

AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
OF  
THE SEASONS AT TIARA RADO FILING NO. 4  
Lots 1 Through 18    BOOK 2132 PAGE 620

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MONIKA TODD CLK&REC MESA COUNTY CO

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND EASEMENTS OF THE SEASONS at Tiara Rado Filing No. 4 (the "Declaration") is made as of March 13, 1995, by THE SEASONS at Tiara Rado Associates, a Colorado general partnership (the "Declarant").

RECITALS

A. A declaration dated May 27, 1994, was recorded by the Declarant at Book 2075, Page 215, Mesa County Records, subjecting the property platted as The Seasons at Tiara Rado Filing No. 4 to certain conditions, covenants, restrictions and easements.

B. Section 16.2 of the original declaration provides that the declaration may be amended during the first 20-year period by an instrument signed by Owners holding not less than 67% of the votes possible to be cast under the original declaration. As further provided in the original declaration, a certificate of the Secretary of the Association is attached as Exhibit A certifying that a sufficient number of Owners approving the amendment is on file in the office of the Association.

C. The Owners desire to amend and restate the declaration as hereinafter set forth.

NOW, THEREFORE, in consideration of the recitals and premises contained herein, the declaration as recorded at Book 2075, Page 215, Mesa County Records is amended and restated to read as follows:

(i). Declarant is owner of that certain real property located entirely within Mesa County, Colorado, more particularly described as Lots 1 through 18, inclusive, Filing No. 4, The Seasons at Tiara Rado Subdivision, according to the Plat recorded May 27, 1994, at Book 14, Page 229, in the office of the Clerk and Recorder, Mesa County, Colorado (the "Property").

(ii). The Property is subject to the Declaration of Covenants, Conditions, and Restrictions of the Master Subdivision of Tiara Rado South, recorded in the office of the Clerk and Recorder of Mesa County, Colorado (the "Master Declaration").

(iii). Declarant desires pursuant to and in accordance with the Colorado Common Interest Ownership Act (C.R.S. §38-33.3-101, *et seq.*), to subject the Property to certain covenants, conditions, restrictions and easements which shall be in addition to, and not in lieu of, the Master Declaration.

Declarant hereby declares that the Property shall be held, sold, and conveyed subject to following covenants, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property.

ARTICLE I  
DEFINITIONS

Section 1.1. Definitions. The following words, when used in this Declaration or in any Supplemental Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

A. "Annual Assessments" means the Assessment levied annually and paid on a prorated basis each month or as otherwise determined by the Board of Directors.

B. "Articles" mean the Articles of Incorporation for THE SEASONS at Tiara Rado Filing No. 4 Courtyard Homeowners Association, to be on filed with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

C. "Assessments" means the Annual, Special, and Default Assessments levied pursuant to Article IX hereof.

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D. "Association" means THE SEASONS at Tiara Rado Filing No. 4 Courtyard Homeowners Association, a Colorado nonprofit corporation, and its successors and assigns.

E. "Association Documents" means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

F. "Board of Directors" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

G. "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

H. "Common Expenses" means (i) all expenses expressly declared to be common expenses by this Declaration, any Supplemental Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Exterior Maintenance Area; (iii) insurance premiums for the insurance carried under Article VII; and (iv) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

I. "Declarant" means THE SEASONS at Tiara Rado Associates, a Colorado general partnership, and its successors and assigns.

J. "Declaration" means and refers to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of THE SEASONS at Tiara Rado Filing No. 4, Lots 1 through 18.

K. "Default Assessment" means the Assessments levied by the Association pursuant to Article IX, Section 9.7. below.

L. "Committee" shall mean and refer to the Design Review Committee created by Declaration of Covenants, Conditions, and Restrictions and Easements of the Master Subdivision of The Seasons at Tiara Rado.

M. "Expansion Property" means such additional real property which is currently owned or may be acquired by Declarant in the future which Declarant may subject to this Declaration by duly recorded Supplemental Declaration prior to December 31, 2001.

N. "Exterior Maintenance Area" means the exterior of any Residence (excluding window panes, decks, patios, and porches), and the property surrounding the Residence and any improvements on such property within the perimeter of the Lot on which the Residence is located.

O. "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

P. "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Q. "Golf Course" means the Tiara Rado Golf Course as owned and operated by the City of Grand Junction that adjoins the Property.

