

the Community Area, without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension of the voting rights of a Member during and for up to sixty (60) days following the cure of any breach by such Member or a Related User of this Declaration or the Rules and Regulations; (e) by levying and collecting a Specific Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User; and (f) by uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, assessed against any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User.

6.17 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties.

6.18 Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental, or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate. Any such transfer shall require the approval of Declarant, if Declarant still owns any Lots, and the approval of Members owning at least sixty percent (60%) of the Lots (exclusive of the Lots owned by the Declarant).

6.19 Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and, with the approval of Members owning at least sixty percent (60%) of the Lots (exclusive of the Lots owned by Declarant), determined as provided in Section 5.4, to encumber Association Properties as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action.

6.20 Power to Merge or Consolidate. The Association shall have the power to merge or consolidate with another association with the approval of Members owning at least sixty-seven percent (67%) of the Lots (exclusive of the Lots owned by Declarant), determined as provided in Section 5.4, and, if Declarant still owns any Lots, the approval of Declarant. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Property, together with the covenants, conditions, and restrictions established upon any other property as one plan.

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6.21 Power to Engage Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, management, and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

6.22 General Corporate Powers; Limitations. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or By-Laws. The Association shall also have the power to do any and all lawful things which may be authorized, required, or permitted to be done under this Declaration or the Articles of Incorporation or By-Laws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation or By-Laws. Notwithstanding any other provision of this Declaration to the contrary, except as provided below in this Section 6.22, the Association shall have no power to bring any legal action or proceeding against Declarant or any Limited Declarant, on its own account or on behalf of any one or more of, or any class of, Members or Owners or any one or more of, or any class of, Mortgagees, with respect to or regarding any defects in the design or construction, or any failure to perform any obligation under any express or implied warranty against defects in the design or construction, or otherwise in any way relating to the condition of any Dwelling or Residence or other Improvement constructed on any of the Lots, or for any consequence of any of the foregoing, and any such action by the Association would be *ultra vires*.

6.22.1 Right of Association to Bring Claims; Limitation on Claims. Nothing contained in Section 6.22 shall be construed as precluding the Association from bringing claims with respect to property owned by the Association, including without limitation gardens, parks, and other open space, if any, owned by the Association (collectively, the "Association Owned Properties"), provided that:

6.22.2 Any such claims shall be governed by and subject to all of the provisions and restrictions contained in Section 11.18.1.

6.22.3 No such claim against Declarant or any Limited Declarant shall be brought unless authorized by either (a) a written authorization executed by all of the Owners of seventy-five percent (75%) of the Lots or (ii) the vote of seventy-five percent (75%) of the votes of the Association present in person or by proxy at a meeting of the Members of the Association at which a quorum of two-thirds of the votes entitled to be cast by all of the Owners is present in person or by proxy.

6.22.4 Limitation on Modification. Notwithstanding any other provision of this Declaration, the provisions of this Section 6.22 may not be amended, modified, or repealed except by the Recording of a written statement of amendment executed and acknowledged before a Notary Public by all of the Owners of the Lots.



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Nothing contained in this Section 6.22 shall be construed as permitting the Association to bring any other claim or action against Declarant of any type whatsoever or for any purpose whatsoever.

6.23 Powers Provided by Law. In addition to the above-referenced powers, except as may be limited by this Declaration, the Act, the Articles of Incorporation, or the By-Laws, the Association shall have full power to take and perform any and all actions which may be lawfully taken by the Association under the Colorado Nonprofit Corporation Act.

6.24 Owners Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Lot(s) and structures thereon providing full replacement cost coverage less a reasonable deductible, unless the Association carries such insurance (which it is not obligated to do hereunder). Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, subject to any obligation of the Association to repair or reconstruct any damage to the Lot as expressly set forth in this Declaration, he shall proceed promptly to repair or to reconstruct such structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9 of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

6.25 Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board or any duly authorized executive committee, officer, agent, or employee without a vote of the membership.

6.26 Governmental Interests. So long as the Declarant owns any property within the Subdivision, the Declarant may designate sites within the Community Area for utility facilities, parks, and other public facilities. The sites may include Common Areas.

6.27 Indemnification. The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right



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to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.28 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the County and/or the Town, or to any other local, state, or federal governmental entity, subject to such approval as may be required by this Declaration.

6.29 Security. The Association shall not be obligated to maintain or support any security activities within the Community Area. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT OR LIMITED DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY AREAS, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS AND RELATED USERS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT OR LIMITED DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY AREAS ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES.

ARTICLE 7 ASSOCIATION PROPERTIES

7.1 Member's Rights of Use and Enjoyment Generally. Unless otherwise provided in this Declaration, all Members and Related Users may use the Association Properties.

