

AMENDED AND RESTATED WATER DELIVERY, MANAGEMENT, AND MAINTENANCE AGREEMENT

THIS AMENDED AND RESTATED WATER DELIVERY, MANAGEMENT, AND MAINTENANCE AGREEMENT ("Agreement") is entered into by and between RIVER VALLEY RANCH GOLF, LLC, a Colorado limited liability company ("RVR Golf") and RIVER VALLEY RANCH MASTER ASSOCIATION, a Colorado non-profit corporation ("RVRMA"), to be effective as of January 1, 2011 regardless of the date it is actually signed by the parties.

RECITALS

A. The parties hereto, together with Crystal River Limited Partnership, a Delaware limited partnership (the "Developer") are parties to that certain Water Delivery, Management, and Maintenance Agreement dated July 31, 1997 and recorded in the records of the Garfield County Clerk and Recorder on August 13, 1997 as Reception No. 512302 (the "1997 Water Agreement").

B. Developer has fully assigned its rights and obligations in the 1997 Water Agreement to RVR Golf and RVRMA by virtue of those certain Assignments dated November 10, 2003 and recorded in the Garfield County real estate records on November 12, 2003 as Reception No. 640567 and Reception No. 640559. RVR Golf and RVRMA are thus the sole remaining parties to the 1997 Water Agreement and have been since the 2003 Assignments identified above.

C. RVR Golf and RVRMA have acted substantially in accordance with the 1997 Water Agreement since 2003 through the effective date hereof, although a dispute has existed between the parties related to the charges for irrigation water allocated and invoiced by RVR Golf to RVRMA and Lot and Unit Owners.

D. By a separate Settlement Agreement executed simultaneously herewith, the parties have agreed to fully and finally resolve their dispute.

E. In order to avoid further disputes, and in order to clarify and amend the parties mutual rights and responsibilities with respect to the various irrigation systems hereinafter defined, the parties wish to amend and restate the 1997 Water Agreement as hereinafter provided. Upon execution hereof, the 1997 Water Agreement is null and void and of no further force and effect, and this Agreement shall control.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. As used in this Agreement, the following terms shall have the respective meanings set forth below:

a. Annexation Agreements. The Agreement Relating to the Annexation of the Gray Ranch Property and Sopris Ranch Property to the Town of Carbondale, Colorado, with an effective date of June 21, 1994, entered into by the Town of Carbondale, as amended by Amendment to Annexation Agreement – Assignment/Assumption made by and among the Town of Carbondale, a Colorado Municipal Corporation, and Richard Gray, Mary L. Gray, Roger Griffin and Sherryl W. Griffin, Perry Sopris Ranch Partnership, Ltd., a limited partnership, Crystal River Land Company, a Colorado corporation, Robert A. Howard and Patrick F. Crooks, and Crystal River Limited Partnership, a Delaware limited partnership duly registered and authorized to conduct business within the State of Colorado, effective January 13, 1995, and recorded in Book 0928, Page 897 of the real estate records of Garfield County, Colorado, and further amended by Second Amendment to Annexation Agreement effective as of March 12, 1996, recorded in Book 0993, Page 807 of the real estate records of Garfield County, Colorado; together with the Ordinances of the Town of Carbondale related to such annexation, including Ordinance Nos. 17, 19, and 20, Series of 1994 and Nos. 19, 20, 23, Series of 1996; and together with the Resolutions, Plats and Master Subdivision Improvements Agreement and Development Covenants of Phase I, River Valley Ranch (the “SIA”) effective as of July 9, 1996, recorded in Book 993, Page 851 of the real estate records of Garfield County, Colorado.

b. Assignment of Reserved Rights to RVR Golf. The Assignment of Reserved Rights of First Use of Water from Developer to RVR Golf, dated July 31, 1997 recorded in the real estate records of Garfield County on September 2, 1997 as Reception No. 513088, assigning rights to use portions of the Raw Water to RVR Golf.

c. Assignment of Reserved Rights to RVRMA. The Assignment of Reserved Rights of First Use of Water and Rights and Obligations Under Water Operating Agreement and Bull Pasture Annexation Agreement dated November 10, 2003 and recorded in the real estate records of Garfield County on November 12, 2003 as Reception No. 640561, assigning, *inter alia*, rights to use portions of the Raw Water to RVRMA.

d. Covenants. The Master Declaration of Protective Covenants for River Valley Ranch, dated September 25, 1996, recorded in Book 994, Page 24 of the real estate records of Garfield County, Colorado, and as the same may be amended or supplemented from time to time.

e. Bull Pasture. The land that is subject to the Agreement Relating to the Annexation of the Turnbull Bull Pasture Property into the Town of Carbondale, Colorado ("Bull Pasture Annexation Agreement") entered into by the Town of Carbondale and Developer, effective June 11, 1996, and recorded in Book 993, Page 823 of the real estate records of Garfield County, Colorado, together with the Ordinances of the Town of Carbondale related to such annexation.

f. Claims. Shall have the meaning set forth in the definition of Indemnify.

g. Community Irrigation System. The ditches, pipes, pumps, valves, ponds, headgates, meters, sprinkler heads, computer and electrical control systems, pumphouses, facilities and improvements installed for the purposes of diverting, storing, and distributing Raw Water from the Irrigation Water Delivery System at designated valves and meters, which are included in the community irrigation system, through a pressurized system to irrigate those portions of the Community Land designated for irrigation and to be distributed throughout the Community Land to individual Irrigation Systems. The facilities that comprise the Community Irrigation System are depicted in blue coloring and identified as "RVR Master Association" facilities on the attached Map A. The RVRMA shall own the Community Irrigation System.