R. "Lot" means the eighteen (18) plots of land subject to this Declaration and designated as a "Courtyard Lot" on any subdivision plat of the Property recorded by Declarant in the office of the Clerk and Recorder of Mesa County, Colorado, together with all appurtenances and improvements, including a Residence, now or in the future on the Lot. The term "Courtyard Lot" shall be synonymous with the term "unit" in C.R.S. § 38-33.3-103(30).

S. "Manager" shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time.

T. "Master Association" shall mean the Master Subdivision of THE SEASONS Tiara Rado Owners Association, a Colorado non-profit corporation, described in the Master Declaration.

U. "Master Association Documents" shall mean the Declaration of Covenants, Conditions and Restrictions of the Master Subdivision of THE SEASONS at Tiara Rado, recorded in the office of the Clerk and Recorder of Mesa County, Colorado (the "Master Declaration"), and the Articles of Incorporation and the Bylaws of the Master Association, and all rules and regulations, including, but not limited to, design regulations issued by the Master Association pursuant to such documents, all as amended and supplemented from time to time.

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V. "Master Subdivision" shall mean the Master Subdivision of THE SEASONS at Tiara Rado.

W. "Member" shall mean every person or entity who holds membership in the Association.

X. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any lot or interest therein as security for payment of a debt or obligation.

Y. "Mortgagee" means any person named as a mortgagee or beneficiary in any mortgage, or any successor to the interest of any such person under such Mortgage.

Z. "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, and "Owner" also includes the purchaser under a contract for deed covering a Lot, but excludes those having such interest in a Lot merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

AA. "Property" means and refers to that certain real property described as Lots 1 through 18, inclusive, Filing No. 4, The Seasons at Tiara Rado Subdivision. The Property, and the units therein (as that term is defined in C.R.S. § 38-33.3-103(30)) are also described on that certain plat recorded May 27, 1994, at Book 14, Page 229, in the office of the Clerk and Recorder, Mesa County, Colorado.

BB. "Residence" means the single family dwelling constructed on any one Lot. The maximum number of Residences which the Declarant reserves the right to create is eighteen (18). The exterior design of the Residence must be approved by the Declarant and built on the Lot in strict accordance with the Site Plan, the Wall and Fence Plan and the Drainage Plan.

CC. "Site Plan" means the plan that shows the location of each residence on each lot within the boundaries of the Property. This Site Plan may be modified only by the Declarant and if the Declarant no longer exist, by the Committee.

DD. "Special Assessment" means an assessment levied pursuant to Article IX, Section 9.5 below on an irregular basis.

EE. "Standards" means the Architectural Standards of The Seasons at Tiara Rado as initially prepared by the Declarant for the Master Subdivision of The Seasons at Tiara Rado and as modified from time to time by the Design Review Committee.

FF. "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Mesa County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

GG. "Supplemental Declaration" means an instrument which subjects any part of the Expansion Property to this Declaration, as more fully provided for in Article IV below.

HH. "The Seasons at Tiara Rado Filing No. 4 Courtyard Homes" shall mean the planned community created by this Declaration, consisting of the Property, the Residences, and any other improvements constructed on the Property.

II. "Wall and Fence Plan" means a plan to be prepared by the Declarant in connection with the final architectural design of the courtyard residences.

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JJ. "Drainage Plan" means the overlot grading and drainage plan applicable to Residences to be built on the property.

KK. "Berm" means the Common Area behind Lots 10 through 18.

LL. "Site Plan" means the Site Plan for Filing No. 4 submitted by Declarant and dated August 20, 1994, and recorded on September 9, 1994, in the office of the Clerk and Recorder, Mesa County, Colorado at Book 14 and Page 276.

ARTICLE II  
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 2.1. The Association. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2.2. Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

Section 2.3. Voting. Except as otherwise provided for in this Declaration, all Owners shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised by one person or alternative persons (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended and disregarded in the event more than one person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one vote be cast with respect to any one Lot. No cumulative voting by Owners shall be allowed.

Section 2.4. Compliance with Association Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots and for the benefit of Declarant's adjacent properties.

Section 2.5. Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 2.6. Manager. The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 2.7. Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

Section 2.8. Notices to Owners. Each Owner, by acceptance of a deed or other conveyance vesting in him an interest in a Lot, consents to notices

from the Association or other Owners regarding matters affecting the Property to be sent by regular mail to the person shown as the Owner of such Lot, at the last address shown for such Owner, on the books and records of the Association.

