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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

**JOHNSTOWN FARMS
TOWN OF JOHNSTOWN, COUNTY WELD, COLORADO**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
JOHNSTOWN FARMS
TOWN OF JOHNSTOWN, COUNTY OF WELD, COLORADO

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

JOHNSTOWN FARMS TOWN OF JOHNSTOWN, COUNTY OF WELD, COLORADO

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR JOHNSTOWN FARMS, TOWN OF JOHNSTOWN, COUNTY OF WELD, COLORADO ("Declaration") is made as of this 11th day of November, 2003, by JOHNSTOWN FARMS, LLC, a Delaware limited liability company ("Declarant").

RECITALS

A. Declarant owns the real property described on Exhibit A attached hereto and incorporated herein by this reference and lying within the boundaries of the plat of Johnstown Farms Filing No. 1, Town of Johnstown, County of Weld, State of Colorado.

B. Declarant desires to ensure the attractiveness of the Subdivision, to prevent the future impairment thereof, to prevent nuisances, and to preserve, protect, and enhance the values thereof. In order to achieve these goals, Declarant wants to subject the Subdivision to the covenants hereinafter set forth.

DECLARATION

In order to enhance the value of the Subdivision and maintain its value and desirability, for the purposes set forth herein, Declarant declares that the Subdivision shall be held, transferred, sold, conveyed, leased, and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, all of which shall run with the land.

ARTICLE 1 GENERAL

1.1 Ownership and Development of Community Area. Declarant is the owner of all of the Lots in the Subdivision and other real property which is included in the Community Area, except the portions thereof dedicated by the Plat to the Town. Declarant intends to develop the Lots within the Community Area as a planned community of single-family detached residential homes.

1.2 Purposes of Declaration. Property which is subject to this Declaration in the manner hereinafter provided shall be referred to as the Community Area. This Declaration is executed: (a) in furtherance of a common and general plan for the Community Area; (b) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Community Area; (c) to provide for an Association as a vehicle to hold, maintain, care for, and manage Association Properties; (d) to define the duties, powers, and rights of the Association; (e) to define certain duties, powers, and rights of Owners of Lots; (f) to provide for the



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maintenance of the Lots, the Association Properties and the other portions of the Community Area; and (g) to take other appropriate actions to enhance the quality of the Subdivision and consistent with the terms of this Declaration.

1.3 Declaration. Declarant, for itself, its successors and assigns, hereby declares that all of the Lots, the other property in the Community Area owned by Declarant, and, to the extent the same are Association Properties, the other property located in the Community Area, and all other property which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall inure to the benefit of each of the Lots (together, the "Benefitted Property") and shall bind, be a charge upon, and inure to the mutual benefit of: (a) all of the Lots and the other property in the Community Area and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, and (d) all Persons having or acquiring any right, title, or interest in the Community Area or any part or parcel thereof or any Improvement thereon and their heirs, personal representatives, successors, and assigns.

1.4 Applicability of Colorado Common Interest Ownership Act. The Act is applicable to the Community Area as a planned community under the Act. This Declaration shall not be subject to the terms and provisions of the Act other than the Applicable Provisions.

1.4.1 "Units" under the Act are the Lots, and each Lot is a "Unit" under the Act. There will be a maximum of two hundred sixty-five (265) Lots in the Community Area.

1.5 Name; Type of Common Interest Community. The name of the common interest community created by this Declaration is "Johnstown Farms." Johnstown Farms is a planned community under the Act.

ARTICLE 2 DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

"AAA": shall have the meaning provided in Section 11.18.2.2.

"Act": the Colorado Common Interest Ownership Act as provided in C.R.S. § 38-33.3-101, et seq., as the same may be from time to time amended.

"Additional Property": shall have the meaning provided in Section 10.11.



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“Administrative Functions”: all functions of the Association that are provided for, or are necessary and proper, under this Declaration and shall include, without limitation, providing management and administration of the Association; providing architectural and design review services under Article 9 hereof; providing for the maintenance and care of the Association Properties and the enforcement of the Declaration; incurring reasonable attorneys’ fees and accountants’ fees; obtaining errors and omissions insurance for officers, directors, and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Association Properties; incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other reasonable and ordinary administration tasks associated with operating the Association.

“Applicable Provisions”: the provisions of the Act which cannot, according to the Act, be varied.

“Appointment Period”: shall have the meaning provided in Section 9.3.

“Area of Common Responsibility”: the Common Area, together with those areas, if any, which by the terms of this Declaration or other applicable covenants, or by contract become the responsibility of the Association.

“Articles of Incorporation”: the Articles of Incorporation of the Association, which have been or will be filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

“Assessment”: a Common Assessment, Special Assessment, or Specific Assessment.

“Association”: Johnstown Farms Homeowners Association Inc., a Colorado nonprofit corporation, and its successors and assigns.