h. Community Land. All lands within River Valley Ranch annexed into the Town of Carbondale pursuant to the Annexation Agreements and Bull Pasture Annexation Agreement with the exception of the Golf Land.

i. Ditch Relocation Agreements. Any and all agreements entered into with the owners of interests in the Town of Carbondale Ditch, Rockford Ditch, and Weaver and Leonhardy Ditch. Said ditches are identified on Map A.

j. Easements. Those certain easements conveyed to RVR Golf or reserved to Developer as more fully provided for in the Golf Land Deed.

k. Event of Bankruptcy. As to RVRMA or RVR Golf:

i. Filing of voluntary petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code (as now or in the future amended) or an admission seeking the relief therein provided;

ii. Making a general assignment for the benefit of its creditors;

iii. Consenting to the appointment of a receiver for all or a substantial part of its property;

iv. In the case of the filing of an involuntary petition in bankruptcy, the failure to have such petition stayed or dismissed within 60 days of filing;

v. The entry of a court order appointing a receiver or trustee for all or a substantial part of its property without its consent; or

vi. The assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of its property.

l. Golf Irrigation System. The ditches, pipes, pumps, valves, ponds, headgates, meters, sprinkler heads, computer and electrical control systems, pumphouses, facilities and improvements installed for the purposes of diverting, storing, and distributing Raw Water from the Irrigation Water Delivery System through a pressurized system to irrigate only those portions of the Golf Land designated for irrigation. The facilities that comprise the Golf Irrigation System are depicted in green coloring and identified as "RVR Golf" facilities on the attached Map A. RVR Golf shall own the Golf Irrigation System.

m. Golf Land. The land described as Golf Course Parcel No. 2, Golf Course Parcel No. 3, Golf Course Parcel No. 4, Golf Course Parcel No. 5, Golf Course Parcel No. 6, as said Parcels are depicted and described on the Final Plat of River Valley Ranch, Phase I, recorded on September 27, 1996 at Reception No. 498928 of the real estate records of Garfield County, Colorado, and on the Amended Plat of Golf Course Parcel No. 2 recorded August 12, 1997 at Reception No. 512237 in said records.

n. Golf Land Deed. The Special Warranty Deed from Developer to RVR Golf dated July 31, 1997 and recorded in the real estate records of Garfield County on August 13, 1997 as Reception No. 512300, conveying the Golf Land to RVR Golf and establishing certain Easements and other relationships between the Golf Land and the Community Land, all as more fully provided therein.

o. Indemnify. "Indemnify" (or "Indemnification") means indemnify, defend, protect and hold harmless the indemnitee, and such indemnitee's officers, directors, managers, agents, servants, employees, partners (and partners of partners), members and their partners (and partners of partners) and mortgagees from and against, assume entire responsibility and liability for and pay or reimburse the indemnitee and such indemnitee parties for, all loss, claims, demands, liability, actions, causes of action, suits, liens, injury, proceedings, judgments, damages, costs and expenses (including, but not limited to, personal injury, property damage and death resulting therefrom, and all reasonable attorneys' and other reasonable professional fees and costs of litigation or other legal proceedings) of any kind or nature whatsoever ("Claims" and individually a "Claim") directly or indirectly as a result of, caused by or in any way arising out of or connected with or occurring in connection with the matter which is the subject of the indemnity, but not including indirect, special or consequential damages of the indemnitee and such indemnitee parties.

- p. Individual Irrigation System. Pipes, pumps, valves, meters, sprinkler heads, computer and electrical control systems, facilities and improvements installed for the purposes of irrigating the separate legal parcels of Community Land owned by Lot or Unit Owners, the RVRMA, sub-associations, or the Town. Raw Water is delivered to each Individual Irrigation System at an individual service connection on the Community Irrigation System. Each Lot or Unit Owner, the RVRMA, and each sub-association shall own their respective Individual Irrigation Systems.
- q. Irrigation Ditches. The Bowles and Holland Ditch, Town of Carbondale Ditch, Lowline Ditch, Weaver and Leonhardy Ditch, Rockford Ditch, and associated laterals and ponds that are located on and/or traverse the Community Land and Golf Land which may be a part of the Irrigation Water Delivery System and Golf Irrigation System.
- r. Irrigation Season. The period of time extending from March through November of each year during which Raw Water is used for irrigation purposes on Community Land and Golf Land.
- s. Irrigation Water Delivery System. Certain Irrigation Ditches and ditches, laterals, pipes, pumps, valves, ponds, headgates, meters, sprinkler heads, computer and electrical control systems, pumphouses, facilities, and improvements installed for the purposes of diverting, storing, and distributing Raw Water through a pressurized system to the Golf Land and Community Land. The facilities that comprise the Irrigation Water Delivery System are depicted in red coloring and identified as "RVR Golf/RVRMA" facilities on the attached Map A. The Irrigation Water Delivery System terminates immediately upstream of all points of interconnection between it and the Community Irrigation System and the Golf Irrigation System. RVR Golf shall own the Irrigation Water Delivery System.
- t. Lot or Unit Owner. The person or persons, including without limitation, the RVRMA and any sub-association, who hold fee simple title of record to a Lot or Unit within the Community Land as defined in the Covenants.
- u. Maintenance. All actions constituting maintenance, repair, alteration, restoration, replacement, rebuilding, construction, demolition and improvement of the Irrigation Water Delivery System in order for it to function in a high quality operable condition to deliver Raw Water to the Golf Irrigation System and Community Irrigation System in a consistent, uninterrupted manner during the Irrigation Season and during such other time as Raw Water is required for the Golf Land or Community Land.
- v. Party. RVR Golf or RVRMA as applicable.
- w. Perry Ditch Agreement. The Ditch Ownership, Ditch Allocation, Ditch Use and Ditch Maintenance Agreement, recorded in Book 928, Page 983, real estate records of Garfield County, Colorado.