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ARTICLE III  
POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

The Board of Directors shall have power to take the following actions:

A. Adopt and publish rules and regulations governing the use of the Exterior Maintenance Area, and governing the personal conduct of the Members and their guests, and the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

B. Suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in Article IX hereof. Such rights may also be suspended after notice and hearing for a period not to exceed 90 days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to 90 days thereafter, and;

C. Exercise for the Association all powers, duties, and authority vested in or delegated to the Board of Directors and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association.

ARTICLE IV  
EXPANSION

Section 4.1. Reservation of Right to Expand. Declarant reserves the right to expand the Property to include additional Lots.

Section 4.2. Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder for Mesa County, Colorado, no later than December 31, 2001, one or more Supplemental Declarations setting forth the Lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions, and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

Section 4.3. Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Lot" shall mean the Lots described in Section 1.1(R) above plus any additional Lots added by a Supplemental Declaration or Declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer right in the Property as expanded.

Section 4.4. Declaration Operative on New Lots. The new Lots shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the supplemental plat(s) depicting the Expansion Property and Supplemental Declaration(s) of public record in the real estate records of Mesa County, Colorado.

ARTICLE V  
PROPERTY RIGHTS OF OWNERS  
AND RESERVATIONS BY DECLARANT

Section 5.1. Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration.

Section 5.2. Utility, Drainage, and Irrigation Easements. There is hereby created a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, electrical, cable communications systems and traffic control devices. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install

and maintain necessary equipment, wires, circuits, and conduits under and over the Property. No water, sewer, gas, telephone, electrical, or communications lines, systems, or facilities, not already on the Property on the date hereof, may be installed or relocated on the surface of the Property unless reasonably necessary to the installation of services or otherwise approved by the Association. Such utilities may temporarily be installed above ground during construction.

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Declarant also reserves for itself and its successors and assigns, and grants to the Association and its agents, employees, successors, and assigns, an easement to enter on any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water.

Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded (provided Declarant has the right to use said ditches), and Declarant reserves for itself and its successors and assigns (including the Association) the right to construct additional irrigation ditches and lines for the maintenance of the Exterior Maintenance Area and for such other purposes as Declarant may from time to time deem appropriate. The Association is hereby granted the right to maintain any such ditches within the easements and to enter upon Lots as necessary to perform such maintenance. Any Owner of a Lot over which such ditches cross shall be prohibited from taking or diverting water from the ditches or constructing any improvements within the easements established for such ditches without the prior written approval of the entity to whom Declarant grants the right to control the ditches in question.

The Master Association will own, operate, maintain and deliver irrigation water to the Property and the Exterior Maintenance Area. The Master Association will also own, operate and maintain the pumping station and the ditches and other delivery facilities.

Any entity using this general easement shall use its best efforts to install and maintain the utilities, drainage, or irrigation ditches provided for without disturbing the uses of the Property by the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and in the case of utility work, shall restore the surface to its original condition as soon as possible after completion of its work, provided no permanent building, structure or improvement shall be placed thereon by the Owners, the Association, or the Declarant. Should any entity furnishing a service covered by this general easement request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish, or modify any other recorded easement affecting the Property.

Section 5.3. Declarant's Rights Incident to Construction.

Declarant, for itself and its successors, assigns, and agents hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Exterior Maintenance Area, together with the right to store materials on the Exterior Maintenance Area, to build and maintain temporary walls, and to make such other use of the Exterior Maintenance Area as may be reasonably necessary or incident to the construction of Residences on the Lots or other improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to any Lot.

Section 5.4. Emergency Access Easement.

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 5.5. Maintenance Easement.

An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Board of Directors or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon any Lot for the purpose of

performing maintenance to the landscaping or the exterior of the Residence on such Lot, as required by the Association Documents.

Section 5.6. Encroachment and Wall Easement. If any improvement constructed by Declarant on any Lot encroaches onto any other Lot, then there is hereby granted an easement for said encroachment. In addition, certain walls will be constructed dividing the Lots, and an easement is hereby granted for said walls, and for the maintenance thereof.

Section 5.7. Lot Owner's "Exclusive Easement". An easement is hereby granted to each Lot Owner for the right to possess and use, subject to the other easements and provisions of this Declaration, certain property which is located on the adjoining Lot of said Lot Owner, and which is shown on the final plat of the subdivision as the "Exclusive Easement." Each Owner will only have an easement in the Exclusive Easement which is adjacent to and abutting said Owner's Lot.