7.2 Right of Association to Regulate Use. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members and Related Users and, to the extent within the power of the Association, the public to further enhance the overall rights of use and enjoyment of all Members.

7.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties.

7.4 Liability of Owners for Damage by Member. Each Member shall be liable to the Association for any damage to Association Properties and for any cost, expense, or liability incurred by the Association to the extent not covered by insurance, which may be sustained by reason of the negligent conduct or intentional misconduct of such Member or such Member's Related Users and for any violation by such Member or such Member's Related Users of this Declaration or any Rule and Regulation adopted by the Association, including any increase in insurance premiums directly attributable to any such damage or any such violation. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a

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Specific Assessment against a Member to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration or of such Rules and Regulations.

7.5 Association Duties if Damage. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with Section 8.8, or if a Member or group of Members is liable for such damage, levy a Specific Assessment against the Member or group of Members responsible therefor, to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of other Association Properties.

7.6 Association Powers in the Event of Condemnation. If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in the Maintenance Funds as determined by the Board, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for Improvements or additions to or operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

7.7 Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be allocated to the Lots in accordance with the Assessment Ratios and distributed to the Members.

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ARTICLE 8 ASSESSMENTS AND FEES

8.1 Obligation and Lien for Assessments. Each of the Lots shall be subject to the Assessments. Each Lot shall be subject to a lien for the Assessments (together with interest, late charges, costs of collection, and attorneys' fees on or accrued with respect thereto) as provided in this Declaration and in the Act. The lien may be claimed and enforced in accordance with the provisions of this Declaration and of the Act. The Assessments against each Lot and each portion of each Assessment (together with interest, late charges, costs of collection, and attorneys' fees on or accrued with respect thereto) shall be the personal, joint and several obligation of the Owners of the Lot at the time each Assessment or portion thereof becomes payable. Each Owner, by acceptance of its interest in any Lot, agrees to pay to the Association the Assessments as to that Lot and as otherwise provided herein, together with interest, late charges, costs of collection, and attorneys' fees as provided herein. Assessments may consist of Common Assessments, Special Assessments, and Specific Assessments.

8.2 Amount of Common Assessments; Allocation of Assessments; Working Capital.

8.2.1 Amount of Common Assessments. The amount of the annual Common Assessment for each Lot which is a Habitable Dwelling shall be the product of the amount of the Base Assessment multiplied by the Assessment Ratio. The amount of the annual Common Assessment for each Lot which is not a Habitable Dwelling shall be one-third of the product of the amount of the Base Assessment multiplied by the Assessment Ratio.

8.2.2 Assessment Ratio. The "Assessment Ratio" for each Lot shall be 100%.

8.2.3 Base Assessment. As used herein, "Base Assessment" shall mean the total amount of the Annual Common Assessment, divided by the sum of the following (the "Total Number of Assessable Lots"):

8.2.3.1. The total number of Lots which are Habitable Dwellings, multiplied by the Assessment Ratio.

8.2.3.2. One-third of the total number of Lots which are not Habitable Dwellings, multiplied by the Assessment Ratio.

8.2.4 Percentage of Assessment. Each Lot which is a Habitable Dwelling shall be assessed a portion of the Common Assessment equal to the Assessment Ratio divided by the Total Number of Assessable Lots. Each Lot which is not a Habitable Dwelling shall be assessed a portion of the Common Assessment equal to one-third of the Assessment Ratio divided by the Total Number of Assessable Lots.

8.2.5 Habitable Dwellings. For purposes of Assessments, there shall be two classes of Lots, Lots which are Habitable Dwellings and Lots which are not Habitable Dwellings. "Habitable Dwellings" shall mean all Lots on which a Dwelling has been constructed and for which a certificate of occupancy has been issued, except, on a



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temporary basis, any Lot on which the Dwellings have become uninhabitable because of casualty (such as fire, flood, or earthquake) and are not inhabited or on which the Dwellings have been totally demolished, during the period starting with the occurrence of such casualty or demolition and ending when repairs or reconstruction have rendered a Dwelling on such Lot habitable. Lots which are not Habitable Dwellings shall mean all Lots on which Dwellings have not been constructed or, if constructed, for which no Certificate of Occupancy has been issued and any Lots, on a temporary basis, on which the Dwellings have become uninhabitable because of casualty (such as fire, flood, or earthquake) and are not inhabited or on which the Dwellings have been totally demolished, during the period starting with the occurrence of such casualty or demolition and ending when repairs or reconstruction have rendered the Dwelling on such Lot habitable.

