportunity to ask questions and receive answers from the General Partner and the Partnership regarding the terms and conditions of the purchase of an Interest in the Partnership and the business, properties, prospects, and financial condition of the Partnership; and has had the opportunity to review the books and records of the Partnership and to obtain additional information

(to the extent the Partnership possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to it or to which it had access;

(f) Its Interest in the Partnership may not be sold, transferred, or otherwise disposed of without registration under the Securities Act and any applicable state securities laws or an exemption therefrom and, in the absence of an effective registration statement covering its Interest in the Partnership or an available exemption from registration under the Securities Act and any applicable state securities laws, its Interest must be held indefinitely;

(g) Any certificate or other document evidencing a partnership interest in the Partnership shall be endorsed with a legend substantially in the form set forth below:

**THE INTEREST IN THE PARTNERSHIP REPRESENTED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR UNDER THE VERMONT UNIFORM SECURITIES ACT (2002) OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SUCH ACTS, OR UNLESS THE PARTNERSHIP HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE SATISFACTORY TO THE PARTNERSHIP AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED;** and

(h) No representation, warranty or statement by it in this Agreement or in any document, certificate or schedule furnished or to be furnished to the General Partner pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

#### **Section 6.06. Option to Purchase.**

Each Limited Partner shall have the first option to purchase an interest, either as a whole unit or a fractional interest, in the Hotel when the Hotel is marketed for sale. No commission will be due and payable on such exercise of the option, which must be exercised and closed on within sixty (60) days of receiving notice from the General Partner that the Hotel is for sale. The Partnership will arrange for title insurance, financing and legal counsel, at the Limited Partner's sole cost and expense, for each Limited Partner desiring to exercise his or her option to purchase and desiring to take advantage of these offered services.

### **ARTICLE VII - Allocations of Profits and Losses**

#### **Section 7.01. Maintenance of Capital Accounts.**

The Partnership shall maintain a Capital Account for each Partner. Each Capital Account shall be maintained in accordance with Treasury Regulation Section 1.704-1 (b)(2)(iv). To each Partner's Capital Account there shall be credited such Partner's Capital Contributions, and its distributive share of Net Profits and Gains and any item in the nature of income or gain allocated to such Partner pursuant to Section 7.02. From each Partner's Capital Account there shall be debited the amount of cash and the fair market value (as of the date of distribution) of any Partnership property (net of liabilities securing the distributed property that such Partner assumes or subject to which such Partner takes the distributed property) distributed to such Partner pursuant to any provision of this Agreement and the Partner's distributive share of Net Losses and Loss and any items in the nature of expenses or deductions that are allocated to the Partner pursuant to Section 7.02. and to the amounts charged under section 5.03(b) to such Partner.

**Section 7.02. Profits and Losses.**

After giving effect to the special allocations set forth in Section 7.03, the Net Profits, Net Losses, Gain and Loss of the Partnership shall be allocated pursuant to each Limited Partner's Interest or, in the event of Secured Debt being assumed by the Partnership, in the same manner as their proportionate share of Available Cash Flow and net proceeds from a Capital Transaction, provided, however, that no Net Profits, Net Losses, Gain and Loss of the Partnership for any Fiscal Year shall be allocated to a Limited Partner to the extent such allocation would cause or increase an Adjusted Capital Account Deficit with respect to that Partner, and those Net Losses, Losses or Partnership deductions shall instead be allocated to the General Partner. Any intangible expenses including, but not limited to, depreciation or amortization are to be allocated in accordance with each Partner's Interest.

**Section 7.03. Special Allocations and Limitations.**

(a) Notwithstanding the provisions of Section 7.02, Partners shall be specially allocated items of Partnership Net Profits, Net Losses, Gain and Loss to comply with the Code and with all applicable Treasury Regulations regarding special allocations for partners of a partnership (the "Regulatory Allocations"). Such provisions include, but are not limited to, minimum gain chargeback requirements, changes in recourse and nonrecourse debts and liabilities, and elimination of Adjusted Capital Account Deficits. The Regulatory Allocations shall be taken into account in allocating other profits, losses and other items of income, gain, loss and deduction to the Partners so that, to the extent possible, the net amount of such allocations of profits and losses and other items shall be equal to the amount that would have been allocated to each Partner had the Regulatory Allocation not occurred. The Tax Matters Partner shall have the absolute discretion to apply the Regulatory Allocations in a manner consistent with this Agreement, and to make any and all determinations of special allocations thereunder.

(b) The respective interest of the Partners in the Net Profits, Net Losses, Gain, and Loss or items thereof shall remain as set forth above unless changed by amendment to this Agreement.

**ARTICLE VIII - Cash Distributions**

**Section 8.01. Distributions of Available Cash Flow.**

Available Cash Flow shall be distributed by the General Partner to and among the Partners and for the purposes below, within thirty (30) days after the close of each calendar month, as follows:

(a) first, to the repayment or part thereof of any remaining unpaid loans made by the General Partner or its Affiliates or third party interests to the Partnership;

(b) second, to the payment of any debts owed to the Limited Partners; and

(c) the balance to the Partners according to their Interests.

Notwithstanding the foregoing, it will be up to the General Partner in its sole discretion and if in the best interest of the Partnership to make any distributions. Distributions can only be made monthly, or such extended period of time, as the General Partner, in its sole discretion, may deem appropriate from the accumulated balance of Available Cash Flow.