“Association Owned Properties”: shall have the meaning provided in Section 6.22.1.

“Association Properties”: all real and personal property, if any, including all Common Areas and all Improvements on Common Areas, (i) which are now or hereafter owned by the Association, (ii) with respect to which the Association holds an easement for the use, care, or maintenance, (iii) which the Association has a right or obligation to maintain, (iv) which are held for the common use and enjoyment of the Members of the Association or for other purposes permitted by this Declaration, or (v) which are otherwise identified in this Declaration as Association Properties or are otherwise identified as Association Properties as provided below. Without limiting the foregoing, the Association Properties shall include Tract A (as provided on the Plat) and any properties which are part of the Community Area and which are designated as Association Properties by Declarant in the manner permitted hereby including but not limited to (i) landscaping and drainage facilities located on Tract A; and (ii) underdrain facilities located outside the lines of individual Lots and collective underdrain systems to the extent located within the lines of individual Lots, but not including the individual perimeter underdrains for each house or the lines located within the boundary lines of the Lots which serve only to connect the perimeter underdrains servicing the Lot to the underdrain system located primarily in the streets.

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Association Properties do not include Lots, except to the extent of easements reserved or otherwise created thereon for the benefit of the Association and except to the extent, if any, owned by the Association and used only for the purposes of the Association.

"Base Assessment": shall have the meaning provided in Section 8.2.3.

"Benefitted Property": shall have the meaning provided in Section 1.3.

"Board of Directors" or **"Board"**: the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as a board of directors under Colorado corporate law.

"Budget": shall have the meaning provided in Section 8.5.

"Builder": any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business.

"Business" and **"Trade"**: shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

"By-Laws": the By-Laws of the Association which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

"Common Area": any portion of the Community Area owned or maintained by the Association for the common use and enjoyment of the Owners (including those which may also be used by others), including, but not limited to, the open space and easements for the use and benefit of the Owners. Common Areas may be owned: (a) by the Association; (b) by individual Owners or other Persons over which the Association may have an easement for use or maintenance purposes or a maintenance obligation; or (c) by the Town. Common Areas do not include the Lots, except to the extent of easements reserved thereon for the benefit of the Association and except to the extent, if any, owned by the Association and used by the Association as Common Areas.

"Common Assessment": assessments levied on all Lots subject to assessment under Section 8.1 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1, 8.3, 8.4 and 8.5.

"Common Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reserve the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless

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approved by the Members of the Association representing a majority thereof, excluding the Declarant.

"Community Area": all of the real property described on Exhibit A lying within the boundaries of Johnstown Farms Filing No. 1, Town of Johnstown, County of Weld, State of Colorado, and all of the Additional Property hereafter annexed to the Community Area in accordance with Section 10.11, together with any Association Properties or portions thereof lying outside the boundaries of such property that are subjected to this Declaration in accordance with Article 10.

"Community-Wide Standard": the standard of conduct, maintenance, or other activity generally prevailing throughout the Community Area. Such standard may be more specifically determined by the Board of Directors and the Design Review Committee.

"Construction Rules": shall have the meaning provided in Section 11.18.2.2.

"County": the County of Weld, State of Colorado.

"Declarant": Johnstown Farms, LLC, a Delaware limited liability company, and its successors by operation of law in the event of the merger or consolidation of Johnstown Farms, LLC into another Person, and any other Person to which Declarant (including any such successor Declarant) transfers all or a substantial portion of the remaining Lots then owned by Declarant and which Declarant (or any such successor Declarant) designates as its successor as Declarant in a Recorded instrument.

"Declarant Control Period": shall have the meaning provided in Section 10.1.

"Declaration": this instrument as it may be amended from time to time.

"Deed of Trust": a deed of trust to the public trustee given voluntarily by any Owner of a Lot and encumbering the Lot to secure the performance of a promissory note or other obligation.

"Design Guidelines": the architectural guidelines and procedures adopted by the Design Review Committee pursuant to Article 9 and applicable to all Lots within the Community Area.

"Design Review Committee": the Committee provided for in Article 9 of this Declaration.


"Design Standards": shall have the meaning provided in Section 9.7.

"Development Agreement": shall have the meaning provided in Section 9.1.1.

"Dwelling": is any residential dwelling unit, including without limitation, a Residence.

"Established Drainage Pattern": shall have the meaning provided in Section 3.16.

"Final Award": shall have the meaning provided in Section 11.18.2.12.


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"First Mortgage": shall have the meaning provided in Section 8.15.

"First Mortgagee": shall have the meaning provided in Section 8.12.

"Habitable Dwelling": shall have the meaning provided in Section 8.2.5.

"Hearing": shall have the meaning provided in Section 11.18.2.5.