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Section 5.8. Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Lot, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution as the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Section and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment. No Owner shall have any rights against the Association or Declarant or any of their officers or directors with respect thereto except in the case of fraud or gross negligence.

Section 5.9. General Reservations. Declarant reserves the (a) the right to dedicate any access roads and streets serving the Property for and to public use, to grant to the public a road easement with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of parking and/or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, and/or the Association.

Section 5.10. Sales and Management Office. Declarant hereby notifies all Owners, and prospective Owners, that a sales and management office is intended to be located on Lot 1 of THE SEASONS at Tiara Rado Filing No. 3.

Section 5.11. Reservation for Expansion. Declarant hereby reserves to itself and/or for Owners in all future phases of the Master Subdivision of The Seasons at Tiara Rado an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress to and egress from the Expansion Property, and other properties abutting and contiguous to the Property and the Expansion Property. The location of these easements and right-of-way may be instruments recorded in Mesa County, Colorado.

Section 5.12. Cluster Mail Boxes. The Declarant reserves the right to locate cluster mail boxes within the 10 foot multi-purpose easement.

Section 5.13. Subdivision Sign or Monument. Declarant hereby reserves the right to construct a temporary or permanent sign or monument in the front Exterior Maintenance Area of Lot 1 of Filing 4 identifying the tradename of the Filing No. 4. This sign shall become part of the Exterior Maintenance Area and shall be the responsibility of the Association.

#### ARTICLE VI EXTERIOR MAINTENANCE AREA AND SPECIAL EASEMENT

Section 6.1. Exterior Maintenance Area. In order to maintain a uniform appearance and a high standard of maintenance within THE SEASONS at Tiara Rado, the Association shall maintain the Exterior Maintenance Area, as more fully set forth below.

Section 6.2. Residence Exteriors. The Association shall maintain the exterior of all Residences, including, but not limited to, painting of the exterior (excluding decks and porches), roof repairs and exterior lighting. Replacement of the roof structure is not included. The Association shall also have the sole discretion to determine the time and manner in which such

maintenance shall be performed as well as the color or type of materials used to maintain the Residence, subject to the architectural and design guidelines of the Master Association. The Owner shall be responsible for the exterior cleaning of windows and the repair or replacement of broken window panes.

Section 6.3. Landscaping, Sidewalks and Driveways. The Association shall maintain landscaping of the Lot between the streets and front walls, including, but not limited to, lawns, trees and shrubs, and the Association shall also maintain all fences, walls, gates and sidewalks (subject to any obligations and rights of the City of Grand Junction or any other governmental subdivision relative to maintenance of the sidewalks). Specifically excluded are any wall or fences not included in the Wall and Fence Plan and the side and rear courtyard areas. The owner shall be responsible for the cleaning and snow removal of their driveways, however concrete repairs shall be the responsibility of the Association. The owners shall keep the driveways reasonably clear of oil stains. The maintenance provided under this section shall be performed at such time and in such a manner as the Association shall determine, subject to the architectural and design guidelines of the Master Association.

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Section 6.4. Association's Right to Grant Owner's Maintenance Area. The Association reserves the right to grant the maintenance responsibility of certain areas on each Lot to the Lot Owner, and the Lot Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner.

Section 6.5. Special Easement. Declarant hereby reserves for itself and grants to the Association, the Board of Directors, and their respective representatives, a nonexclusive easement to enter upon and use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article VI.

Section 6.6. Maintenance Contract. The Association or Board of Directors may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Exterior Maintenance Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board. The Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 6.7. Owner's Responsibility. The Owner shall be responsible for maintaining all portions of the Owner's Lot other than the Exterior Maintenance Area, unless modified by Section 6.4.; provided, however, the Owner shall also be responsible for the maintenance of any balcony, patio, or deck area of his Residence. No Owner shall make any addition or other alteration to any portion of the Exterior Maintenance Area without the express consent of the Association. Nothing shall be attached to any building, wall or fence. All areas near buildings, walls and fences shall be kept reasonably clear for painting and maintenance of buildings, walls and fences. The Association shall not be held liable for damage to any vegetation or property of the owner that interferes with the maintenance of the Exterior Maintenance Area. The Association shall be entitled to reimbursement for cost of repair from any Owner who causes, or whose tenant, employee or guest causes, damage to the Exterior Maintenance Area by a deliberate act or negligence.