**Section 8.02. Distributions of Proceeds from Capital Transaction.**

Proceeds from a Capital Transaction (defined as the net proceeds, after all costs, expenses and payments to Affiliates and any third party interests, upon liquidation of the Partnership resulting from the sale of the Partnership Property as set forth in Article XII, or upon sale or other disposition of the Hotel, in the entirety or otherwise as set forth in Section 10.03), shall be distributed to and among the Partners in the following amounts and order of priority:

- (a) first, to the payment of all matured debts and liabilities of the Partnership other than debts, liabilities and fees owed to Partners or their Affiliates;
- (b) second, to the repayment of any remaining unpaid loans from the General Partner or its Affiliates to the Partnership;
- (c) third, to the payment of any debts owed to the Limited Partner and their Affiliates;
- (d) fourth, to the Partners to the extent of their Adjusted Capital Account Deficits; and
- (e) last, to the Partners according to their Interests, the balance of which shall be distributed to the Partners in the same manner as distributions of Available Cash Flow.

#### **Section 8.03 Deficit Capital Accounts at Liquidation**

The Limited Partners shall have no liability to the Partnership, to the General Partners or to the creditors of the Partnership on account of any deficit balance in their capital accounts upon liquidation of the Partnership, provided however that any Partner for whom any changes have been made to his capital account by reason of the obligations under section 3.03 and section 5.03(b) This section 8.03 will survive the termination of the Partners' status as a Partner. A Partner must also pay any attorneys' or accountants' fees actually and reasonably incurred by the Partnership or a General Partner in collecting amounts under this provision from the Partner.

#### **Section 8.04 Limitation of Liability**

No Limited Partner shall have any personal liability whatsoever, whether to the Partnership, to any Partners or to the creditors of the Partnership, for the debts or obligations of the Partnership or any of its losses beyond his Capital Contribution, to be set forth opposite his name in exhibit A attached hereto; provided, however, that any Partner for whom any charges have been made to his Capital Account by reason of the obligations described in section 8.02, section 3.03 and or section 5.03(b), is required to reimburse the Partnership for the amount of any negative balance in his Capital Account, but such reimbursement shall not exceed the sum of such Partner's obligations under section 8.03 and section 8.04. This section 8.04 will survive the termination of a Partner's status as a Partner. A Partner must also pay any attorneys' or accountants' fees actually and reasonably incurred by the Partnership or a General Partner in collecting amounts under this provision from the Partner.

#### **Section 8.05 Death or Incapacity of Limited Partner**

The death, legal incapacity, dissolution, termination, merger, consolidation or bankruptcy (each a "Triggering Event") of one or more Limited Partners shall not cause dissolution of the Partnership, but the rights of such Limited Partner(s) to share in the profits and losses of the Partnership, to receive distributions from the Partnership and to assign an Interest in the Partnership shall, on the happening of such a Triggering Event, devolve upon such Limited Partner's executor, administrator, guardian, conservator or other legal representative or successor as the case may be, subject to the terms and conditions of this Agreement, and the Partnership shall continue as a Limited Partnership. However, in any such Triggering Event such legal representative or successor or any assignee of such legal

representative or successor shall be admitted to the Partnership as a Limited Partner only in accordance with and pursuant to all of the terms and conditions of this Agreement.

#### **Section 8.06 Recourse of Limited Partners**

Each Limited Partner shall look solely to the Project for all distributions with respect to the Partnership, his Capital Contribution thereto and profits and losses thereof, and shall have no recourse therefore upon dissolution of the Partnership or otherwise against the General Partners or any other Limited Partner, except to the extent of any required General Partner contributions to the Partnership required by Article III.

#### **Section 8.07 No Right to Property**

No Limited Partner shall have a right to demand or receive any distribution from the Partnership in any form other than cash, upon dissolution of the Partnership or otherwise.

### **ARTICLE IX - Admission of Successor and Additional General Partners: Removal and Withdrawal of General Partner**

#### **Section 9.01. Voluntary Withdrawal of General Partner/Admission of Successor or Additional General Partners.**

(a) The General Partner shall not have any right to retire or withdraw voluntarily from the Partnership or to sell, transfer, or assign all or any portion of its Interest, without the Consent of the Limited Partner, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that the Consent of the Limited Partner has been obtained by the General Partner, the General Partner shall designate one or more persons to be its successor. In no event shall the Interests of the other Partners be affected thereby. The designated successor General Partner shall be admitted as such to the Partnership upon approval of the Limited Partner and upon satisfying the conditions of this Agreement. Any voluntary withdrawal by the General Partner from the Partnership or any sale, transfer, or assignment by the General Partner of its Interest shall be effective only upon the admission of the successor General Partner in accordance with this Agreement, at which time the predecessor General Partner shall no longer have any obligations or liability under this Agreement.

(b) A successor General Partner shall, by its execution of an amendment to this Agreement and as a condition precedent to being admitted as a successor General Partner and to receiving any Interest in the Partnership or the Partnership Property, agree to be bound by this Agreement to the same extent and on the same terms as the predecessor General Partner.

(c) Upon the execution of the amendment to this Agreement by the successor General Partner and the admission of a successor General Partner, an amendment to the Certificate shall be executed by the successor General Partner and filed in accordance with the Act.

#### **Section 9.02. Removal of General Partner/Admission of Additional General Partner Under Certain Circumstances.**

(a) Upon the occurrence of an Event of Default, as defined herein, the Limited Partner shall have the right to cause a Person to be admitted to the Partnership as an additional General Partner and to remove a defaulting General Partner or both. The Limited Partner shall have the right in the name of the General Partner to take all actions and do all things necessary or appropriate to implement and carry out the provisions of this Section, provided that the replacement or addition of a General

Partner must be an Affiliate of the Initial General Partner, unless prohibited by state or federal law.