8.2.6 Working Capital. At the time of the sale of each Lot to the first Owner thereof following the completion of the Dwelling on the Lot by the Declarant or any Limited Declarant, the Owner purchasing the Lot shall pay an amount equal to two (2) months' Common Assessment for such Lot assuming it is a Habitable Dwelling to the Association as a contribution to the Association's working capital. After such contribution to the working capital of the Association has been made as to any Lot, at the time when the Lot is transferred to a new Owner, the new Owner shall pay an amount to the Association equal to such contribution, and, at the time such replacement contribution is made, the Association shall return the existing capital contribution to the transferring Owner, less a handling charge as set from time to time by the Association; provided that the contribution shall not otherwise be refundable and, in lieu of replacing the contribution in such manner, the transferring Owner may transfer the capital contribution to the new Owner, in which case the handling fee shall be avoided.

8.3 Common Assessments and Initial Assessment. For each calendar year, the Association may levy Common Assessments against the Lots. Each Owner shall jointly and severally be obligated to pay the Common Assessments levied against and allocated to the Lot of such Owner. The first Common Assessment (the "Initial Assessment") shall be made at or after the time the first Habitable Dwelling is transferred by Declarant or a Limited Declarant to the first Owner (which is not the Declarant or a Limited Declarant) thereof, as shall be determined by the Board of Directors. After the Initial Assessment has been made, Common Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually in accordance with Section 8.5. The Initial Assessment and each subsequent Common Assessment shall be determined by the Board in accordance with the Budget. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto not less than thirty (30) days prior to the effective date of such change.

8.4 Supplemental Common Assessments. If the sums provided for Common Assessments prove or at any time are anticipated to be inadequate for any reason, including nonpayment of any Owner's Common Assessment, the Board may, from time to time, levy a supplemental Common Assessment. Such supplemental Common Assessments shall be allocated among the Lots in the same manner Common Assessments are allocated. Written



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notice of any supplemental Common Assessment shall be sent to every Owner subject thereto not less than thirty (30) days prior to the date such supplemental Common Assessment becomes payable.

8.5 Annual Budgets. The Board of Directors shall cause to be prepared, prior to the commencement of each calendar year, commencing with the first calendar year after the Initial Assessment, a budget (the "Budget") for such calendar year. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the reserve fund for major capital repairs, replacements, and improvements to the Association Properties. The Budget, when prepared and revised to the satisfaction of the Board of Directors, shall be adopted by the Board of Directors. Within thirty (30) days after the adoption of the proposed Budget for any year by the Board of Directors, the Board of Directors shall cause the Budget or a summary thereof to be delivered to all Members in any manner in which notices may be given hereunder. Such notice shall set a meeting of the Members to consider the ratification of the budget, which shall be not less than fourteen nor more than sixty days after the delivery of the Budget or summary thereof. Unless at that meeting Members representing a majority of all of the Lots (Members representing all of the Lots, other than the Lots owned by Declarant, during the Declarant Control Period) reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event that any Budget approved by the Board of Directors is rejected by the Members, the Budget last ratified by the Members shall be continued until such time as the Members ratify, as provided in this Section, a subsequent Budget adopted by the Board of Directors. The Budget approved by the Board of Directors and ratified by the Members may be amended from time to time by the Board of Directors and ratified by the Members, in the manner provided above in this Section and when so approved and ratified, shall be adopted as the Association Budget and replace the Budget previously adopted.

8.6 Payment of Assessment. Unless otherwise provided by the Board of Directors as to any Common Assessment, Common Assessments shall be due and payable in advance to the Association by the assessed Member during the calendar year in equal monthly installments, on or before the first day of each month of each calendar year, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion.

8.7 Failure to Set Assessment. If the Board of Directors fails to levy an Assessment for any year, the Assessment set for the prior year shall continue in effect for such year until revised by the Board of Directors in accordance with this Declaration. The failure by the Board of Directors to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Common Assessment or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to Association Properties or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

8.8 Special Assessments for Capital Expenditures. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this Section 8.8, levy



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Special Assessments for the purpose of raising funds not otherwise provided from Common Assessments to construct or reconstruct, repair, or replace capital Improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration; or for such other purposes as reasonably determined by the Association. Special Assessments shall be allocated in the same manner as Common Assessments. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified. Notwithstanding the foregoing, during the Declarant Control Period, no Common Assessments or Special Assessments may be used for construction of capital improvements to Association Properties.