Section 6.8. Owner's Failure to Maintain or Repair. In the event that a Lot and the improvements thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Lot lies with the Owner of the Lot, or in the event that the improvements on the Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made.



The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article IX of this Declaration.

ARTICLE VII  
INSURANCE AND FIDELITY BONDS

Section 7.1. Authority to Purchase. All insurance policies relating to the Exterior Maintenance Area shall be purchased by the Master Association or its duly authorized agent. If the Master Association chooses not to provide insurance coverage or if the Board of Directors of this Association determine that such coverage acquired through the Master Association is inadequate, then the Board of directors of this Association shall purchase be authorized to purchase insurance coverage. The Board of Directors, the Manager, and Declarant shall not be liable for failure to obtain any coverage required by this Article VII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage are available only at demonstrably unreasonable cost.

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Section 7.2. Notice of Owners. The Board of Directors shall, upon written request from any Owner, promptly furnish to such requesting Owner written notice of the procurement of, subsequent change in, or termination of, adverse changes in, or termination of, insurance coverage obtained on behalf of the Association under this Article.

Section 7.3. General Insurance Provisions. All such insurance coverage obtained in accordance with this Article by the Board of Directors shall be governed by the following provisions.

A. As long as Declarant owns any Lot, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article VII shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims.

B. The deductible amount, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments; or as an item to be paid from working capital reserves established by the Board of Directors; or alternatively, the Board of Directors may treat the expense as an assessment against an Owner whose negligence or willful act resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible in accordance with Sections 9.6. and 9.7. below.

C. Insurance Premiums. Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage provided by the Board of Directors pursuant to this Article shall be a Common Expense to be paid by regular Annual Assessments levied by the Association.

Section 7.4. Physical Damage Insurance on Exterior Maintenance Area. The Board of Directors shall obtain and maintain, to the extent such insurance is reasonably and economically available in light of the nature of the Exterior Maintenance Areas, in full force and effect broad form property insurance on all insurable improvements within the Exterior Maintenance Area, if any, in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage). Such insurance shall afford protection against at least the following:

A. Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement, and caused by debris removal, demolition, vandalism, malicious mischief, windstorm, and water damage;

B. Such other risks as shall customarily be covered with respect to projects similar in construction, location, and use. If there are no improvements within the Exterior Maintenance Area, no physical damage insurance need be obtained by the Association.

Section 7.5 Commercial General Liability Insurance. The Board of

Directors shall obtain and maintain in full force and effect commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Exterior Maintenance Area (including libel, slander, false arrest and invasion of privacy coverage) in an amount to be reviewed and determined by the Board of Directors annually, but to be in no circumstances less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. In addition, the Board of Directors shall obtain and maintain some reasonable amount of umbrella liability insurance in excess of the primary limit set forth above, which umbrella coverage shall be in an amount not less than Five Million Dollars (\$5,000,000.00). The general liability insurance identified in this Section 7.5 shall insure the Board of Directors, the Association, any management agent retained and appointed by the Association and their respective employees and agents. All Owners shall be included as additional insured under this policy, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the common areas. In addition, this insurance coverage shall cover claims for one or more insured parties against other insured parties. Such comprehensive liability policy shall also cover contractual liability, liability for non-owned and hired automobiles, bailee's liability, garage keeper's liability, host liquor liability, employer's liability insurance, and such other risks as are customarily provided in policies with respect to a planned community, location and use.

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Section 7.6. Provisions Common to Physical Damage Insurance.

A. In contracting for the policy or policies of insurance obtained pursuant to Sections 7.4. above, the Board of Directors shall make reasonable efforts to secure coverage as the Board deems advisable which provides the following:

(i) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made by the affirmative vote of the Owners of eighty percent (80%) of the Lots not to do so;

(ii) The following endorsements (or equivalent): (i) "cost of demolition;" (ii) "contingent liability from operation of building laws or codes;" (iii) "increased cost of construction;" and (iv) "agreed amount" or elimination of co-insurance clause;

(iii) Periodic appraisals to determine replacement cost, as more fully explained in Section 7.5 B below; and

(iv) A provision that no policy may be canceled, invalidated, or suspended on account of the conduct of any Owner (including such Owner's tenants, servants, agents, invitee, and guests), any member of the Board of Directors, officer, or employee of the Association or the Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, the Manager, any Owner, or Mortgagee.

B. Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Board of Directors may deem advisable, the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the Board may determine, of the then current replacement cost of the property (exclusive of the Land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Article.