(b) The following shall each be an Event of Default:

(1) the General Partner has, in connection with the Partnership or the Project, performed an act or failed to perform any act constituting fraud, intentional misconduct, material breach of fiduciary duty, misappropriation or commingling of funds, or dishonesty;

(2) the General Partner has breached any material written representation, covenant or warranty under this Agreement that substantially impairs the performance or purpose of the Partnership; or

(3) an Event of Bankruptcy shall have occurred with respect to the General Partner;

(c) If the Limited Partner elects to

(1) admit a Person as an additional General Partner upon the occurrence of an Event of Default, such admission shall occur automatically and without further action by the General Partner upon the giving of notice thereof by the Limited Partner to the General Partner, and each of the Partners hereby agrees and consents in advance to the foregoing admission. Upon the occurrence of such admission, any delegation of authority given to the defaulting General Partner (whether expressly set forth in this Agreement or otherwise) shall be canceled and of no further force and effect, and instead the defaulting General Partner shall be deemed to have delegated, automatically and without the requirement of a writing or any other action other than as set forth above, all its powers and authority (including, without limitation, all right to deposit to, withdraw from and otherwise control all Partnership bank accounts) to the Person so designated by the Limited Partner in its capacity as an additional General Partner. Notwithstanding its admission to the Partnership, the additional General Partner may withdraw as a General Partner without the consent of any other Partner.

(2) remove the General Partner, then the Limited Partner shall have the right, without the consent of any of the General Partner, to designate a successor General Partner and elect to continue the business of the Partnership; such removal shall occur automatically and without further action by any Partner upon the giving of notice thereof by the Limited Partner to the General Partner. Upon such removal, (A) the removed General Partner shall have the obligation to sell its Partnership Interest to the General Partner or its designee for \$10.00US; and (B) such removed General Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership.

(d) The Limited Partner shall not have the right to exercise any remedies pursuant to this Article as a result of any Event of Default if the failure or violation is curable and if the General Partner shall cure such failure or violation within 30 days after notice.

### **Section 9.03. Event of Bankruptcy of a General Partner.**

(a) The General Partner shall cease to be the General Partner upon an Event of Bankruptcy with respect to the General Partner, or, with the Consent of the Limited Partner, upon the occurrence of the General Partner's insolvency. Upon such an Event of Bankruptcy, or, with the Consent of the Limited Partner, such insolvency, the remaining or successor General Partner shall cause the Partnership to redeem the General Partner's Interest for \$10.00US and the General Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership.

(b) If, at the time of an Event of Bankruptcy with respect to the General Partner, the General Partner is the sole General Partner, the Limited Partner shall have the right, in its sole discretion, to designate a successor General Partner and the Limited Partner may, within the maximum number of days permitted by the Act after the General Partner's ceasing to be a General Partner of the Partnership, elect to continue the business of the Partnership.

**Section 9.04. Continuation of the Business of the Partnership.**

(a) If, at the time of an Event of Default, the General Partner was not the sole General Partner, the remaining General Partner or General Partners may elect to continue the business of the Partnership and shall immediately: (i) give Notice to the Limited Partner of such Event of Default; and (ii) subject to the Consent of the Limited Partner, make any amendments to this Agreement and execute and, if required by the Act, file for recording any amendments or other documents or instruments necessary to reflect the termination of the Interest of the General Partner as and in order to comply with the requirements of the Act.

(b) A Person shall be admitted as a successor or additional General Partner with the Consent of the Limited Partner if an amendment to the Certificate evidencing the admission of such Person as a General Partner shall have been filed with the Secretary of State of the State. Each General Partner hereby agrees to execute promptly any such amendment to the Certificate, if required, in the event of its withdrawal or removal pursuant to the provisions of this Article. The Limited Partner shall have the right in the name of the General Partner to execute any such amendment in the event of the General Partner's withdrawal or removal. The election by the Limited Partner to remove any General Partner or admit any additional General Partner under Section 9.02 shall not limit or restrict the availability and use of any other remedy that the Limited Partner or any other Partner might have with respect to any General Partner in connection with its undertakings and responsibilities under this Agreement.

**ARTICLE X- Assignability of Interests of Limited Partner**

**Section 10.01. Substitution and Assignment of a Limited Partner's Interest.**

(a) Other than as set forth herein, no Limited Partner shall have the right to assign, sell, transfer, convey, encumber or pledge its Interest. In no event shall any Interest of a Limited Partner, or any portion thereof, be sold, transferred or assigned to a minor or incompetent, and any such attempted sale, transfer or assignment shall be void and ineffectual and shall not bind the Partnership or the General Partner. This investment may be beneficial to investors who seek lawful permanent residence pursuant to the EB-5 Program under the IN Act, as more fully described in the Confidential Memorandum. Failure of a Limited Partner desiring lawful permanent residence to remain invested fully in the Limited Partnership may result in the denial of lawful permanent residence for such Limited Partner as an outcome of this investment. There are other requirements of the EB-5 Program which the interested investor must observe or risk denial of lawful permanent residence pursuant to the EB-5 Program, as further set forth in the Confidential Memorandum.

(b) No assignment of the Interest of a Limited Partner shall be made if, in the opinion of counsel to the Partnership, such assignment (i) may not be effected without registration under the Securities Act, (ii) would result in the violation of any applicable state securities laws, (iii) would result in a termination of the Partnership under Section 708 of the Code (unless consented to by the General Partner), (iv) would result in the treatment of the Partnership as an association taxable as a corporation or as a "publicly-traded limited partnership" for tax purposes (unless consented to by the General Partner), or (v) would jeopardize the ability of any other Limited Partner to qualify under the EB-5 Program to become a lawful permanent resident of the United States. The Partnership shall not be required to recognize any such assignment until the instrument conveying such interest has been

delivered to the General Partner for recordation on the books of the Partnership and the General Partner has consented to the assignment under the parameters set forth herein. Unless an assignee becomes a substitute Limited Partner in accordance with the provisions of subsection (c), he shall not be entitled to any of the rights granted to a Limited Partner hereunder, other than the right to receive all or part of the share of the Net Profits, Net Losses, cash distributions or returns of capital to which its assignor would otherwise be entitled.