"Improvement": all structures and any appurtenances thereto of every type or kind, including, but not limited to, Residences, buildings, outbuildings, swimming pools, patio covers, awnings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures.

"Improvement to Property": shall have the meaning provided in Section 9.2.

"Initial Assessment": shall have the meaning provided in Section 8.3.

"Installment Sale Contract": any contract for deed or real property sale contract pursuant to which possession is transferred to the contract purchaser and fee title is retained by the contract seller to secure the obligations of the contract purchaser to pay the purchase price owing under such contract.

"Lease": any agreement for the leasing or rental of a Lot, and shall specifically include, without limitation, a month-to-month or other short-term rental.

"Limited Declarant": shall mean, for purposes of Sections 3.3.3, 3.14, 6.22, 6.29, 9.1, 9.11, 10.1, 10.2, 10.6, 10.9, 11.2, 11.4, 11.18, 11.20, 11.21, and 11.27, any Person to which Declarant transfers a Lot on which construction of a Residence has not yet been completed and which is specifically designated as a Limited Declarant as to such Lot in a written instrument executed and acknowledged by Declarant as to any Lot sold by Declarant and duly Recorded. Notwithstanding the foregoing, as to any Lot sold by Declarant to Engle Homes Colorado, a division of TOUSA Homes, Inc., a Florida corporation ("Engle"), including any Lot within the Additional Property which is hereafter annexed to the Community Area in accordance with Section 10.11, Engle shall be the Limited Declarant with respect to such Lot(s) without the requirement of any Recorded instrument other than the deed(s) conveying such Lot(s) from Declarant to Engle, which deed(s) do not need to reference such designation.

"Losing Party": shall have the meaning provided in Section 11.18.2.9.

"Lot": is a single family detached residential lot within the Community Area platted by the Plat.



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"Maintenance Funds": the accounts into which the Board shall deposit monies paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to Article 8.

"Member": the Person or, if more than one, all Persons collectively who constitute the Owner of a Lot.

"Mortgage": any mortgage, Deed of Trust, security deed, Installment Sale Contract, lease intended for security, or other such instrument, given voluntarily by any Owner of a Lot and encumbering the Lot to secure performance of a promissory note or other obligation.

"Mortgagee": the holder of a promissory note or other obligation secured by a Mortgage.

"Mortgagor": the Person who grants a Mortgage.

"Notice of Annexation": shall have the meaning provided in Section 10.11.

"Notice of Completion": shall mean written notice to the Design Review Committee of the completion of any Improvement to Property pursuant to Article 9 of this Declaration.

"Owner": the Person, including without limitation Declarant and a Limited Declarant, or, if more than one, all Persons collectively, who together hold fee simple title of Record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder and any Person to whom the Owner's rights have been assigned in accordance with Section 5.3.

"Person": a natural person, a corporation, a partnership, or any other entity.

"Plat": the plat of Johnstown Farms Filing No. 1 Recorded on August 2, 2002 as Reception No. 2974635, together with all amendments of the Plat from time to time approved and Recorded.

"Prevailing Party": shall have the meaning provided in Section 11.18.2.9.

"Priority Liens": shall have the meaning provided in Section 8.15.

"Proceeding": shall have the meaning provided in Section 11.18.2.2.


"Proceeding Property": shall have the meaning provided in Section 11.18.2.2.

"Record" or **"Recorded"**: shall mean the filing for record of any document in the office of the Clerk and Recorder for the County.

"Related Users": shall have the meaning provided in Section 3.11.

"Residence": shall mean a single family detached residential dwelling unit.

"Rules and Regulations": shall mean rules and regulations adopted by the Board of Directors as provided in Section 6.15 of this Declaration.


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"Special Assessment": assessments levied in accordance with Section 8.8 of this Declaration.

"Specific Assessment": assessments levied in accordance with Section 8.9 of this Declaration.

"Subdivision": means all of the real property lying within the boundaries of the Plat.

"Substantive Award": shall have the meaning provided in Section 11.18.2.8.

"Supplemental Declaration": an amendment or supplement to this Declaration filed pursuant to Article 10 which subjects Additional Property to this Declaration and which may, expressly or by reference, impose additional or different restriction and obligations on the land described therein.


"Total Number of Assessable Lots": shall have the meaning provided in Section 8.2.3.

"Town": shall mean the Town of Johnstown, Colorado.

ARTICLE 3 GENERAL RESTRICTIONS APPLICABLE TO COMMUNITY AREA

All real property within the Community Area shall be held, used and enjoyed subject to the following easements, limitations, and restrictions, subject to exemptions of Declarant and Limited Declarant set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board of Directors and/or the Design Review Committee (but only to the extent within the scope of the Design Review Committee's authority) if such strict application is not necessary to achieve the purposes of this Declaration or, under the circumstances, would be unreasonably or unduly harsh in comparison to the goals of this Declaration that such strict application is necessary to achieve. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Board of Directors and/or the Design Review Committee (but only to the extent within the scope of the Design Review Committee's authority). Notwithstanding the foregoing or any provision hereof to the contrary, the strict application of Section 11.18 of this Declaration may not be modified or waived in whole or in part by the Board.