C. A duplicate original or photocopy of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums and any notice issued under Section 7.5.A.(iv) above, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty days prior to expiration of the then current policy. The Mortgagee of a Residence shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such Residence.

Section 7.7. Fidelity Insurance. To the extent obtainable at reasonable cost and terms, fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the

Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond shall be obtained by the Manager for it and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 7.8. Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance. Any insurance coverage obtained by the Association under the provisions of this Article VII above shall be subject to the following provisions and limitations:

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A. The named insured under any such policies shall include Declarant, until all the Lots have been conveyed, and the Association, as a trustee for the Owners and their Mortgagees, as their interests may appear, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee") who shall have exclusive authority to negotiate losses and receive payments under such policies;

B. In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees;

C. The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner (including an Owner's tenants, servants, agents, invitee, and guests) when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control;

D. The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled or substantially modified or reduced (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any Mortgagee who is the beneficiary of a First Mortgage of record against any Lot, and all insured named in the policies;

E. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Board of Directors, the Association, the Manager, and any Owner or their respective agents, employees, or tenants, and in the case of Owners, members of their households; and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured; and

F. All policies shall be written with a company licensed to do business in Colorado and holding a rating of B/VI or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or, if not reasonably available, the most nearly equivalent rating.

Section 7.9. Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate personal liability insurance shall be maintained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

Section 7.10. Workmen's Compensation Insurance. The Board of Directors shall obtain workmen's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 7.11. Other Insurance. The Board of Directors may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 7.12. Insurance Obtained by Owners. Each Owner shall obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the full replacement value of the Owner's Residence, personal property and personal liability (except to the extent any such Lot is encumbered by an easement conveyed to the Association under the

Master Association Documents). In addition, an Owner may obtain such other and additional insurance coverage on such Owner's Lot and Residence as such Owner in the Owner's sole discretion shall conclude to be desirable. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association, or by the Master Association, or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Lot.

#### ARTICLE VIII INCIDENTS OF OWNERSHIP

Section 8.1. Inseparability. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Lot and the Residence and other improvements thereon shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance respectively of the entire Lot, including each easement, license, and all other appurtenant rights created by law or by this Declaration.

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Section 8.2. No Subdivision. No Lot shall be subdivided between or among the Owners of the Lot. Specific reference is made to the City of Grand Junction Zoning and Development Code as it applies to Resubdivision.

Section 8.3. Residential Use/Declarant's Use. A Residence may be used for permanent or short-term occupancy by its Owner, its family, servants, agents, guests, invitee, and tenants, and such Owner shall be allowed to rent or arrange for rental of its Residence for any length of time, except that such Residence may not be used as an office or for any other commercial purpose. Notwithstanding the foregoing, Declarant is authorized to maintain a sales office, development office, sales model and property management office on any Lot, as well as other facilities (including signage) which, in the sole opinion of Declarant, may be reasonably necessary, convenient or incidental for conducting sales, building and land development or for property management purposes. Timesharing shall not be permitted.

Section 8.4. Golf Course. Owners' acknowledge that Residences on or near a golf course and its family, servants, agents, guests, invitee and tenants are subject to damage or injury from flying golf balls as well as noise associated with golf play and golf course maintenance. Owners also acknowledge that access to the Tiara Rado Golf Course is controlled through the golf pro shop located at the Tiara Rado Golf Clubhouse and that access at other locations along the golf course is not permitted.

Section 8.5 The City of Grand Junction Zoning and Development Code. The City of Grand Junction Zoning and Development Code applies to these covenants for Filing 4.

#### ARTICLE I ASSESSMENTS

Section 9.1. Obligation. Declarant, for each Lot owned by Declarant, hereby covenants, and each Owner, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Board of Directors as necessary to meet the Common Expenses of maintenance, operation, and management of the Exterior Maintenance Area and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

Section 9.2. Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of THE SEASONS at Tiara Rado, for maintenance of the Exterior Maintenance Area, as more fully set forth in this Article below.