x. Person. Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so allows.

y. Prime Rate. The annual rate of interest announced from time to time by First National Bank of Chicago (or its corporate successor) as its corporate base rate, such prime rate to change effective with the effective date of each change in such prime rate of interest announced by First National Bank of Chicago (or its corporate successor).

z. Raw Water. Water decreed or to be decreed for irrigation uses and additional uses and owned or to be owned by the Town and reserved to RVR Golf and RVRMA as described in and pursuant to and subject to the provisions of the Annexation Agreements, SIA, and the Assignment of Reserved Rights to RVR Golf and Assignment of Reserved Rights to RVRMA.

aa. Town. The Town of Carbondale, Colorado, a Colorado municipal corporation.

bb. Unavoidable Delay. All failures or delays in a Party's performance of its obligations hereunder not within such Party's reasonable control, including without limitation, the impossibility of such performance which shall result from or be caused by any arbitration, legal proceedings or other litigation instituted against such Party, in good faith, and not in collusion with the plaintiff, acts of God, acts of public enemy, wars, blockades, epidemics, earthquakes, storms (including cold, snowy or other inclement weather, or snow covered or frozen ground), floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, lawful acts of any governmental agency or authority restricting or curtailing the construction of improvements or withholding or revoking necessary consents, approvals, permits or licenses (provided such Party who is unable to do so makes reasonable efforts to procure same), inability to procure and obtain needed building materials (provided such Party who is unable to do so makes reasonable efforts to procure satisfactory substitute materials if practical) whether as a result (directly or indirectly) of any lawful order, law or decree of any governmental authority or agency or otherwise, and any other cause, whether of the kind herein referred to or otherwise; provided, that such Party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a Party to settle any labor dispute shall not qualify or limit the effect of Unavoidable Delay. The inability or refusal of a Party to secure funds required to perform its agreements hereunder shall not constitute Unavoidable Delay.

cc. Unreasonably Withheld. Being unreasonably withheld or delayed, and, as to any matter for which consent or approval is required by the terms hereof to not be unreasonably withheld, such consent or approval shall be deemed given if no written objection is made by the Party whose consent and approval is required within five (5)

business days of request therefor being received by such Party, provided the notice states in all caps or bold print that failure to respond may be deemed an approval.

dd. Water Rights Operating Agreement. The Water Rights Operating Agreement between Developer and the Town, recorded in the real estate records of Garfield County as Reception No. 498942.

2. General Concept. The Irrigation Water Delivery System, Golf Irrigation System, and Community Irrigation System, have all been installed and are operational. An isolation valve and a Cla-Val valve have been installed at each point of delivery between the Irrigation Water Delivery System and the Community Irrigation System. Each combination of an isolation valve and corresponding Cla-Val valve have the capability of metering the amount of Raw Water delivered from the Irrigation Water Delivery System into the Community Irrigation System at that point of delivery. RVR Golf shall, at its initial expense, operate, manage and maintain the Irrigation Water Delivery System in such manner so as to deliver Raw Water to the Golf Irrigation System and the Community Irrigation System as contemplated by the Water Rights Operating Agreement, the Assignment of Reserved Rights to RVR Golf, the Assignment of Reserved Rights to RVRMA, and this Agreement. RVR Golf shall also, at its initial expense, operate, manage and maintain the Irrigation Ditches as required by the Ditch Relocation Agreements and the Assignments defined in paragraph B of the Recitals to this Agreement. RVRMA shall pay its fair share of the cost of operation, maintenance and management of the Irrigation Water Delivery System and the Irrigation Ditches to RVR Golf in accordance with the budget and payment provisions set forth in paragraph 4 of this Agreement. RVR Golf shall, at its sole responsibility and expense, operate, manage and maintain the Golf Irrigation System in such a manner so as to provide for the irrigation of those portions of the Golf Land designated for irrigation. RVRMA shall, at its sole responsibility and expense, operate, manage and maintain the Community Irrigation System in such a manner so as to deliver Raw Water to Individual Irrigation Systems and to provide for irrigation of those portions of Community Land designated for irrigation. Each Party shall operate and maintain the components of the overall River Valley Ranch Irrigation System for which it is responsible in a reasonable and prudent manner so as to assure that there are no leaks, damage, or other defects in such components that cause an undue expense or amount of wear and tear on the components of the overall Irrigation System that are the responsibility of the other Party. RVRMA shall have the right to charge lot or unit owners, or sub-associations, for Raw Water delivered from the Community Irrigation System to any Individual Irrigation Systems. However, the failure of any Lot or Unit Owner or sub-association to pay RVRMA for Raw Water delivered through the Community Irrigation System to such Lot or Unit Owner, or sub-association, shall in no way affect RVRMA's obligation to pay RVR Golf for RVRMA's share of expenses for the Irrigation Water Delivery System and the Irrigation Ditches as set forth in paragraph 4 hereof.