3.1. Maintenance of Community Area. No property within the Community Area shall be permitted to fall into disrepair, and all property within the Community Area, including the Residences, fences, Improvements, and landscaping thereon, shall be kept and maintained in a clean, attractive, and sightly condition and in good repair. Maintenance, repair, and upkeep of each Lot and the Residence and other Improvements on such Lots shall be the responsibility of the Owner of the Lot. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.


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3.2 Association Properties. Maintenance, repair, and upkeep of Association Properties shall be the responsibility of the Association.

3.3 Property Uses. All Lots shall be used for private residential purposes. No Dwelling erected or maintained within the Community Area shall be used or occupied for any purpose other than for a Residence. Notwithstanding the foregoing:

3.3.1 Activities associated with the sale of Lots shall be allowed.

3.3.2 In-home businesses not involving visits to the Community Area by customers or employees shall be allowed if permitted under applicable zoning and other regulations, so long as such activities are conducted solely within the Residences and do not create or result in any offensive or noxious activities, constitute a nuisance, or otherwise affect or jeopardize the character of the Community Area as a residential subdivision.

3.3.3 Declarant (including Limited Declarants) may (subject to owning such Lot or obtaining the permission of the Owner of such Lot for such use) use any of the Lots for purposes of selling or marketing the Lots or Residences constructed or to be constructed on the Lots (including without limitation maintaining sales offices and model homes on the Lots) or for the purpose of housing construction trailers for use in connection with the construction of Residences on the Lots; provided that, unless otherwise authorized in writing by the Design Review Committee (which authorization shall, in each case, state the time period during which such authorization shall be in effect and any limitations or conditions on such authorization), not more than two Lots may be used at any one time by the Declarant (and not more than one Lot by each Limited Declarant) for sales offices, not more than two additional Lots may be used at any one time by Declarant (and not more than one Lot by each Limited Declarant) for construction offices, not more than five Lots may be used at any one time by Declarant (and not more than four Lots by each Limited Declarant) for model homes, and not more than two Lots may be used at any one time by Declarant (and not more than one Lot by each Limited Declarant) for construction trailers. Any stricter restrictions imposed in writing by Declarant on any Limited Declarant, written notice of which referencing this Section is given to the Association, shall be binding on the Limited Declarant and enforceable by the Association as if set forth in this Declaration.

3.4 Construction Type. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings.

3.5 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Community Area, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others.

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3.6 Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Community Area which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Design Review Committee, and no loud or obnoxious sounds shall be emitted from any Lot or part of the Community Area at any time.


3.7 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any property within the Community Area which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property within the Community Area, and no open fires shall be lighted or permitted on any property within the Community Area except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

3.8 No Unsightliness. All unsightly conditions, structures, facilities, equipment, including snow removal equipment and garden or maintenance equipment, and objects shall be enclosed within a structure, except when in actual use.

3.9 Weeds. Each Lot shall be kept free from brush or other growth or trash which, in the opinion of the Design Review Committee, is unsightly or causes undue danger of fire, and shall be kept mowed during growing seasons so that no weeds, brush, grasses, or growth on any Lot exceed six (6) inches in height at any time.

3.10 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up and except that compost and composting materials shall not be subject to the foregoing restriction so long as they are kept in an appropriate, attractive container in an appropriate location that does not detract from the overall attractiveness of the Lot on which such container is placed.

3.11 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that, so long as not bred or maintained for commercial purposes and so long as not hazardous, a nuisance, or otherwise offensive to any portion of the Community Area, domesticated birds or fish, other small domestic animals permanently confined indoors, and an aggregate of not more than three (3) domesticated dogs or cats of which not more than two (2) may be domesticated dogs (all of which must be fenced or restrained at all times within a Lot), will be permitted on any one Lot. No animal of any kind (including dogs and cats) shall be permitted which is determined by the Design Review Committee to make an unreasonable amount of noise or odor, to be offensive or hazardous, or to be a nuisance. All household pets shall be controlled by their owner and shall not be allowed off the owner's Lot except when properly leashed and accompanied by the pet owner or his representative, who shall be


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responsible for collecting and properly disposing of any animal waste. Each Owner of a Lot shall be financially responsible and liable for any injury or damage caused by any household pet (a) normally housed on that Lot, (b) belonging to or brought onto the Community Area by the Owner of the Lot, or (c) belonging to or brought onto the Community Area by anyone living in the Residence on the Lot or visiting with or staying with the Owner of the Lot or coming onto the Community Area pursuant to permission granted by the Owner of such Lot (all of whom together are herein called "Related Users").