Section 9.3. Annual Assessments. The Board of Directors of the Association may establish any reasonable system for collection periodically of Annual Assessments for Common Expenses, in advance or arrears, as deemed desirable and consistent with the Articles and Bylaws of the Association. Annual Assessments for Common Expenses made shall be based upon the budgeted

cash requirements as the Board of Directors shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Exterior Maintenance Area; expenses of management; taxes and special governmental assessments pertaining to the Exterior Maintenance Area and insurance premiums allocated from the Master Association and for additional insurance coverage as deemed desirable or necessary by the Association; irrigation water, including allocations from the Master Association for such irrigation water and related utilities and repairs, landscaping, care of grounds, common lighting within the Exterior Maintenance Area; routine repairs and renovations within the Exterior Maintenance Area; wages; common water and utility charges for the Exterior Maintenance Area; legal, accounting and tax return preparation fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Exterior Maintenance Area on a periodic basis, as needed.

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Assessments to Owners shall not be made or due until the earlier of when any person is occupying the Residence on the Owners Lot or when such Residence is legally available for occupancy by reasons associated with the applicable building codes.

Annual Assessments shall be payable on a prorated basis in advance and shall be due on the first day of each month or other determined payment period. The Association shall not be required to send monthly billings for such Assessments. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make pro rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 9.4. Apportionment of Annual Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the Lots, subject to the following provisions. All expenses (including, but not limited to, costs of maintenance, repair, and replacement) relating to the Exterior Maintenance Area on fewer than all of the Lots shall be borne by the Owners of those affected Lots only.

Section 9.5. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the External Maintenance Area, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 9.5. shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 9.4. hereof, subject to the requirements that any extraordinary maintenance, repair or restoration work to the Exterior Maintenance Area on fewer than all of the Lots shall be borne by the Owners of those affected Lots only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitee) shall be borne by that Owner. Notice in writing in the amount of such budgeted Special Assessments and the time for payment of the Special Assessments shall be in accordance with Section 9.6 hereof.

Section 9.6 Annual Budget. No less frequently than each year, the Board of Directors shall adopt a proposed budget for the Association. Within thirty (30) days after adoption of any proposed budget by the Board of Directors, it shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at a meeting, more than 67% of the votes possible to be cast under this Declaration reject the budget, the budget shall be deemed for all purposes to be ratified, whether or not a quorum is present at that meeting. In the event the proposed budget is rejected, the budget most recently

ratified by the Owners shall be continued until such time as the Owners have ratified a subsequent budget proposed by the Board of Directors in accordance with this Section 9.6.

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**Section 9.7. Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.

**Section 9.8. Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid within 30 days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Board of Directors, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- B. Assess an interest charge from the date of delinquency at the yearly rate of two points above the prime rate charged by the Association's bank, or such other rate as the Board of Directors may establish;
- C. Suspend the voting rights of the Owner during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- F. Enforce its statutory lien rights with respect to the Lot and proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Lot shall constitute a lien on such Lot, including the Residence and any other improvements on the Lot. Recording of this Declaration constitutes record notice and perfection of such lien. No further recordation of any claim of lien for assessment is required by law.

**Section 9.9. Personal Obligation.** The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

**Section 9.10. Successor's Liability for Assessment.** In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Lot, except as provided in Article I, Section 9.11. below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorney's fees payable relative to such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under Article I, Section 9.12. below.

**Section 9.11. Subordination of Lien.** The lien of the Assessments provided for in this Declaration shall have for all purposes the priority set forth in C.R.S. §38-33.3-316, and shall also be subordinate to the lien for assessments pursuant to the Master Declaration. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. No sale or transfer shall release a Lot from the lien of Assessments, except in the case of a sale or

transfer of a Lot pursuant to a decree of foreclosure by a public trustee in foreclosure which shall extinguish the lien of such Assessments as to instalments which became due prior to such sale or transfer. The amount of such extinguished lien may be reallocated and assessed to all Lots as a Common Expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, any Assessments made after the sale or transfer.

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Section 9.12. Assessment Status Statement. The Association shall furnish to an Owner or such Owner's designee, or to a holder of a security interest or its designee, upon written request, delivered personally or by certified mail, first class postage prepaid, delivered personally or by the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against that Owner's Lot and Residence. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Board of Directors, and each Owner. If no statement is furnished to the Owner or holder of a security interest or their respective designees, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall not have the right to assert a priority lien upon the Lot and Residence for unpaid assessments which were due as of the date of the Request, pursuant to C.R.S. §38-33.3-316.

#### ARTICLE X ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article VII upon their damage or destruction as provided in Article XI, or a complete or partial taking as provided in Article XII below. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

#### ARTICLE XI DAMAGE OR DESTRUCTION

Section 11.1. The Role of the Board of Directors. Except as provided in Section 11.6., in the event of damage to or destruction of all or part of any property covered by insurance written in the name of the Association under Article VII, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property, (the property insured by the Association pursuant to Article VII is sometimes referred to as the "Association-Insured Property").