8.9 Specific Assessments. The Board of Directors may, subject to the provisions hereof, levy an Assessment against any Member for the funds expended by the Association if the Member or a Related User or other Person enjoying the privileges and benefits of the Subdivision (such as the use of Association Properties) in a way which the Board of Directors reasonably determines makes such Person's conduct the responsibility of the Member violates or fails to comply with this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations and such violation or failure to comply shall have resulted in the expenditure of funds by the Association to cause such compliance or the cessation of such violation. Such Assessment shall be known as a Specific Assessment and shall be levied only after hearing and approval by the Board in accordance with the By-Laws following notice to the Member(s) against whom the Specific Assessment is proposed to be made given in a time and manner reasonably determined by the Board of Directors to be adequate under the circumstances but in any event in writing delivered to the Residence of which the Member is the Owner. The amount of the Specific Assessment shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board of Directors that the Specific Assessment is owing.

8.10 Late Charges and Interest. If any Common Assessment, Special Assessment, or Specific Assessment or any installment thereof is not paid when due, the Member obligated to pay the Assessment may be required to pay a late charge at the level from time to time determined by the Board. Any Assessment or installment of an Assessment which is not paid when due shall bear interest from the due date at the rate of eighteen percent (18%) per annum or such other rate as may be established by the Board from time to time.

8.11 Attribution of Payments. All Assessment payments shall be credited first to any late fees, interest, attorneys' fees, and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations.

8.12 Notice of Default and Acceleration of Assessments. If any Common Assessment, Special Assessment, or Specific Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of default ("Notice of Default") to the Owner and to the holder (the "First Mortgagee") of the First Mortgage against


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the Lot if the First Mortgagee has requested a copy of the notice. The notice shall specify: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is mailed to the Member, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment against the Lot of the Member. If the delinquent Assessment or installment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may (as to any Assessment payable in installments, including the Common Assessment) declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law in this Declaration, subject to the protection afforded to the First Mortgagee under this Declaration.

8.13 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owners and Members (who shall be jointly and severally liable therefor) of the Lot against which the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, or Specific, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

8.14 Lawsuit to Enforce Assessments. The Board may bring suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

8.15 Lien to Enforce Assessments. All Assessments against a Lot (including late fees, interest, cost of collection, and attorneys' fees) shall constitute a lien on such Lot superior to all other liens and encumbrances, except the following (the "Priority Liens"): (a) liens and encumbrances Recorded before the Recording of the Declaration; (b) tax and special assessment liens in favor of any assessing governmental or quasi-governmental authority; and (c) all sums unpaid under the Mortgage encumbering the Lot that has first lien priority over any other Mortgage encumbering such Lot ("First Mortgage") if the First Mortgage was Recorded before the date on which the assessment sought to be enforced became delinquent, including any unpaid amounts remaining to be paid by the contract purchaser under an Installment Sale Contract, including any Installment Sale Contract in which the Administrator of the VA (as defined in Section 11.10 hereof) is seller, whether such contract is owned by the VA or its assigns, and whether Recorded or not. By acceptance of transfer of an interest in a Lot, the Owners of each Lot agree that the Assessment lien shall be prior to any homestead exemption or right and irrevocably waive any and all rights they or any of them may have to claim a homestead exemption against enforcement of the Assessment lien. Except as set forth in Sections 8.15 and 11.8 hereof or pursuant to Section 38-33.3-316 of the Colorado Revised Statutes, sale, foreclosure, or transfer of any Lot shall not affect the Assessment lien. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens or assessments made by the Association.



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In order to assert any such lien, the Association shall be required to Record a written notice setting forth the amount of such unpaid Assessments, the name of the Owner of the Lot, and the identification of the Lot. Such notice shall be signed by one member of the Board of Directors, an officer of the Association, or an agent appointed by the Board and shall be Recorded. Such notice shall not be required to be in any particular form. Such lien may be enforced by foreclosure on the defaulting Owner's Lot by the Association in the same manner as a mortgage on real property and shall encumber all rents and profits issuing from the Lot, which lien on rents and profits shall be subordinate only to the matters described in subparagraphs (a), (b), and (c) above. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the Lot.

8.16 Estoppel Certificates. Upon the written request of any Member and any Person with, or intending to acquire, any right, title, or interest in the Lot of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

8.17 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

8.18 User Fees. The Association may assess fees ("User Fees") charged to Members who use or derive special benefit from services provided by the Association and which are not used or which do not generally benefit all of the Members. The Association shall charge User Fees in the amount required to pay for such special services, and shall keep separate books for the cost and revenues with respect to such separate service. The User Fees shall be assessed on a per Lot basis for the Lots deriving the special benefit from the special service. Unpaid User Fees may be enforced as Specific Assessments or in any other manner reasonably determined by the Association.

8.19 Other Fees. The Association may impose other fees from time to time in uniform amounts for providing routine services to Owners and Members. Examples of such fees are transfer fees (for changing the names of the Owners of a Lot or Members with respect to a Lot upon the sale or other transfer of a Lot), handling fees (for accepting the contribution to the working capital of the Association from a new Owner of a Lot and refunding the working capital contribution of the transferring Owner), and fees for providing estoppel certificates, confirmations of the status of payment of Assessments, User Fees, and other fees to an existing or prospective purchaser or Mortgagee.