3.12 No Temporary Structures. No tent, shack, storage shed, satellite dish, temporary structure, or temporary building shall be placed upon any property within the Community Area except with the prior written consent of the Design Review Committee obtained in each instance, subject to such conditions or restrictions as may be required by the Design Review Committee.

3.13 Restrictions on Antennae, Pipes, Utility Lines, and Transmitters. Pipes for water, gas sewer, drainage, or other purposes, and wires, poles, aerials, antennae, satellite dishes and other facilities for the transmission or reception of audio, visual, microwave, or similar signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground, within an enclosed structure, or otherwise screened from view from neighboring properties other than the Lot on which such facilities are installed and from any public streets, roads, or other rights-of-way in or adjacent to the Community Area and no such facilities shall be installed without the prior approval of the Design Review Committee; provided that the Design Review Committee shall not withhold its approval of the installation on any Lot of one satellite dish television reception device which does not exceed 36 inches in diameter so long as such device is located on the Lot in a manner consistent with the terms set forth in this Declaration and screened from view in accordance with the requirements of this Section. With the approval of the Design Review Committee, a master antenna or cable television antenna may, but need not, be provided for use of all Owners or a group of Owners, and Declarant or the Association may grant easements for such purposes. No electronic or radio transmitters of any kind other than garage door openers or cellular or cordless telephones shall be operated in or on any structure or within any Lot.

3.14 Restrictions on Signs and Advertising. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Community Area so as to be evident to public view, except signs as may be approved in writing by the Design Review Committee. One two-sided sign advertising a Lot for sale or for lease may be placed on such Lot; provided, however, that standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Design Review Committee. Notwithstanding the foregoing, subject to approval by the Design Review Committee, Declarant and each Limited Declarant shall be permitted to place one- or two-sided signs (of not more than fifty (50) square feet per side) on any Lots which it owns or in the Common Areas to advertise the Lots during the development, construction, and sales period.

3.15 Restrictions on Mining or Drilling. No property within the Community Area shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, or removing underground water by Declarant or any Person designated by Declarant.

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3.16 Maintenance of Drainage; Established Drainage Patterns. There shall be no interference with the Established Drainage Pattern over any property within the Community Area, except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "Established Drainage Pattern" shall mean the drainage pattern which exists at the time the overall grading of any Lot is completed in accordance with any established drainage pattern shown on any plans approved by the Design Review Committee and includes the positive slope away from the Residence built on the Lot in accordance with the status thereof as of the date of the completion of the Residence on the Lot as reflected on the finished grading plan for such Lot and the drainage certificate, if any, provided to the Owner of each Lot reflecting the existing positive slope away from the Residence upon completion thereof. The established drainage pattern may include the drainage patterns: (a) from Association Properties over any Lot; (b) from any Lot over the Association Properties; (c) from any property owned by the Town or other Persons over any Lot; (d) from any Lot over property owned by the Town or other Persons; (e) from any Lot over another Lot; or (f) on any Lot. The Owner of each Lot shall not disturb and shall from time to time restore such Established Drainage Pattern on its Lot without regard to whether it is disturbed by actions of Owner, actions of others, subsidence, or natural causes. The Owner of each Lot shall maintain positive drainage away from the Residence built on the Lot as necessary so that melting snow, rain, surface, irrigation, and other water coming onto the Lot is drained away from the Residence and does not collect near the Residence and does not seep into the fill areas and other areas lying within the area adjoining or near the Residence and as necessary to conform with the finished grading plan for such Lot as reflected on the drainage certificate, if applicable. The Owner of each Lot shall be responsible for promptly repairing any erosion on the Lot or any adjoining property resulting from the failure of the Owner to maintain the positive draining away from the Residence built on the Lot in accordance with the finished grading plan for such Lot and the drainage certificate, if applicable. If the Owner of any Lot fails to maintain that Owner's Lot in accordance with this Section, the Association may enter onto the Lot and restore the positive slope and make a Specific Assessment against the Lot and the Owner for the Association's cost in doing so including the cost of restoration of adjoining property as a result of the failure by the Owner to maintain the Lot in accordance with this Section.

3.17 Maintenance of Underdrain System. The Owner of each Lot shall perform regular maintenance of the underdrain system located on or serving such Lot to insure the performance of such system. All Owners of Lots acknowledge the importance of the maintenance of the underdrain system serving the Lots and agree to regularly perform their maintenance obligations. All Owners of Lots further acknowledge that the Association shall only be responsible for the maintenance of those portions of the underdrain system (including any outfalls) located on or included within the Association Properties, that such maintenance obligations shall be included within the Assessments, that the Association shall not maintain any underdrain system located on any Lots, and that the Owners of such Lots shall be solely responsible for maintenance of such underdrain systems located on any Lots. The Association shall maintain any underdrain system located on any of the Association Properties or Common Area.