(c) An assignee of the Interest of a Limited Partner, or any portion thereof, shall become a substitute Limited Partner entitled to all the rights of a Limited Partner if, and only if:

(i) the assignor (or, if the assignor is a defaulting Limited Partner, the General Partner pursuant to the power of attorney granted in Section 16.09) gives the assignee such right;

(ii) the assignee pays to the Partnership all costs and expenses howsoever incurred in connection with such substitution, including, specifically, without limitation, costs incurred in the review and processing of the assignment and in amending the Partnership's then current Certificate and/or Agreement of Limited Partnership, if required; and

(iii) the assignee executes and delivers such instruments, in form and substance satisfactory to the General Partner, as the General Partner in its sole discretion may deem necessary or desirable to effect such substitution and to confirm the agreement of the assignee to be bound by all the terms and provisions of this Agreement.

(d) The Partnership and the General Partner shall be entitled to treat the record owner of any Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability for distribution of cash or other property made in good faith to such owner until such time as a written assignment of such Interest has been received and accepted by the General Partner and recorded on the books of the Partnership. The General Partner may refuse to accept an assignment until the end of the next successive quarterly accounting period.

#### **Section 10.02. Withdrawal of Initial Limited Partner.**

Notwithstanding the provisions of Article X, the Interest of the Initial Limited Partner shall be terminated and of no further force or effect upon the first admission of a Limited Partner other than the Initial Limited Partner. The termination of the interest of the Initial Limited Partner shall be automatic and require no action on its part or on the part of any other Person, and the General Partner shall cause to be prepared appropriate amendments to Exhibit A of this Agreement and to the Certificate.

#### **Section 10.03. Sale or Other Disposition of Hotel.**

(a) Notwithstanding anything herein to the contrary, beginning in the fourth quarter of 2013, or once all conditions have been removed under the EB-5 Program for all Qualified Investors who have invested into the Partnership to take advantage of the EB-5 Program, whichever is the later, the General Partner shall review market conditions to determine if it is appropriate to market the Hotel and, if so, to decide upon a plan of disposition of the Hotel (which may, but need not, include the sale of fractional interests, subdivision of the Hotel into separate condominiums or other common interest ownership units, and sale, or redemption by the Partnership, of Limited Partner Interests), to be managed and conducted exclusively by the General Partner or its designee on terms to be determined by General Partner in its sole discretion. Without limiting the foregoing, said terms will include brokerage fees payable to General Partner or its designee of eight percent (8%) if whole units are sold or if the Hotel is sold in its entirety as an operating business, and fifteen percent (15%) if fractional interests are sold. The Consent of the Limited Partner to the disposition shall only be required if the Hotel is sold in its entirety as an operating business.

(b) In the event the General Partner institutes a plan to market the Hotel, as described in (a) above, the General Partner will as a condition of the sale require the purchaser(s) to make their purchased property interests available to commercially reasonable, on-going Hotel operations to assist in maintaining permanent employment created by this Project, and the General Partner or its designee will continue to manage the Hotel on terms, including terms of compensation, substantially similar to those contained in this Agreement.

**Section 10.04. Termination of Leases for Ancillary Buildings.**

All Ancillary Buildings shall be operated by the Partnership for up to ten (10) years upon terms and conditions set forth in the individual Leases. All Leases shall automatically terminate upon the withdrawal of all Partners from the Partnership, or upon the expiration of the ten (10) year term, whichever is sooner.

**ARTICLE XI - Management Compensation, Etc.**

**Section 11.01. Management Compensation, Etc.**

Other than receiving its Interest herein, being reimbursed for all of its expenses and costs incurred related directly or indirectly to the development of the Project (including but not limited to permitting fees, professional fees and third party consultant fees), and receiving reimbursement for expenses and other costs incurred directly or indirectly by the General Partner to fulfill its duties hereunder, the General Partner shall not be entitled to compensation for its services rendered pursuant to this Agreement. While maintaining overall control hereunder, the General Partner shall, however, delegate its duty to operate the Hotel and the Ancillary Projects to an Affiliate for compensation to be paid by the Partnership in an amount equal to fifty percent (50%) of the gross income of the Hotel and the Ancillary Projects, excepting for the Golf Clubhouse, where the compensation shall be 75% of the gross income derived from the Golf Clubhouse, from which the Affiliate will pay all of the day to day operating, management and marketing costs of the Hotel and the Ancillary Projects, and ensure adequate staffing levels. In addition, the General Partner shall delegate its duty to develop the Project, including but not limited to the construction and build out of the Project, to the Resort Owner or another Affiliate for a construction supervisor charge to be paid by the Partnership in an amount equal to fifteen percent (15%) of the overall cost to the Partnership of the Hotel, excluding the cost of the Hotel Land acquisition. Further, the General Partner shall delegate its duty to market the Hotel to an Affiliate on the terms and for the fees as defined in Section 10.03 herein. Each Limited Partner has been given a copy of the Confidential Memorandum, including without limitation the financial pro formas attached thereto, in which the proposed fee structure to compensate the General Partner or its Affiliate(s), as identified in this section, is disclosed and agreed to without limitation by each Limited Partner.