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ARTICLE 9
ARCHITECTURAL APPROVAL


9.1 Approval of Improvements Required; Restrictions and Requirements. The approval of the Design Review Committee shall be required for any Improvement to Property on any Lot, except: (a) for any Improvement to Property made by Declarant (not including any Limited Declarant) and (b) where prior approval of Improvements to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Review Committee. Where the Design Review Committee has approved basic plans for any distinct or separate type or elevation of Residence for construction in the Subdivision by Declarant or any Limited Declarant, the Association or Design Review Committee may provide that its review of the plans for any Improvement shall be limited to, or may limit its review of any Improvement to, the elements of such Improvement changed from the basic plans previously approved; provided that any such limited review shall also consider any impact of any such changes on the basic plans for such Improvement and, notwithstanding any provision or intention to limit its review, the power and authority of the Design Review Committee to review (and approve or reject) any part or all of the plans for such Improvement, including those approved as part of the basic plan, shall not be limited thereby.

9.1.1 Restrictions and Requirements. In accordance with the Public Improvements Development Agreement (the "Development Agreement") for Town of Johnstown (Johnstown Farms) dated May 31, 2002 between the Town and Johnstown Farms, LLC, a Delaware limited liability company, notwithstanding any other provision of this Declaration to the contrary, no Improvement to Property shall be installed or permitted to be installed within the Community Area except in accordance with the following restriction and requirements, unless expressly consented to by the Town (or its successor in interest) in a Recorded instrument:

9.1.1.1. All Residences within the Community Area must be comprised of at least 1,400 square feet of livable space. The Design Review Committee, with the consent of Declarant during the Appointment period, shall have the right to approve Residences which are comprised of between 1,200 and 1,400 square feet of livable space (the "Reduced Size Units"), provided that the Reduced Size Units cannot comprise more than fifteen percent (15%) of the Lots within the Community Area unless expressly authorized by the Town pursuant to the Development Agreement.

9.1.1.2. All Lots directly adjoining Johnstown Center Third Addition, Town of Johnstown, County of Weld, State of Colorado shall only be permitted to be improved with Residences which are single story ranch style homes (but which may have basements).

9.1.1.3. No model of Residence shall be permitted to be constructed on any Lot within the Community Area within three (3) Lots of the same model of residence located on either side of the street on which such Lot is located.


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9.1.1.4. No Residence shall be permitted to be constructed on any Lot within the Community Area unless it includes a two (2) car garage.

9.1.1.5. At least twenty-five percent (25%) of the façade of each Residence (excluding windows, doors, and garage doors) shall be of masonry, stone, brick, or an equivalent approved by the Design Review Committee. All roofs of Residences shall have architectural style shingles unless expressly approved by the Design Review Committee. Three-tab conventional asphalt shingle roofing is not permitted in the Community Area.

9.2 Improvement to Property Defined. "Improvement to Property" requiring approval of the Design Review Committee shall mean and include, without limitation: (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the landscaping, grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern, change of stream bed, or change of established grade; and (d) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

9.3 Membership of Committee. During the Appointment Period, the Design Review Committee shall consist of two (2) members, both of whom shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint both members during the Appointment Period. During the period of development of the Community Area while Declarant has rights to appoint members of the Design Review Committee, Declarant shall give the Association written notice of the appointment or removal of any member of the Design Review Committee. The "Appointment Period" shall mean the period of time commencing as of the date of Recordation of this Declaration and continuing until the earlier of: (i) the expiration of the Declarant Control Period or (ii) when, in its discretion, Declarant voluntarily relinquishes such right by Recorded instrument specifically referring to this Section and specifically relinquishing such right. Members of the Design Review Committee may but shall not be required to be Members of the Association. After expiration of the Appointment Period, members of the Design Review Committee shall be appointed by the Board of Directors. Members of the Design Review Committee may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Appointment Period, the Association may at any time and from time to time change the authorized number of members of the Design Review Committee, but the number of members of the Design Review Committee shall not be less than three (3).

9.4 Address of Design Review Committee. The address of the Design Review Committee shall be at the principal office of the Association.

9.5 Submissions of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property (other than landscaping consistent with a landscaping plan previously approved by the Design Review Committee), the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Design Review Committee at its

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offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Applicant shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval.