3.18 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Community Area



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which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association. No Owner shall cause or permit a situation or condition to exist on that Owner's Lot which causes or might reasonably cause the insurance rates for neighboring Lots to be increased beyond those that would be applicable absent such situation or condition.

3.19 Compliance with Laws. Nothing shall be done or kept on any property within the Community Area in violation of any law, ordinance, rule, or regulation of any governmental authority or quasi-governmental entity having jurisdiction.

3.20 Further Subdivision of Lots. No Lot may be subdivided into two or more separate parcels. The boundaries and lot lines of any Lot shall not be changed or adjusted and no Owner shall give the Owner of any adjoining Lot the right to use any portion of any Lot for the purpose of effecting a lot line adjustment by easement, lease, or similar contrivance without the written approval of the Association approved by the Directors of the Association after public meeting where notice of such meeting has specifically identified the proposed lot line adjustment as an agenda item for such meeting and a copy of such notice has been given to all Owners. Before any change or adjustment in boundaries or lot lines of Lots, the Owners of the Lots as to which the lot lines or boundaries are adjusted shall, at their expense, comply with all requirements of Section 38-33.3-212 of the Act, with all other applicable laws, and with any requirements which the Board of Directors of the Association shall impose in connection with their approval of such adjustment and in connection with compliance with such laws.

3.21 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Lot, subject to the Association's obligation, if any, to restore any such damage or destruction as set forth herein, the Owner thereof shall cause the damaged or destroyed Improvement to be replaced or restored to its original condition, or to such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and, until a new Improvement approved by the Design Review Committee is constructed, the Lot to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

3.22 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement.

3.23 Playground Equipment. No playground equipment, excluding basketball backboards, above eight (8) feet in height, nor any basketball backboards above thirteen (13) feet in height, all as measured from the ground level where the equipment is installed, shall be erected (on a temporary or permanent basis) on any property within the Community Area without the prior written consent of the Design Review Committee; provided that one temporary moveable basketball backboard may be used on each Lot without the prior written consent of the Design Review Committee so long as such backboard is not installed or used on any Lot in a manner which provides for the long term or permanent use thereof.

3.24 Vehicle Repairs. No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, trailer, machine, or device may be carried on, except within a completely enclosed structure on a Lot which screens the sight and sound of the activity from the street and from other Lots.

3.25 Storage of Gasoline and Explosives, Etc. No Lot shall be used for storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel for Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis on the Lot in an aggregate amount not to exceed five (5) gallons. No elevated tanks or appurtenances of any kind shall be erected, placed, or permitted on any part of the Community Area.

3.26 Trailers, Campers, and Other Vehicles. No boat, camper (on or off supporting vehicles), trailer, tractor, truck (other than a one ton or smaller pickup truck not used for commercial purposes), towed trailer unit, motorcycle, snowmobile, disabled, junked, or abandoned vehicle, motor home, mobile home, camper, recreational vehicle, or any other vehicle, the primary purpose of which is recreational, sporting, or commercial use, shall be parked or stored in, on, or about any Lot or street within the Community Area, except within the garage with garage door closed except temporarily as required for entrance or exit of vehicles from such garage and except as permitted by Section 3.3.3 and except for construction vehicles during periods of construction on any property within the Community Area so long as they are not stored within the Community Area and are not parked within the Community Area except temporarily as may be required for purposes of loading and unloading. The Association shall have the right to enter any Owner's Lot to remove and store, at Owner's expense, any of the foregoing in violation of this Section. If, within thirty (30) days after such removal and storage, such Owner fails to collect such vehicle from storage, with payment in full of all outstanding costs for removal and storage, the Association shall have the right to dispose of such vehicle by such manner as determined by the Association, in the Association's sole discretion. Owner shall be entitled to thirty (30) days' written notice prior to such action by the Association. Parking of any motor vehicles and any of the vehicles and types of equipment listed above on public streets within the Community Area may be regulated or restricted pursuant to the Master Declaration and by the Association, the Town, or any other governmental body with jurisdiction over the Community Area.

3.27 Fences Prohibited. No fences shall be constructed along or adjacent to the boundary or lot line of any Lot, or on any other portion of any Lot by any Owner, without the prior approval of the Design Review Committee unless in conformance with standard design specifications previously approved by the Design Review Committee. Privacy fences, security fences, and fences for screening purposes shall also be subject to the approval of the Design Review Committee unless in conformance with standard design specifications previously approved by the Design Review Committee. The maintenance of any and all fences installed on any Lot shall be the sole responsibility of the Owner of such Lot.