**ARTICLE XII - Dissolution of Partnership**

**Section 12.01. Dissolution.**

The Partnership shall be dissolved, and the business of the Partnership shall be terminated in accordance with the Act, upon the occurrence of any of the following events:

(a) the dissolution, liquidation, withdrawal, retirement, removal, death, insanity, disability and/or Event of Bankruptcy of a General Partner, under such circumstances where no other remaining General Partner desires to continue the Partnership; provided, however, that the Partnership shall not be dissolved as aforesaid if the Limited Partner shall, within the maximum number of days permitted by the Act, elect to continue the Partnership and the Partnership business, and shall designate a successor General Partner;

(b) an election to dissolve the Partnership made in writing by all of the Partners in accordance with

the Act;

(c) the sale or other disposition of all or substantially all of the Partnership Property, whether under Section 10.03 or otherwise;

(d) the expiration of the Term; or

(e) The occurrence of any other event causing the dissolution of a limited partnership under the laws of the State.

**Section 12.02. Distribution of Partnership Assets.**

Upon the dissolution of the Partnership, the Partnership business shall be wound up, all leases shall terminate and its assets liquidated; and the net proceeds of such liquidation shall be distributed to the Partners as set forth in Section 8.02.

**Section 12.03. Termination of the Partnership.**

The Partnership shall terminate when all Partnership Property shall have been disposed of (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid assets of the Partnership, have been distributed to the Partners as provided in this Article and in accordance with the Act.

**ARTICLE XIII - Accounting and Reports**

**Section 13.01. Bank Accounts.**

The General Partner shall deposit the funds of the Partnership in the name of the Partnership in such separate bank account or accounts, and with such bank or banks whose deposits are insured by an agency of the federal government, as shall be determined by and in the sole reasonable discretion of the General Partner. The General Partner shall arrange for the appropriate operation of such account or accounts.

**Section 13.02. Books of Account.**

The General Partner shall at the expense of the Partnership keep at the principal office of the Partnership true, correct, and complete books of account, maintained in accordance with generally accepted accounting principles, consistently applied, in which shall be entered fully and accurately each and every transaction of the Partnership. For federal income tax and financial reporting purposes, the Partnership shall use the accrual method of accounting and the fiscal year shall end December 31. Each Partner shall have access thereto to inspect and copy such books of account at all reasonable times upon reasonable advance written notice to the General Partner. The Partnership shall retain all books and records for the longest of the periods required by applicable laws and regulations.

**Section 13.03. Reports.**

The General Partner shall at Partnership expense cause to be prepared and delivered to the Limited Partner and, when required, shall cause the Partnership to file with relevant governmental agencies, each of the following:

(a) by March 15 of each calendar year, the Partnership's federal income tax return including Schedule K-1's to form 1065 and all other information from the Partnership necessary for the preparation of the Limited Partner's federal income tax return;

(b) by March 15 of each calendar year, for the prior fiscal year a financial statement and report prepared for the Partnership in accordance with generally accepted accounting principles; and

(c) in addition, General Partner at its sole discretion may distribute interim financial reports.

**Section 13.04. Tax Elections and Adjustments.**

The General Partner is authorized to cause the Partnership to make, forego or revoke such elections or adjustments for Federal Income tax purposes as they deem necessary or advisable in their sole discretion, provided such elections or adjustments are consistent with federal income tax rules and principles, including but not limited to, in the event of a transfer of all or part of the Limited Partnership Interest of any Partner, an election pursuant to section 754 of the Code to adjust the basis of the assets of the Partnership or any similar provision enacted in lieu thereof. The Partners will, upon request, supply any information necessary to properly give effect to any election or adjustment.

**ARTICLE XIV - Meetings of the Partnership**

**Section 14.01. Meetings of the Partnership.**

Meetings of the Partnership may be called for any matters upon which the Partners may vote as set forth in this Agreement. The calling of a meeting shall be made:

(a) by the General Partner, which shall give Notice to the Partners setting forth (i) a statement of the purposes of the meeting, and (ii) the date of the meeting (which shall be a date no fewer than 15 days and no more than 30 days after the date of the Notice); or

(b) by the Limited Partner (which for the limited purpose of this subsection shall require at least sixty-six percent (66.67%) of the Limited Partners agreeing to such call for a meeting), which shall give Notice to the Partners setting forth a statement of the purposes of the meeting. No more than 15 days after receipt of such Notice, the General Partner shall provide Notice of the meeting to the other Partners in accordance with subsection (a).

**ARTICLE XV - Amendments**

**Section 15.01. Generally.**

In addition to amendments otherwise authorized in this Agreement, this Agreement may be amended in any respect from time to time by the General Partner without written approval or consent of Limited Partners including but not limited to the following;

(a) by the General Partner, without the Consent of the Limited Partner, to

(1) add to its duties or obligations or to surrender any right or power given to it by this Agreement;

(2) cure any ambiguity, correct or supplement any provision of this Agreement which may be inconsistent with any other provision of this Agreement or make any other provisions with respect to matters or questions arising under this Agreement which are not inconsistent with the provisions of this Agreement;

(3) reflect on Exhibit A the removal, addition or substitution of the General Partner or the Limited Partner;

(4) correct or modify any provision to comply with the Act or satisfy USCIS; or

(5) any other amendment in the General Partner's sole discretion, so long as the amendment does not allow the Limited Partner to take part in the control of the Partnership's business in a manner that would reduce or eliminate the limited liability of the Limited Partner, or otherwise modify the limited liability of the Limited Partner, or increase the liability or obligations of

the Limited Partner, or as to change the Capital Contributions required, or rights and interests in profits, losses and distributions of any Partner or dilute the Interest of the Limited Partner.

**Section 15.02. Signatures.**

The General Partner shall sign any amendment to this Agreement adopted in accordance with the terms of this Agreement.

**ARTICLE XVI - Miscellaneous Provisions**

**Section 16.01. Notices. etc.**

All notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered or mailed by first-class registered or certified mail, postage prepaid, to the respective parties hereto at their respective addresses set forth in Exhibit A or in each case at such other address as such party may have furnished to the Partnership in writing, (ii) delivered in hand to a party, (iii) on the business day next following delivery to a nationally recognized overnight courier, or (iv) when transmitted by facsimile with electronic confirmation of transmission receipt.