3. Details of Raw Water Delivery.

a. RVR Golf shall deliver through the Irrigation Water Delivery System to each point of delivery into the Community Irrigation System a sufficient quantity of Raw

Water to fully irrigate the Community Land designated for irrigation from the subject point of delivery during the Irrigation Season.

b. The Parties acknowledge that at all times the senior water rights of the Raw Water are in priority, the Community Land shall receive a full supply of Raw Water for the irrigation of Community Land designated for irrigation pursuant to the provisions of the Covenants. In the event any of such senior water rights are curtailed in whole or in part, the remaining available Raw Water shall be allocated to provide thirty percent (30%) of any available water for irrigation of Golf Land and seventy percent (70%) of any available water for irrigation of Community Land. Neither the Golf Land nor the Community Land shall have priority over the other with respect to the delivery and use of Raw Water for irrigation.

c. It is understood by the parties that the obligations to irrigate the Bull Pasture under the Bull Pasture Annexation Agreement are set forth therein and will be through a separate system as described in such agreement. RVRMA is responsible for the irrigation of the Bull Pasture pursuant to the Assignment of Reserved Rights to RVRMA so this Agreement does not affect the obligations to irrigate the Bull Pasture under that separate agreement.

d. RVR Golf agrees to deliver Raw Water through Irrigation Ditches, associated laterals and ponds for use on Community Land at such times outside of the Irrigation Season as requested by RVRMA, provided however that RVR Golf shall not be obligated in any way to deliver such water through any other portions of the Irrigation Water Delivery System.

e. RVR Golf agrees to operate those portions of the Irrigation Ditches at such times and in such a manner necessary to fulfill the obligations set forth in the Perry Ditch Agreement.

f. RVR Golf and RVRMA may agree upon conservation use restrictions to be imposed on RVR Golf, Lot or Unit Owners, the RVRMA, and sub-associations including without limitation restrictive hours for irrigation.

g. The obligations herein shall be performed in compliance with the provisions of the Water Rights Operating Agreement.

h. The RVRMA shall be responsible for insuring that all area limits of irrigation set forth in the Covenants for portions of the Community Land are complied with by the RVRMA, sub-associations, and Lot or Unit Owners.

i. Upon mutual execution of this Agreement RVRMA shall execute and deliver to RVR Golf a bill of sale for all of the personal property in the Irrigation Water Delivery System and Golf Irrigation System and RVR Golf shall execute and deliver to

RVRMA a bill of sale for all personal property in the Community Irrigation System and the Individual Irrigation System.

4. **Operating Budget and Payment Provisions.**

a. **Preparation of Annual Operating Budget.** During the fourth calendar quarter of each year, RVR Golf shall prepare and submit to RVRMA for its review and approval an operating budget setting forth the anticipated expenses for operating and maintaining the Irrigation Water Delivery System and the Irrigation Ditches for the ensuing year. The operating budget shall include the following items:

Shared Expense Categories:

- i. **Irrigation Maintenance** – Repair and maintenance expenses related to the Irrigation Water Delivery System and the Irrigation Ditches;
- ii. **Electricity** – All electrical expense related to the delivery of Raw Water through the Irrigation Water Delivery System;
- iii. **Legal and Consulting** – All expenses incurred to preserve water rights to maintain Irrigation Water Delivery System
- iv. **Travel** – Crown Golf personnel travel expenses incurred relating to annual RVR water department meetings and activities such as annual budget review, year-end expense reconciliation review, capital project planning, onsite project review, etc. Travel expenses are limited to airline travel and lodging accommodations at a mutually agreed-to location for up to two (2) Crown Golf personnel no more than two (2) times per calendar year.

The parties shall share the expenses incurred in the foregoing categories based upon their relative use of Raw Water. RVR Golf's use of Raw Water shall be the total number of gallons delivered through the Irrigation Water Delivery System minus the total number of gallons of Raw Water delivered through all of the isolation valves/Cla-Val valve combinations to the Community Irrigation System. RVRMA's use of Raw Water shall be the total number of gallons of Raw Water delivered into the Community Irrigation System through all of the isolation valve/Cla-Val valve combinations. Meter readings shall be performed at regular intervals throughout each Irrigation Season and all meter readings shall be done cooperatively by the parties. Records of all meter readings shall be retained and exchanged by the Parties for purposes of review and confirmation at the annual Budget/Payment Reconciliation process set forth in subparagraph (c) of this paragraph. At periodic intervals, or at the reasonable request of either party, any meter measuring delivery of Raw Water shall be tested and, if necessary, re-calibrated or replaced to assure its accuracy. Subject to the indemnity provisions contained elsewhere in this Agreement, if any such meter is part of the Irrigation Water Delivery System, then the cost of such work will

be a shared expense under paragraph 4(a)(i), above or if any such meter is part of the Community Irrigation System, then the cost of such work will be borne by RVRMA.

Flat Expense Categories:

v. Payroll and Benefits – 10% of the Golf Course Superintendant's annual salary plus 30% of said 10% to reflect the Superintendant's employee benefits. This expense is for general oversight of the Irrigation Water Delivery System, vendor contracting, invoice coding/payment, project planning, meter reading, and the like;

vi. Property Taxes – Allocation equal to 10% of the annual personal property and real property taxes paid by RVR Golf as set forth in paragraph 7 hereof.

The objective of the foregoing operating budget process is to arrive at an estimated operating expense for the Irrigation Water Delivery System and the Irrigation Ditches for the ensuing year, including an estimate, based upon RVRMA's relative use of Raw Water during the current year, of RVRMA's share of the operating expense for the Irrigation Water Delivery System and the Irrigation Ditches.

b. Payment by RVRMA. RVRMA shall pay to RVR Golf the RVRMA share of Irrigation Water Delivery System and Irrigation Ditch budgeted operating expense for each year in twelve (12) equal monthly installments, commencing on the 1st day of January of each year and continuing on the 1st day of each month thereafter for the remainder of the year.

c. Budget/Payment Reconciliation. During the first calendar quarter of each year, but prior to February 15 of said year, the Parties will analyze actual operating expenses incurred for the operation, maintenance and repair of the Irrigation Water Delivery System, and their actual relative Raw Water usage for the previous year, based upon meter readings. For purposes of such reconciliation process, RVR Golf shall keep and provide to RVRMA a complete set of financial records detailing all operating costs incurred for the Irrigation Water Delivery System and Irrigation Ditches during the preceding Irrigation Season. After completion of the review of the actual expenses and actual relative Raw Water usage for the previous year, the parties shall reconcile any excess/shortage in payments made by RVRMA to RVR Golf during the previous year. Any payment due as a result of this reconciliation process shall be made by the appropriate party no later than twenty (20) days after completion of the reconciliation. Any payments exchanged by the Parties pursuant to this Budget reconciliation process shall constitute a final and binding accord and satisfaction between the Parties as to all sums due for the preceding Irrigation Season.