3.28 Air Conditioning and Heating Equipment. No heating, air conditioning, or refrigeration equipment shall be placed, allowed, or maintained anywhere other than those contained totally within structures and those placed on the ground with screening as approved by

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the Design Review Committee; provided, however, that solar units meeting all governmental guidelines for residential uses may be located on the roof if such unit is not viewable from the street on which the Residence fronts or faces or from any Lot and if specifically approved by the Design Review Committee. Notwithstanding any provision hereof to the contrary, no swamp coolers shall be permitted within the Community Area.

3.29 Landscaping. All portions of each Lot not used for Improvements shall be landscaped utilizing primarily perennial and similarly "long-lived" ground cover, sod, shrubs, trees, and similar plantings and rock, bark, mulch, and similar materials. Annual and other short-lived and non-living durable plantings and landscape materials may be utilized only to supplement long-lived elements. Every Lot improved with a Residence shall be landscaped as approved by the Design Review Committee within the earlier of (i) the time period required by the Development Agreement and (ii) six (6) months after the occupancy or completion of the Residence thereon as evidenced by the certificate of occupancy, whichever shall first occur. The landscaping of each Lot having once been installed shall be maintained in a neat, attractive, slightly and well-kept condition, which shall include lawns mowed, hedges trimmed, adequate watering, replacement of dead, diseased, or unsightly materials, removal of weeds and debris, and appropriate pruning of plant materials.

3.30 Reflective Glass. No reflective glass windows shall be utilized in any improvements constructed within the Community Area.

3.31 Association Easement. Easements to perform its maintenance and enforcement duties and as necessary to exercise its powers pursuant to this Declaration are hereby granted by Declarant to the Association, its officers, agents, employees, and assigns, upon, across, over, in, and under the Community Area together with the right to make such use of the Community Area as may be necessary and appropriate in carrying out such maintenance and enforcement duties. All conveyances of Lots hereafter made, whether by Declarant or other Person, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to the Declaration appears in the instrument of such conveyance.

3.32 Easements for Encroachments. If any portion of the Common Area encroaches upon any Lot or any Lot encroaches upon the Common Area or any other Lot as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Improvements, or any encroachments resulting from repair, or reconstruction after damage or destruction of the Improvements, an easement for the encroachment and the repair and maintenance thereof shall exist in favor of the Lot Owner or the Association (as applicable) so long as the encroachment exists. Such encroachments and easements shall not impair or otherwise adversely affect the marketability of title to either the Common Area or the Lots.

3.33 Utility Easements. Easements for the installation, transmission, repair, and replacement of gas and electric utility lines, private underdrains, and sewer, perimeter drain, and water lines to each Lot are hereby reserved through, over, across, and under the Common Area and any Lot or any portion thereof as may be necessary to provide gas, electric, sewer, drainage, and water utility service to any Lot. Said easements may be underground, above ground, or

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through the Improvements constructed on the Common Area or any Lot, as determined by the Declarant.

3.34 Lateral Support. Each Owner shall have the right to lateral support of its Lot.

3.35 Application of Restrictions. All provisions of this Declaration and of any Association rules shall also apply to all occupants, tenants, guests and invitees of any Lot. Any Lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the By-Laws and the Rules and Regulations of the Association. Immediately upon execution of any lease for a Lot, the Owner of such Lot must provide the Association with a copy of such Lease along with the name and address for the tenant under such Lease and the contact address for such Owner.

ARTICLE 4 PROPERTY RIGHTS

4.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

4.1.1 This Declaration, the By-Laws and any other applicable covenants;

4.1.2 Any restrictions or limitations contained in any deed conveying such property to the Association;

4.1.3 The right of the Board to adopt rules regulating the use and enjoyment, of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Lots and their guests and rules limiting the number of guests who may use the Common Area;

4.1.4 The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area, (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association;

4.1.5 The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Sections 6.18 and 6.28;

4.1.6 The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests with or without the payment of use fees established by the Board; and

4.1.7 The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 6.19.

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Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot during the term of the Lease.

ARTICLE 5 ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

5.1 Function of Association. The Association has been or will be formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association has been or shall be organized prior to the date the first Lot located in the Community Area is conveyed to an Owner other than the Declarant. The Association shall be the entity responsible for management, maintenance, operation, and control of the Association Properties within the Community Area. As more specifically set forth hereinafter, the Association shall have a Board of Directors which, except as provided herein, in the Articles, or in the By-Laws, shall be elected by the Members. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Community Area as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and Colorado law.

5.2 Board of Directors. The affairs of the Association shall be managed by the Board of Directors. The number, term, and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and By-Laws. The Board of Directors may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

5.3 Membership. Every Owner shall be a Member of the Association. There shall be one Membership in the Association for each Lot. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Lot. Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot except that an Owner may assign some or all of his rights as an Owner and as a Member of the Association to a tenant, a purchaser under an Installment Sale Contract, or a Mortgagee and may arrange for a tenant, a purchaser under an Installment Sale Contract, or a Mortgagee to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Declaration. The rights acquired by any such tenant, purchaser under an Installment Sale Contract, or Mortgagee shall be extinguished automatically upon termination of the Lease or Mortgage.