9.6 Criteria for Approval. The Design Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community Area as a whole; that the appearance, exterior design, materials and color of the proposed Improvement to Property will be in harmony with the surrounding areas of the Community Area and will be substantially consistent with the specific provisions or intent of the Design Guidelines; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Community Area or the enjoyment thereof by Owners; that the proposed changes in topography properly relate to adjacent Lots and the Community Area as a whole; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. The Design Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Review Committee determines, in its judgment, reasonably exercised, are necessary to comply with this Section.

9.7 Design Guidelines; Design Standards.

9.7.1 Design Guidelines. The Design Review Committee may, from time to time, issue, revise, and reissue guidelines (the "Design Guidelines") to be applicable to all subsequent Improvements to Property. The Design Guidelines may specify substantive standards for styles of architecture, colors, and features which are required to be followed for submissions to the Design Review Committee for approval of proposed Improvements to Property and any additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. During the Appointment Period, any revision or amendment and restatement of the Design Guidelines shall be subject to the approval of the Declarant.

9.7.2 Design Standards. The Design Review Committee may, from time to time, issue, revise, and reissue standards or rules ("Design Standards") relating to the procedures, materials to be submitted, and fees in connection with the approval of any proposed Improvement to Property. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonably or unduly harsh under the circumstances. The Design Standards may provide for the waiver, until such provision is



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revised, of the requirement for approval of certain Improvements to Property or provide for the exemption, until such provision is revised, of certain Improvements to Property from the requirement for approval, if the Design Review Committee determines for the time being that such approval may not be reasonably required to carry out the purposes of this Declaration.

9.8 Design Review Fee. The Design Review Committee may, in the Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Design Review Committee shall provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property in accordance with a schedule of fees adopted by the Design Review Committee or that the fee shall be determined in any other reasonable manner, such as based upon the cost to the Association of the evaluation and response to the application.

9.9 Decision of Committee. The Design Review Committee shall approve or disapprove all requests for approval of any Proposed Improvement to Property within forty-five (45) days after receipt by the Design Review Committee of all materials required by the Design Review Committee in conjunction therewith. If the Design Review Committee fails to approve or disapprove any request within forty-five (45) days after complete submission of all materials and information with respect thereto, the Design Review Committee shall be deemed to have given its approval of such submission.

9.10 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished promptly and diligently and in complete conformity with the description of the proposed Improvement to Property and any other materials submitted to the Design Review Committee in connection with the proposed Improvement to Property and with any conditions imposed by the Design Review Committee. If the Improvement to Property is not completed within eighteen (18) months after the date of approval or such shorter period as is specified in writing by the Design Review Committee in granting its approval, the approval granted shall automatically lapse.

9.11 Notice of Completion. Upon completion of the Improvement to Property, the Applicant shall give written Notice of Completion to the Design Review Committee; provided that the requirement of such notice shall be waived if the Applicant is the Declarant and the requirement of such notice may be waived by the Design Review Committee as to any Limited Declarant. Unless such notice is waived as or in the manner provided in this Section, until the date of receipt of such Notice of Completion, the Design Review Committee shall not be deemed to have notice of completion of such Improvement to Property.

9.12 Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion; provided that the right of inspection shall terminate thirty (30) days after the Design Review Committee has received a Notice of Completion from Applicant and the Design Review Committee has been provided access to inspect the Improvement to Property.

9.13 Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Review Committee determines that any Improvement to Property has been made without obtaining the approval of the Design Review Committee or was not made in complete conformity with the description and materials furnished to, and any conditions imposed by, the Design Review Committee or was not completed within eighteen (18) months after the date of approval by the Design Review committee or such shorter period as specified in writing by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance, which notice shall be given, in any event, within thirty (30) days after the Design Review Committee receives a Notice of Completion from the Applicant and the Design Review Committee has been provided access to inspect the Improvement to Property. The notice shall specify the particulars of the noncompliance and such action to be taken to remedy the noncompliance, which may include demolition of the Improvement to Property or remodeling of the Improvement to Property to comply with the plans for such Improvement to Property, if any, approved by the Design Review Committee.

9.14 Appeal to Board of Directors; Finding of Noncompliance. If the Design Review Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Design Review Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to submit a timely appeal to the Board or fails to commence diligently to remedy such noncompliance, the Design Review Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Association and the Applicant within sixty (60) days after delivery to the Applicant of a notice of noncompliance from the Design Review Committee. In either event, the Board of Directors shall hear the matter in accordance with the provisions of the By-Laws, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

9.15 Correction of Noncompliance. The Applicant shall remedy the noncompliance within thirty (30) days after notification thereof by the Design Review Committee, or, if a timely appeal to the Board was submitted by the Applicant or a request for a finding of noncompliance was submitted to the Board by the Design Review Committee, within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the Lot(s) on which the noncompliance exists, may enter upon such Lot(s) and remove the noncomplying Improvement to Property, and/or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Specific Assessment against the Owner of the Lot for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration. The Applicant and Owner of the Lot shall have no claim for damages or otherwise on account of the entry upon the property and removal of the noncomplying Improvement to Property.