**Section 16.02. Survival of Representations.**

All representations, warranties, and indemnifications contained herein shall survive the dissolution and final liquidation of the Partnership.

**Section 16.03. Entire Agreement.**

This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

**Section 16.04. Applicable Law.**

It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State without regard to principles of conflicts of laws.

**Section 16.05. Severability.**

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable statutes, laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**Section 16.06. Binding Effect.**

(a) Each Partner, including any additional General Partner, successor General Partner, additional Limited Partner and substitute Limited Partner, shall be deemed to have adopted, and to have agreed to be bound by, all the provisions of this Agreement.

(b) When entered into by a Partner, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

**Section 16.07. Counterparts.**

This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the

same counterpart.

**Section 16.08. No Implied Waiver.**

No failure on the part of any Partner to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

**Section 16.09. Power of Attorney.**

Each Limited Partner, including any additional or substituted Limited Partner, by the execution of this Agreement or any counterpart thereof, does hereby irrevocably constitute and appoint the General Partner's president William Stenger, with full power of substitution, acting alone or jointly, its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead, to make, execute, acknowledge, swear to, deliver, file and record such documents and instruments as may be necessary or appropriate to carry out the provisions of this Agreement, including, but not limited to: (i) such amendments to this Agreement and the Partnership's Certificate of Limited Partnership, as amended from time to time, as are necessary to effectuate the provisions of this Agreement, including without limitation to admit to the Partnership a substituted Limited Partner or a substituted General Partner, (ii) such documents and instruments as are necessary to cancel the Partnership's Certificate of Limited Partnership, (iii) an amended Certificate of Limited Partnership reflecting the terms of this Agreement, (iv) all certificates and other instruments deemed advisable by the General Partner to permit the Partnership to become or to continue as a limited partnership or partnership wherein the Limited Partner has limited liability in the jurisdiction where the Partnership may be doing business, (v) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Partnership and (vi) all other instruments which may be required or permitted by law to be filed on behalf of the Partnership. The foregoing power of attorney is coupled with an interest, shall be irrevocable and shall survive the death, bankruptcy or incapacity of any Limited Partner and the assignment by any Limited Partner of its limited partnership interest.

**Section 16.10. Partition.**

The Partners hereby agree that no Partner, nor any successor-in-interest to any Partner, shall have the right while this Agreement remains in effect to have the property of the Partnership partitioned, or to file a complaint or institute any proceeding at law or in equity to have the property of the Partnership partitioned, and each Partner, on behalf of himself, his successors, representatives, heirs, and assigns, hereby waives any such right. It is the intention of the Partners that during the term of this Agreement, the rights of the Partners and their successors-in-interest, as among themselves, shall be governed by the terms of this Agreement, and that the right of any Partner or successor-in-interest to assign, transfer, sell or otherwise dispose of its interest in the Partnership's Property shall be subject to the limitations and restrictions of this Agreement.

**Section 16.11. Confidentiality.**

A prospective investor into the Partnership, by accepting receipt of this Agreement, agrees not to duplicate or to furnish copies of this Agreement or to divulge information garnered from this Agreement or its exhibits to persons other than such investor's investment and tax advisors, accountants and legal counsel, and such advisors, accountants and legal counsel together with the prospective investors and any other persons to which this Agreement or the Related Documents come into their possession are prohibited from duplicating or using this Agreement, the Related Documents and all exhibits thereto in any manner other than to determine whether the investor wants to invest into the Partnership. Prospective investors are not to construe the contents of this Agreement as legal, investment, immigration or tax advice, or any other advice related to the efficacy of the investment to them. The General Partner has not engaged any legal or other advisors to represent prospective investors. Each prospective investor should consult their

own advisors as to legal, tax and related matters concerning the efficacy of this investment and the appropriateness of this investment to them and any other matters concerning this investment. The expense of such consultations shall be paid separately by the investor.

**Section 16.12. Approval of Agreement.**

All Qualified Investors who invest in the Partnership and become a Limited Partner, by their receipt of this Agreement and investment into the Partnership hereby approve this Agreement, all Related Documents and all exhibits thereto, and approve without limitation the use of their investment proceeds, the investment itself, and all management and exit strategies, all as disclosed herein.

**Section 16.13. No Guarantees or Redemption Rights.**

Each Limited Partner acknowledges and agrees by their receipt of this Agreement and investment into the Partnership that no promises or guarantees of performance, investment results or returns, rights to redeem their interests or removal of conditions under the EB-5 Program have been made to them by anyone, including but not limited to by the General Partner or any of its Affiliates, and their agents, representatives, officers, salesmen, managers, employees, attorneys, consultants and third party contractors, and they are not relying on anything from the General Partner or any of its Affiliates, and their agents, representatives, officers, salesmen, managers, employees, attorneys, consultants and third party contractors except this Agreement and the Related Documents in making the decision to invest.

**Section 16.14. Arbitration Clause.**

Any and all disputes arising under or relating to the interpretation or application of this Agreement shall be subject to arbitration in Vermont under the then existing rules of the American Arbitration Association and pursuant to the Vermont Arbitration Act, codified at 12 V.S.A. section 5651, et seq. (the "VAA"), and if any conflict exists between said rules and VAA, the VAA shall control. Judgment upon the award rendered may be entered in any court of competent jurisdiction. The cost of such arbitration shall be borne equally by the parties. Nothing contained in this Section shall limit the right of the General Partner, either on behalf of the Partnership or on its own behalf, and Limited Partner from seeking or obtaining the assistance of the courts in enforcing their constitutional or civil rights.