For example, if in year one the RVRMA budgeted operating expenses for the Irrigation Water Delivery System was \$120,000.00, then RVRMA would pay to RVR Golf \$10,000.00 per month on the first day of each month during year one. In the first quarter of year two, but prior to February 15, the parties would review and analyze the actual operating expenses incurred for the operation, maintenance and repair of the Irrigation Water Delivery System during year one, and the actual relative usage of Raw Water of the parties during year one. If such analysis determines that the RVRMA share of the Irrigation Water Delivery System for year one were actually \$100,000.00, instead of the \$120,000.00 previously budgeted and paid, then RVR Golf would pay to RVRMA the \$20,000.00 in excess funds collected above and beyond the year one budgeted expenses. If, on the other hand, RVRMA's share of the actual expenses for year one were \$135,000.00, then RVRMA would pay to RVR Golf \$15,000.00 to make up for its underpayment of year one actual expenses.

5. Capital Budget and Payment Provisions.

a. Preparation of Capital Budget. At the same time each year as the parties review and approve the Annual Operating Budget pursuant to paragraph 4 hereof they shall also consider the need for foreseeable capital repairs and improvements to the Irrigation Water Delivery System and the Irrigation Ditches and prepare a Capital Budget accordingly. The Capital Budget shall identify the foreseeable and necessary Capital Project(s), set forth the estimated cost of each such project, and establish the time schedule for performance of each such project. The Capital Budget may have a larger horizon than a single year, but the parties agree that they shall annually revisit the Capital Budget and update the same based upon the then existing circumstances related to the condition and performance of the Irrigation Water Delivery System and the Irrigation Ditches.

b. Performance and Payment of Capital Projects. Performance of Capital Projects shall be undertaken in accordance with the approved Capital Budget. Each party shall be responsible for its proportionate share of the actual cost incurred in the performance of a budgeted Capital Project. Each party's "proportionate share" of the cost of a Capital Project shall be the average percentage of the parties' relative use of Raw Water measured pursuant to paragraph 4(a) hereof over the three Irrigation Seasons preceding the year in which the Capital Project is performed. It is anticipated that RVR Golf will typically act as the "contracting party" for the performance of Capital Projects and will thus become initially responsible to pay the costs related to such Capital Project. In such case, RVRMA shall reimburse RVR Golf RVRMA's proportionate share of the cost of such Capital Projects within seven (7) business days of receipt of an invoice from RVR Golf for such costs. RVRMA's obligation to reimburse RVR Golf within seven (7) business days shall apply to the entire cost of a Capital Project, whether invoiced at the conclusion of the Project, or whether invoiced based upon progress payments required under the contract, deposits, advances, stored materials cost, retainers and the like, charged to RVR Golf under the contract. In each case, any invoice submitted by RVR

Golf to RVRMA requesting reimbursement shall be accompanied with all pertinent documents submitted by the contractor to RVR Golf in its request for payments, including lien waivers from the contractor and any subcontractor specifically including RVRMA as a named party to any waiver. In the event that for whatever reason the parties decide that RVRMA should act as the "contracting party" for a Capital Project, than RVR Golf shall reimburse RVRMA RVR Golf's proportionate share of the Capital Project's costs incurred by RVRMA on the same conditions as set forth above. Regardless of which party is acting as the contracting party for purposes of a contract, the contracting party shall not permit mechanics liens or other clouds on title to remain on the real or personal property of the other, non-contracting party. The contracting party shall take such reasonable steps, including payment, posting a bond or initiating legal proceedings, to ensure that no liens shall remain in place and in effect for a period in excess of sixty (60) days from the date of the encumbrance. The contracting party shall also defend and indemnify the other party from any claims arising out of the performance of a contract entered into pursuant to this section, including for any equitable claims asserted, such as unjust enrichment.

c. Emergency Capital Repairs. In the event that it becomes necessary to perform an emergency capital repair to the Irrigation Water Delivery System or the Irrigation Ditches, the parties agree:

i. That to the extent practicable they shall confer with one another concerning the emergency repair and the most efficient and cost effective way to effect the emergency repair, and then proceed accordingly. If consultation is not practicable prior to undertaking the emergency repair work, the party initiating the repair shall advise the other party as soon as possible concerning the emergency situation and the work that has been undertaken;

ii. The parties shall each pay their proportionate share of the cost of emergency capital repairs, with each party's "proportionate share" being determined in the same manner as it is for budgeted capital expenditures as set forth in paragraph 5(b) above. In the case of emergency capital repairs, the party initially incurring the expense shall be entitled to reimbursement from the other party for that party's proportionate share of the expense within seven (7) business days of submittal of an invoice therefore. For purposes of emergency capital repairs, it is agreed that the cost of either party's in-house labor that is utilized to effect an emergency capital repair shall be included within the costs of performing the repair that shall be divided proportionately by the parties.