9.16 No Implied Waiver or Estoppel. No action or failure to act by the Design Review Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Design Review Committee or the Board of Directors with respect to any Improvement to Property. Specifically, the approval of the Design Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property.

9.17 Committee Power to Grant Variances. The Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration or the Design Guidelines, including restrictions upon height, size, floor area, or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental conditions may require. Such variances must be approved by the Design Review Committee in accordance with its regular procedures and shall not be effective until so approved and evidenced in writing executed by the Chairman or a majority of the Design Review Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property, the particular Improvement to Property covered by the variance, and the particular provision hereof or of the Design Guidelines, covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

9.18 Meetings of Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval of any Improvement to Property, determination of non-compliance, and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Design Review Committee shall constitute action of the Design Review Committee.

9.19 Estoppel Certificate. The Board of Directors shall, upon the reasonable request of any interested Person (and the payment of any fee established by the Board of Directors or the Design Review Committee therefor) and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

9.20 Nonliability of Committee Action. There shall be no liability imposed on the Design Review Committee, any member of the Design Review Committee, any Committee Representative, the Association, any member of the Board of Directors, or Declarant for any

loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, any Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations. Members of the Design Review Committee shall be indemnified by the Association to the same extent as the Board of Directors of the Association, as set forth in the Articles of Incorporation or By-Laws of the Association.

9.21 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, so long as construction is being prosecuted with reasonable diligence, the Design Review Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent determined by the Design Review Committee to be necessary to permit such construction to proceed in a reasonable manner. Any such temporary suspension may be revoked by the Design Review Committee upon its determination that construction is not being diligently prosecuted. No such temporary suspension shall permit anything to be done which will result in a violation of any of the provisions of this Declaration upon completion of construction or shall permit anything to be done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

9.22 Compliance with Planned Unit Development Plan. The height, floor area, materials and other attributes of all Improvements to Property constructed within the Community Area shall comply in all respects with the provisions of the Plat, the Development Agreement, and any Official Development Plan or Planned Unit Development Plan which has been Recorded as to the Community Area, all as amended from time to time.

9.23 General. No Improvement to Property shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines and upon approval of the Design Review Committee under Section 9.9 other than (a) any Improvement to a Lot made by Declarant and (b) where prior approval of Improvements to a Unit may be waived or certain Improvements to a Lot may be exempted in writing or under written guidelines or rules promulgated in accordance with this Article 9. Notwithstanding the foregoing, no Improvement shall be permitted to be installed in violation of Section 9.1.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

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All Dwellings constructed on any portion of the Community Area shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article, other than Section 9.1, shall not apply to the activities of the Declarant, nor to Improvements to the Common Area by or on behalf of the Association.


ARTICLE 10 DECLARANT'S RIGHTS AND RESERVATIONS

10.1 Period of Declarant's Rights and Reservations. Declarant shall have, and Declarant hereby retains and reserves, certain rights as hereinafter set forth with respect to the Association and the Association Properties for a period of time (the "Declarant Control Period") commencing on the date hereof and ending: (a) sixty (60) days after the date on which seventy-five percent (75%) of the Lots no longer are owned by Declarant and Limited Declarants; or (b) two (2) years after the conveyance by Declarant (or any Limited Declarant) of the last Lot conveyed by Declarant (or any Limited Declarant) in the ordinary course of business, whichever occurs first. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant whether or not specifically stated therein. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment.

10.2 Declarant's Right to Appoint Board of Directors. During the Declarant Control Period, Declarant shall have the right to appoint the members of the Board of Directors; provided that (i) not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Owners other than Declarant (including as Declarant any Limited Declarants), at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners other than the Declarant; (ii) not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Owners other than Declarant (including as Declarant any Limited Declarants), not less than thirty-three and one-third percent (33 %) of the members of the Board of Directors must be elected by Owners other than the Declarant; and (iii) not later than the termination of the Declarant Control Period, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Owners other than the Declarant or designated representatives of Owners other than Declarant. During the Declarant Control Period, the Articles and By-Laws and any amendment to either of them shall not be effective unless and until approved in writing by the Declarant.

10.3 Selection of Officers; Date for Taking Office. The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election.

10.4 Requirements for Turnover of Declarant Control. On or before the Turnover Date, the Declarant shall deliver to the Association all property of the Owners and the


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Association held by or controlled by the Declarant, including without limitation the following items:

10.4.1 The original or a certified copy of the recorded Declaration as amended, the Association's Articles of Incorporation, By-Laws, minute books, other books and records, and any Rules and Regulations which may have been promulgated.