**ACKNOWLEDGMENT OF ARBITRATION.**

The parties to this Agreement understand that this Agreement contains an agreement to arbitrate. After signing this Agreement, or the investment subscription documents as set forth in Section 3.02(b) herein, each Partner understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, each Partner agrees to submit any such dispute to an impartial arbitrator.

**Section 16.15. Reimbursement of Expenses and Costs.**

Notwithstanding anything herein to the contrary, the General Partner and its Affiliates will be reimbursed by the Partnership for all expenses and costs incurred by the General Partner or its Affiliates in exercising the duties and powers delegated to and granted the General Partner herein.

**Section 16.16. Translation of Agreement, Etc.**

Each prospective Partner, by their receipt of this Agreement, acknowledges that it is their responsibility to obtain and pay for the translation of this Agreement, Related Documents and exhibits thereto if they cannot read or understand English.

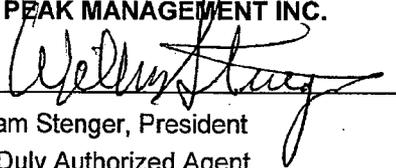
**Section 16.17. Gender Clause.**

Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

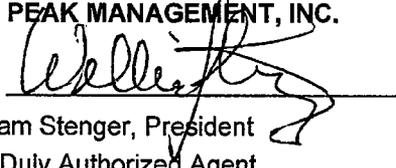
Jay Peak Hotel Suites Phase II Limited Partnership Agreement

DATED at Jay, Vermont as of the 20 day of June, 2008.

**GENERAL PARTNER:  
JAY PEAK MANAGEMENT INC.**

BY:   
William Stenger, President  
and Duly Authorized Agent

**INITIAL LIMITED PARTNER:  
JAY PEAK MANAGEMENT, INC.**

BY:   
William Stenger, President  
and Duly Authorized Agent

**Exhibit A**

<u>Name</u>	<u>Address</u>	<u>Initial Interest</u>	<u>Capital Contribution</u>
<u>General Partner</u>			
Jay Peak Management Inc.	4850 VT. Route 242 Jay, VT 05859-9621	0.01%	
<u>Limited Partner</u>			
Jay Peak Management Inc.	4850 VT. Route 242 Jay, VT 05859-9621	99.99%	

**B**

# JAY PEAK

VERMONT

Bill Stenger  
President & CEO

April 2013

Dear Jay Peak Hotel Suites Phase II Partner,

As we near the completion of the current ski season we are pleased with the growth of the Phase II business. In 2012 only a portion of the facilities were open and these generated the operating income that is being distributed currently. In late 2012 and 2013, with attendance and occupancy growth increasing, the facilities are now showing promising returns.

Please find attached the 2012 operating statement and your proceeds check.

We continue to be encouraged by bookings this summer and fall. Now that we are fully open and operating you will get quarterly financial reports and proceeds payments as they apply.

The future is very bright. We have constructed first class facilities and our market loves what we have built.

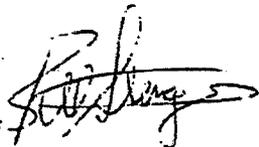
We are also pleased to inform you that all petitions filed for Removal of Conditions have been approved thus far.

We hope you will visit Jay Peak this year to see firsthand what we have created. All reservations are based on availability and we have four blackout periods per year. For 2014 they are:

- Christmas and New Year's Week: December 22, 2013 to January 4, 2014
- Martin Luther King Weekend: January 17, 2014 to January 20, 2014
- President's Week: February 14, 2014 to February 22, 2014
- Ontario Break Week: March 14, 2014 to March 22, 2014

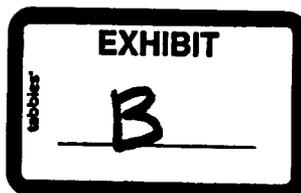
To book your complimentary stay, contact Lizzy Button at [lbutton@jaypeakresort.com](mailto:lbutton@jaypeakresort.com) and she will send you a request form for your completion