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5.4 Voting. Each Member shall have the right to cast one vote for each Lot owned by such Member except that, in the event any Lot is owned by more than one Member, any Member who is Owner of that Lot and is present to vote at any meeting may cast the votes for such Lot, if more than one Member who is an Owner of that Lot is present at a meeting, the votes for such Lot shall be cast as such Members shall agree or, in the absence of agreement, each Member who is Owner of such Lot shall be entitled to cast the portion of the votes for such Lot equal to such Owner's fractional ownership interest in such Lot. Each Lot is allocated one-eighty-first ($1/81^{st}$) of the total votes in the Association until such time as any Additional Property is annexed to the Community Area. From time to time following annexation of Additional Property to the Community Area, the votes for the Lots shall be reallocated so that each Lot is allocated a number of votes in the Association equal to one divided by the number of total Lots that are part of the Community Area. Upon annexation of all of the Additional Property to the Community Area, each Lot shall be allocated one-two hundred sixty-fifth ($1/265^{th}$) of the total votes in the Association.

5.5 Meetings of Members. The By-Laws shall provide for the manner, time, place, conduct, and voting procedures for meetings of Members.

ARTICLE 6 DUTIES AND POWERS OF ASSOCIATION

6.1 General Duties and Powers of Association. The Association will be formed to further the common interests of the Members. The Association, acting through the Board or Persons to whom the Board has from time to time temporarily delegated such powers in any given instance, shall have the duties and powers hereinafter set forth and, in general, subject to the limitations set forth in this Declaration, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve, and enhance the common interests of the Members, to maintain, improve, and enhance Association Properties, and to improve and enhance the attractiveness, aesthetics, and desirability of the Community Area.

6.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to all Association Properties and other real property from time to time transferred to the Association, including any Improvements thereon, and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all Administrative Functions and maintenance associated therewith; provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests from time to time transferred to the Association by Declarant may include fee simple title, easements, leasehold interests, contractual rights, or licenses to use. Any real property or interest in real property transferred to the Association by Declarant shall be within the boundaries of the Community Area. Any property or interest in property from time to time transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all monetary liens (other than the lien of taxes and assessments not yet due and payable) but shall be subject to the terms of this Declaration. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the


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Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

6.3 Power and Duty to Manage and Care for Association Properties. The Association shall have the power and duty to manage, operate, care for, maintain, and repair all Association Properties, to keep the same in an attractive and desirable condition for the use and enjoyment of the Members consistent with this Declaration and the Community-Wide Standard, and to satisfy its obligations with respect to Association Properties under the Plat or any document executed in connection with obtaining the Town's approval of the Plat.

6.4 Power to Pay Taxes. The Association shall have the power to pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings.

6.5 Power to Maintain Casualty Insurance. The Association shall have the power to obtain and keep in full force and effect property insurance on all insurable Improvements and personal property from time to time owned by the Association as Association Properties in such amounts used with such terms as the Board of Directors shall from time to time determine. The Association shall maintain all such insurance required by the Act.

6.6 Power to Maintain Liability Insurance. The Association shall have the power to obtain and keep in full force and effect general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Association Properties with such limits and terms as the Board of Directors shall from time to time determine. The Association shall maintain all such insurance required by the Act.

6.7 General Provisions Respecting Insurance. Insurance obtained by the Association may contain such deductible provisions as the Board of Directors may determine and as shall be consistent with the Act. The Association may carry any other type of insurance it considers appropriate in amounts it deems appropriate, to insure the interests of the Association. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration for all deductibles paid by the Association. At Declarant's request, insurance obtained by the Association shall, to the extent reasonably possible and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

6.8 Fidelity Bonds. The Association may obtain and keep in force a fidelity bond or bonds for any Person handling funds of the Association. The Board of Directors may request any Person employed as an independent contractor by the Association for the purpose of managing the Association Properties to obtain and maintain fidelity insurance in an amount determined by the Board.

6.9 Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

6.10 Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as elsewhere provided in this Declaration.

6.11 Power to Levy and Collect Assessments and Fees. The Association may levy and collect Assessments and Fees as elsewhere provided in this Declaration.

6.12 Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against any Lot.

6.13 Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Association may construct Improvements on property and may demolish existing Improvements.

6.14 Duties With Respect to Design Review Committee Approvals. The Association shall perform functions to assist the Design Review Committee as elsewhere provided in this Declaration.

6.15 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to Members as elsewhere provided in this Declaration or the By-Laws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

6.16 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within