6. Payment and Reconciliation for 2011. Notwithstanding that the effective date of this Agreement is January 1, 2011, the parties acknowledge and agree that RVRMA has not yet paid to RVR Golf any portion of its relative share of the cost of operating, maintaining and repairing the Irrigation Water Delivery System and the Irrigation Ditches for the 2011 Irrigation Season. In addition, RVR Golf has, in cooperation with RVRMA, operated, maintained and

repaired the Community Irrigation System during the 2011 Irrigation Season and has incurred costs therefor. The parties hereby agree that based upon information available to them as of October 31, 2011, RVRMA's estimated relative share of the cost of operating, maintaining and repairing the Irrigation Water Delivery System and the Irrigation Ditches for the 2011 Irrigation Season, and the cost incurred by RVR Golf in the operation, maintenance and repair of the Community Irrigation System during the 2011 Irrigation Season, (which is the responsibility of RVRMA under the terms of this Agreement), is a total of \$103,496.00. This amount has been calculated utilizing the budget methodology and metering of water process set forth in this Agreement and based upon a full and complete exchange of information between the parties with respect to RVR Golf's costs incurred thus far in the 2011 Irrigation Season. RVRMA will therefore pay the said sum of \$103,496.00 to RVR Golf no later than fifteen (15) days after complete execution of this Agreement. Prior to February 15, 2012, the Parties will engage in the Budget/Payment Reconciliation process as set forth in paragraph 4(c) of this Agreement for the full 2011 Irrigation Season, and will reconcile any excess/shortage between the payment to be made under this paragraph and RVRMA's actual share of expenses for the 2011 Irrigation Season, as provided in said paragraph 4(c).

7. **RVR Golf's Tax Obligations.** RVR Golf shall pay, before any fine, penalty, interest or costs may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all personal property taxes, real property taxes, licenses and permit fees and other such governmental charges, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever, which at any time may be assessed, levied, confirmed, imposed upon or become due and payable out of or in respect of, or become a lien on the Golf Land, the Irrigation Water Delivery System, or the Irrigation Ditches. RVR Golf hereby indemnifies RVRMA against all loss, liability, damage and expense including attorneys' fees, arising from or in connection with RVR Golf's failure to pay such taxes, fees, etc. above described before delinquency. RVR Golf is not required to pay any taxes, assessments, levies, impositions, charges or permit fees now levied, assessed and imposed, wholly or partially as a capital levy, or otherwise, on the Community Irrigation System or the Individual Irrigation Systems, which shall be due and payable by the respective owners of each such systems.

8. **No Partnership.** Notwithstanding any provision herein to the contrary, nothing in this Agreement shall create a partnership, joint venture or other business entity between RVRMA and RVR Golf.

9. **Indemnity.**

a. **RVR Golf.** RVR Golf covenants to Indemnify RVRMA from and against all Claims in any way arising from or out of RVR Golf's operation, management, and Maintenance of the Irrigation Water Delivery System, Irrigation Ditches, and Golf Irrigation System or the failure to perform RVR Golf's obligations under this Agreement, including acts or omissions of RVR Golf, its officers, directors, owners, managers, employees, agents, and representatives. RVR Golf's indemnity of RVRMA hereunder shall not be applicable for any Claim arising from the sole negligence, willful misconduct

or other acts or omission of RVRMA (or its respective agents, employees and representatives) which are solely responsible for the Claim.

b. **RVRMA.** RVRMA covenants to Indemnify RVR Golf from and against all Claims, including those that may or could be made by the RVRMA, Lot or Unit Owners and sub-associations, in any way arising from or out of the operation, management, and Maintenance of the Community Irrigation System or any Individual Irrigation Systems pursuant to or provided for in this Agreement or the Covenants or the failure of the RVRMA, Lot or Unit Owners, or sub-associations to perform their obligations under this Agreement or the Covenants, including their acts or omissions or those of their respective officers, directors, owners, managers, employee, agents, representatives, contractors, consultants, vendors, licensees and invitees. RVRMA's indemnity of RVR Golf hereunder shall not be applicable for any Claim arising from the sole negligence, willful misconduct or other acts or omissions of RVR Golf (or RVR Golf's agents, employees and representatives) which are solely responsible for the Claim.

10. **Liability Insurance.** RVRMA and RVR Golf shall each maintain or cause to be maintained, in full force and effect commercial general liability insurance, including by not limited to, comprehensive property damage insurance, personal injury coverage, contractual liability insurance for their respective agreements indemnity set forth herein, and automobile liability insurance, including owned, hired and non-owned automobile coverage, with an insurance company or companies rate B+ or better by the then current Best Key Rating Guide (or similar replacement rating guide), including coverage for any Claim occurring within or upon the Community Land or Golf Land, with a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence. Developer, the RVRMA, and RVR Golf shall each furnish to the other, on or before the effective date of any such policy, evidence that the insurance referred to in this Section is in force and effect and that the premiums therefor have been paid. Such insurance shall name the other Party as additional insured thereunder (without limitation as to coverage) and provide that the same may not be canceled or amended to reduce the applicable coverage or limits without at least thirty (30) days prior written notice being given by the insurer to the other party. Such insurance shall expressly insure the agreement to Indemnify by the applicable Party contained herein with respect to any loss covered by such insurance policy if such express insurance is necessary to provide insurance coverage for such respective indemnity agreements for losses, claims occurrences covered by such insurance policy. The amount of insurance required to be carried under this Agreement, in the event that subsequent obtaining an insurance policy, the Best's rating for the company issuing such policy is reduced below B+, then the Party carrying such insurance shall not be required to replace its insurance until the end of the then current policy period.

11. **Blanket Insurance.** The insurance described herein may be carried in whole or in part under a blanket insurance policy or policies covering other premises, property or insureds in addition to the land of a Party within the Community Land or Golf Land; provided such policy or policies shall insure the risks and amounts of coverage required under this Agreement.