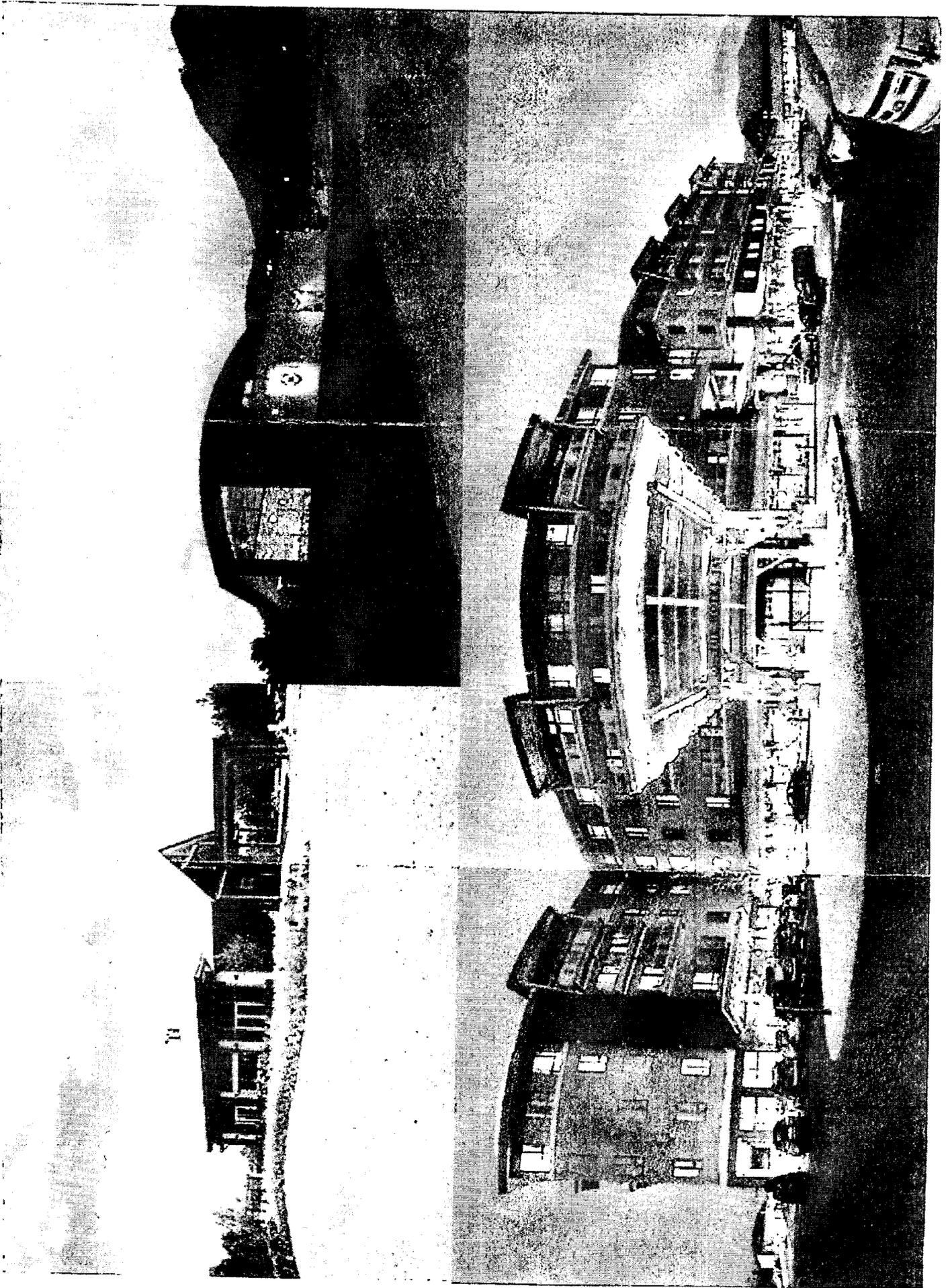
Sincerely,



Bill Stenger  
President & CEO  
General Partner

4850 VT Rte. 242 • Jay, Vermont 05859-9621 • Direct Dial (802) 327-2222 • Fax (802) 988-4049  
E-Mail: [bstenger@jaypeakresort.com](mailto:bstenger@jaypeakresort.com) • [JAYPEAKRESORT.COM](http://JAYPEAKRESORT.COM)





<b>Jay Peak Hotel Suites Phase II LP</b> <b>Income Statement</b> <b>For the Period Ended March 31, 2013</b>
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<b>REVENUES</b>	
Lodging	1,685,740
Food and beverage	248,074
Water Park, Ice Arena and Arcade Admissions	2,436,518
<b>TOTAL REVENUES</b>	<b><u>4,370,332</u></b>
<b>EXPENSES</b>	
Cost of sales and management fee - lodging	862,069
Cost of sales and management fee - food and beverage	198,382
Cost of sales and management fee - Water Park, Ice Arena and Arcade admissions	1,240,289
Fixed expenses	1,806,023
<b>TOTAL OPERATING EXPENSES</b>	<b><u>4,106,743</u></b>
<b>INCOME FROM OPERATIONS</b>	<b><u>263,589</u></b>
<b>OTHER INCOME (EXPENSE)</b>	
Common area easement	22,917
Other expense	(30,837)
<b>TOTAL OTHER INCOME (EXPENSE)</b>	<b><u>(7,920)</u></b>
<b>INCOME BEFORE NON OPERATING INCOME (EXPENSES)</b>	<b>255,669</b>
Depreciation	(1,206,609)
<b>NET LOSS</b>	<b><u><u>(950,940)</u></u></b>

(1) Fixed expenses include property taxes, utilities, insurance, professional fees, maintenance, repairs and reserve for replacement.

Cash distributions are calculated by dividing income before non operating income (expense) between 150 limited partners.

<b>This statement should not be used for tax preparation purposes. Schedule K-1 will be provided as soon as the Partnership tax return is completed and filed with the IRS.</b>
---

**Jay Peak  
Hotel Suites Phase II L.P.**  
4850 VT RTE. 242  
JAY, VERMONT 05859

**People's United  
Bank**  
51-7218-2211

NO.

2410

DATE 04/09/2013

AMOUNT \*\*\*\*7,418.08

PAY

Seven Thousand Four Hundred Eighteen and 08/100\*\*\*\*\*

TO THE ORDER OF  
JUAN HINESTROSA  
401 E. LAS OLAS BLVD  
SUITE 1400  
FORT LAUDERDALE, FL 33301  
U.S.

  
Jay Peak Hotel Suites Phase II L.P.  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Security features. Details on back.

⑈002418⑈ ⑆226172186⑆ 0016520659⑈

**Jay Peak Hotel Suites Phase II L.P.**

INV0168

JUAN HINESTROSA

04/09/2013

2418

FY 2012 DISTRIBUTIONS 12/31/2012

7,418.08

0.00

7,418.08



*Thank you for banking with SunTrust*  
For Account Information call 800.SunTrust (800.786.8767)

120 CHECK DEPOSIT \*  
Bus. Date 16Apr.2013 AM

212

Transaction Date: 16Apr.2013 13:07:36

101829 (8/12)

This is your receipt showing bank, date, time, type of account and amount.  
All deposits are credited to your account subject to verification and final payment.

Making a payment through a retail branch will result in a delay in processing. We cannot guarantee such payments will be processed within two business days. However, payments made at a retail branch will be credited effective as of the date received in the branch.