10.4.2 An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Declarant Control Period ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association; provided that, if then permitted by the Act, the Association rather than the Declarant shall pay for the audit. The requirement for an audit may be waived by the Declarant to the extent permitted by the Act.

10.4.3 The Association funds or control thereof.

10.4.4 All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or, to the extent required by the Act, all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Areas, and inventories of these properties.


10.4.5 To the extent required by the Act, a copy of any plans and specifications used in the construction of any improvements which were completed within two (2) years before this Declaration was recorded.

10.4.6 All insurance policies then in force, in which the Owners, the Association or its members of the Board of Directors and officers are named as insured persons.

10.4.7 To the extent required by the Act, copies of any certificates of occupancy that may have been issued with respect to the Improvements located on Association Properties.

10.4.8 To the extent required by the Act, any other permits issued by governmental bodies applicable to the Subdivision and which are currently in force or which were issued within one year prior to the date on which the Declarant Control Period ended.

10.4.9 To the extent required by the Act, written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective.


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10.4.10 A roster of Owners and First Mortgagees and the addresses and telephone numbers, if known, as shown on the Declarant's records.

10.4.11 Employment contracts in which the Association is a contracting party.

10.4.12 Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

10.5 Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey Association Properties to the Association and construct additional Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners. Declarant may convey or transfer such Improvements to the Association if Declarant has elected to construct such Improvements. The Association shall be obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration. Association Properties and Improvements conveyed by Declarant to the Association shall be conveyed free and clear of any Mortgage or lien (other than a lien for any tax or assessment not yet due and payable) arising by reason of Declarant's promise or failure to pay any monetary obligation of Declarant.

10.6 Declarant's Rights to Use Association Properties in Marketing of Community Area. Until Residences have been constructed on all of the Lots and all of the Lots have been sold by Declarant and the Limited Declarants to Owners for the purpose of occupancy of the Residences thereon, Declarant shall have and hereby reserves the right to reasonable use of the Association Properties and of services offered by the Association in connection with the promotion and marketing of the Community Area. Without limiting the generality of the foregoing, until Residences have been constructed on all of the Lots and all of the Lots have been sold by Declarant and the Limited Declarants to Owners for the purpose of occupancy of the Residences thereon, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of property within the boundaries of the Community Area who are not Owners or Members of the Association to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the development, promotion, and marketing of property within the boundaries of the Community Area. Declarant shall pay any costs and expenses arising from its use of Association Properties in accordance with this Section 10.6.

10.7 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of the Community Area or elect not to complete development of any part of the Community Area; to develop Association Properties or to

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construct Improvements to Property thereon, whether or not required by the Plat or any other requirements imposed by the Town in connection with the approval of the Plat; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes and offices for construction, sales purposes, or similar facilities on any property owned by Declarant within the Community Area; or to post signs or do any other act or thing incidental to development, construction, promotion, marketing, or sales of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant; (b) to use any structure on any property owned by Declarant as a construction office, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Community Area; (c) to store construction materials, supplies, equipment, tools, waste or other items on property within the Community Area that is owned by Declarant; (d) to require Declarant to seek or obtain the approval of the Design Review Committee or of the Association for any such activity or Improvement to Property on any property owned by Declarant; or (e) to develop Association Properties or to construct Improvements to Property thereon, whether or not required by the Plat or any other requirements imposed by the Town in connection with the approval of the Plat, or to seek or obtain the approval of the Design Review Committee or the Association for any such activity or Improvement to Property. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

10.8 Declarant's Approval of Conveyances or Changes in Use of Association Properties. During the Declarant Control Period, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, mortgage Association Properties, or use Association Properties other than solely for the benefit of Members or as specifically allowed hereunder.

10.9 Declarant's Rights to Grant and Create Easements. Until Residences have been constructed on all of the Lots and all of the Lots have been sold by Declarant and the Limited Declarants to Owners for the purpose of occupancy of the Residences thereon, Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water, and other purposes incident to development and sale of the Community Area located in, on, under, over, and across: (a) Association Properties; (b) the five (5) feet of each Lot adjoining each of the exterior boundaries of such Lot; and (c) the portions of the Community Area affected by the easements reserved on the recorded plats for the Community Area. Declarant may, at any time, grant or create temporary or permanent easements for such purposes on Lots owned by Declarant. Within these easements, unless the consent of the holder of such easement rights is obtained, no structure, planting or other improvements or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change or adversely affect Established Drainage Patterns or the direction and flow of drainage, or obstruct or retard the flow of water as contemplated by the Established Drainage Pattern. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot on which said easement is located, except for those improvements for which a public authority or private