12. **Mutual Release; Waiver of Subrogation.** Each Party hereby releases the other Party and their respective officers, directors, agents, partners, managers, servants, employees and affiliates from any liability, and on behalf of its insurer, waives any right of subrogation, for any loss or damage to any or all of its property, including any resulting loss of rents or profits of each, which loss or damage is of the type covered by insurance maintained by such Party, regardless of any negligence on part of the released Persons which may have contributed to or caused such loss or damage and regardless of whether such negligence is simple or gross, sole, concurrent or comparative. If the insurance policy does not include a waiver of the right of subrogation of the insurer, each Party covenants that it will obtain for the benefit of the other Party a waiver of any right of subrogation which the insurer of such Party may acquire against the other Party by virtue of the payment of any such loss covered by such insurance.

If any Party is by law, statute or governmental regulation or for any other reason unable to obtain a waiver of the right of subrogation for the benefit of the other Party, then, in addition to any other remedies available in law or equity, during any period of time when such waiver is unobtainable, or has not been obtained for any reason, said Party shall be deemed not to have released any subrogated claim of its insurance carrier against the other Party, and during the same period of time, each Party shall be deemed not to have released the other Party who has been unable, or failed for any reason, to obtain such waiver from any claims they or their insurance carriers may assert which otherwise should have been released under this Section.

13. **Certificate of Insurance.** Each Party shall, from time to time upon the request of the other Party, furnish the requesting Party a certificate evidencing the former Party's compliance with the insurance coverage requirements herein.

14. **Default.** If an Event of Bankruptcy shall occur with respect to any Party or if RVRMA or RVR Golf shall fail to fully and timely perform any of their respective obligations required pursuant to this Agreement (as applicable, the "Defaulting Party") and such default continues for five (5) days after receipt of written notice from the other Party (the "Non-Defaulting Party"), the continuance of such default or failure of performance after the expiration of such five (5) day period shall be an "Event of Default" by the Defaulting Party under this Agreement unless (a) the default, by its nature, cannot be cured by the payment of money or cured completely within said period, then the 5-day period shall be extended for so long as the Defaulting Party is diligently and in good faith seeking to promptly cure said default or (b) the default was caused by an Unavoidable Delay.

15. **Remedies.** Upon the occurrence and during the continuance of an Event of Default on the part of RVR Golf that results in the failure of the delivery of Raw Water through the Irrigation Ditches or the Irrigation Water Delivery System, for three consecutive days during the Irrigation Season when Raw Water is available for diversion, RVRMA shall have the absolute right without notice to take over the operation, management, and maintenance of the Irrigation Ditches and Irrigation Water Delivery System, in order to secure the delivery of Raw Water as provided herein. Any access shall be along the Easements as appropriate, convenient, or necessary to operate, manage, and provide Maintenance to the Irrigation Ditches and

Irrigation Water Delivery System, to so deliver Raw Water. Any costs incurred in connection with the exercise of these rights shall be recoverable or credited against the charges due to RVR Golf from RVRMA. In addition, upon the occurrence and during the continuance of any Event of Default, subject to the further provisions hereof and the limitations herein, the Non-Defaulting Party shall have the following remedies: (i) to recover from the Defaulting Party any damages incurred by the Non-Defaulting Party as a result of the Defaulting Party's failure to perform its obligations in accordance with the Agreement; and (ii) the Non-Defaulting Party shall be entitled to any other rights and remedies available at law or in equity for such breach or failure of performance, except that in no event shall the Defaulting Party be liable to the Non-Defaulting Party for special, indirect or consequential damages of the Non-Defaulting Party and the Parties waive any and all such claims for their own indirect, special or consequential damages arising from or related to any breach of this Agreement.

16. **Additional Remedies.** In addition to the rights under Paragraph 15 but subject to the limitations herein, the Non-Defaulting Party shall have the following rights and remedies after the occurrence and during the continuance of an Event of Default:

a. **Performance.** The Non-Defaulting Party shall have the right to perform such agreement or covenant on the part of the Defaulting Party, (and the Non-defaulting Party shall notify the Defaulting Party of exercising such right following an Event of Default), and the Defaulting Party, promptly upon written demand therefor, shall reimburse the non-Defaulting Party for all reasonable and necessary expenses incurred and costs paid by the Non-Defaulting Party in connection therewith, together with interest thereon from the date or dates of any such expenditure until reimbursement at the lesser of four percent (4%) per annum above the Prime Rate or the maximum applicable interest rate permitted by the usury laws of the State of Colorado, but not for the Non-Defaulting Party's negligence or intentional misconduct. In addition, as appropriate, such expenses, costs, and interest may be applied as a credit against amounts otherwise due and payable pursuant to the terms and provisions set forth herein.

b. **Injunctive and Other Remedies.** To the extent monetary damages are inadequate or difficult to measure, Non-Defaulting Party shall be entitled to injunctive or other equitable relief and enforcement against the Defaulting Party, mandating compliance by the Defaulting Party with the covenants, agreements and obligations contained in this Agreement and to a decree specifically enforcing or ordering specific performance thereof, it being stipulated and acknowledged by the parties that the legal remedies available as a result of any default hereunder are or may be inadequate, and that irreparable harm would or may be caused by any such default.

c. **Interest and Offset.** In the case of any failure of a Defaulting party to pay sums to the Non-Defaulting Party when due under this Agreement which continues for ten (10) days after delivery of an additional notice to the Defaulting Party, such sum shall bear interest from the due date until paid at the lesser of four percent (4%) per annum above the Prime Rate or the maximum applicable interest rate permitted by the usury

laws of the State of Colorado. Any such sums which are actually due from the Defaulting Party to the Non-Defaulting Party and which remain unpaid may be credited and offset against any sums due from the Non-Defaulting party to the Defaulting Party under this Agreement.

i. *Attorneys' Fees and Court Costs.* In the event either Party institutes legal proceedings against the other as a result of an Event of Default (including any action under the indemnity provisions hereof), the prevailing Party in such legal or arbitration proceedings shall be entitled to reasonable attorneys' fees, court costs, and other costs incurred by such prevailing Party in connection therewith. If either Party fails to execute documents when required to do so, the other party shall be entitled, upon the final order of a court with appropriate jurisdiction or arbitration as provided herein, to recover all reasonable attorneys' fees incurred by the Non-Defaulting Party in connection with the enforcement of obligations of the Defaulting Party hereunder and interest on such amount at the lesser of four percent (4%) per annum above the Prime Rate or the maximum rate allowed by applicable usury law of the State of Colorado from the date of incurring the cost until recover of the same.

ii. *Non-Terminable Agreement.* Notwithstanding any provision in this Agreement to the contrary, no breach of any provision of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement; but such limitation shall not affect any other rights or remedies of either Party, including the rights and remedies provided for herein.

17. **Recourse Only to Parties.** It is expressly agreed and understood that the obligations under this Agreement are solely obligations of the named Parties and that no personal liability on account of such obligations of a Party shall attach to, or be incurred by, any general or limited partner, incorporator, stockholder, member, officer, director, official, employee or agent, as such, past, present or future, of any party or any general or limited partner, incorporator, stockholder, member, officer, director, official, employee or agent, as such, past, present or future of any successor, either directly or through a party or any successor, by reason of any of the obligation, covenants, promises or agreements of a Party contained in this Agreement or to be implied herefrom or therefrom. All liability, if any, of that character against any general or limited partners, incorporators, stockholders, members, officers, directors, officials, employees or agents is, as a condition to, and as part of the consideration for, the execution of the Agreement or any agreements provided for herein, expressly, irrevocably and unconditionally waived and released.

18. **Force Majeure.** Notwithstanding any provision of the Agreement apparently to the contrary, each Party shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by any cause which constitutes Unavoidable Delay.

Regardless of whether or not a provision of this Agreement states it is subject to Unavoidable Delay, it is agreed that all provisions of this Agreement are subject to Unavoidable Delay unless such provision expressly states that it is not subject to Unavoidable Delay. In connection with a delay associated with breakage or accident to machines or lines of pipe or mains of the Irrigation Ditches or Irrigation Water Delivery System, there shall be no excuses as provided hereunder unless RVR Golf continually exercises reasonable efforts to repair or replace such machines or lines of pipe or mains from the time of breakage or accident.

19. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors of the Parties and, to the extent assignment may be approved or deemed permitted hereunder, assigns. The RVRMA shall not assign its interests herein. RVR Golf expressly reserves the right to transfer, assign or convey, in whole or in part, their rights, powers, privileges and duties hereunder. In the case of any assignment by RVR Golf of its rights and interests hereunder, RVR Golf will, if appropriate or requested, designate by recordable instrument the successor to the interest of "RVR Golf," as applicable hereunder.

20. **Estoppel Certificates.** Each of the Parties agrees that it will, at any time and from time to time within thirty (30) days following receipt of notice by the other Party specifying that it is given pursuant to this Section, execute, acknowledge and deliver to the Party so requesting same, a statement certifying (i) that this Agreement has not been modified, supplemented or amended and is in full force and effect (or if there have been or will be any such modifications, supplements or amendments, reference to the same will be made) and (ii) that to the best of the certifying Party's knowledge and belief, there are no defaults in the performance of this Agreement (or, if there are any such defaults of which the certifying Party may have knowledge, reference to the same will be made.) Such statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent such claims asserted against a bona fide encumbrancer or purchaser for value without knowledge of the facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. However, such statement shall in no event subject the Party furnishing it to any affirmative liability whatsoever, notwithstanding the negligence or otherwise inadvertent failure of such party to disclose correct and/or relevant information. The party requesting the estoppel certificate shall only do so at the request of an independent third party, including any proposed or existing lender, purchaser or owner of an interest.

21. **Governing Law.** This Agreement shall be governed by and construed in accordance with Colorado law and applicable United States federal law. The obligations of RVRMA and RVR Golf are performable and the exclusive venue for any legal action arising out of this Agreement shall lie in Garfield County, Colorado.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute on and the same instrument.

23. **Headings.** The headings herein are for convenience of reference only and do not limit, amplify or constitute matter to be construed in interpreting this Agreement. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" used in the Agreement refer to the entire Agreement and not any particular provision or section.

24. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Title of Sections is for convenience only, and neither limit nor amplify the provisions of this Agreement itself. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonable fall within the broadest possible scope of such general statement, term or matter.

25. **Severability; Partial Invalidity.** If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other application of any such provision shall not be affected thereby.

26. **Covenants Running with Land.** The covenants, agreements, rights, powers, conditions and obligations (collectively, "covenant") in this Agreement shall, except as otherwise specifically provided herein, run with the land, both as respects the benefits and burdens affecting any portion of the Golf Land. Each such covenant shall constitute an equitable servitude and a covenant running with the land under applicable law.

27. **Authority.** Each Party represents to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action of the governing body of the entity on behalf of which this Agreement is signed and that upon such execution and delivery this Agreement will be a valid and enforceable Agreement between Parties hereto.

28. **Further Acts/Access to Records.** Each Party hereto agrees to take such additional steps and perform such additional acts as necessary to effectuate the purposes and intent of this Agreement.

[Signatures Appear on Following Page]

Executed and dated as of the date first above written.

RIVER VALLEY RANCH GOLF, LLC,
a Colorado limited liability company,
By: Crown Golf Properties, L.P.

By: David Fairman
David Fairman, President

RIVER VALLEY RANCH MASTER ASSOCIATION,
a Colorado non-profit corporation

By: J. Noyes
Name: JAMES E. NOYES
Title: President, RVR Executive Board