Section 11.2. Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Article XI shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors or the Insurance Trustee, if any, determines to be necessary.

Section 11.3. Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 11.4. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the

Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Article I, Section 9.5., levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. However, if the aggregate of any Special Assessment for expenses relating to the Exterior Maintenance Area exceeds the greater of (i) 10% of the gross annual budget for the Association for that year or (ii) \$10,000.00, then the Special Assessment shall be subject to the approval of 65% of the votes of the Class B Member(s), as long as the Class B membership exists, and 65% of the votes of the Class A Members who are subject to the Special Assessment and who attend a meeting for the purpose of approval of such Special Assessment. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

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Section 11.5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot first to the Mortgagees and then to the Owners, as their interests appear.

#### ARTICLE XII

(There is no Article XII)

#### ARTICLE XIII ARCHITECTURAL CONTROL

Section 13.1. General. No building, home, improvement, structure or any attachment to an existing structure, whether a residence, an accessory building, a fence, wall barrier, exterior lighting facility, recreation facility, or other similar improvement or attachment or sign, shall be constructed upon the Property, no alteration of the exterior of a structure shall be made, and no change in the final grade nor the installation of any landscaping shall be performed, unless complete plans and specifications therefore shall have been first submitted to and approved in writing by the Design Review Committee in accordance with the procedures set forth in the Master Declaration and in accordance with the Standards. The Design Review Committee shall exercise its best judgement to the end that all attachments, improvements, height of improvements, construction, landscaping and alterations to structures and on land within the Property conform to and harmonize with existing surroundings and structures.

Section 13.2 Specific Matters. Without limiting the authority and discretion of the Board of Directors and/or such Committee, the following restrictions and controls are hereby established for Property.

A. Walls Adjoining Berm and Golf Course. Walls may be constructed at the rear of any Lot where such Lot abuts the Golf Course or Berm at the option of the lot Owner. If such wall is built, it shall be no higher than 4 feet above the average finished grade on both sides of the finished wall and uniform as to design, material and color as specified by the Design Review Committee. All rear walls must be within the boundary of the Lot and no closer than 10 feet from the property line of the Berm.

B. Mailboxes and Newspaper Boxes. No Owner shall place or install a mailbox or newspaper delivery box on any Lot. The Association shall provide uniform groups of mailboxes, or "cluster" mailboxes in lieu of individual mailboxes on the Property.

C. Plans Applicable To Courtyard Residences. Construction on any Lot on the Property shall be in strict accordance with the Site Plan, Wall and Fence Plan and the Drainage Plan. The building design is substantially the



same as exists for the patio homes in Filing No. 1 with the ability to extend the rear wall up to 4 feet and the front bedroom wall by two feet. The building height shall not exceed 18 feet as measured from a corner of the building at the lots highest natural grade. Declarant reserves the right to make minor modifications to the exterior appearance of the Filing No. 1 plans. Lots 1, 2 and 7 shall be permitted to have a concrete pad or additional attached living area on the side of the garage in the area shown on the Site Plan. Such additional living area is to be within the building set backs for the applicable Lots.

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D. Off Street Parking. Each lot, including garages, shall provide for enough off street parking for at least four (4) vehicles.

E. Exterior Garage Lights. Each Residence shall have two exterior garage lights as provided for by the design of each Residence. These lights shall be wired to a photo cell that will turn on the lights at approximately dusk and turn them off at approximately dawn. Owners shall not be permitted to turn off the lights during the time that they are to be on as programmed by the Association. Replacement of all exterior light bulbs shall be the responsibility of the Owners. The Association may replace non-functioning bulbs and charge the Owners a reasonable cost for replacement.

F. Berm Common Area. The Berm that is surrounded by Lots 10 through 18 is part of Lot C as described on the Plat. The Berm area will be considered as Exterior Maintenance Area and will be maintained by the Association. The Berm is for visual enjoyment only for Owners of Lots 10 through 18 as well as for persons using the concrete private open space pathway on Lot C. Access to the Berm shall only be in accordance with Article V and shall not be accessible for recreational or general public purposes.

G. Overnight Parking. No owner, renter or guest shall permit any vehicle to be parked overnight on any street in Filing 4.

#### ARTICLE XIV WITHDRAWAL

Section 14.1. Right of Declarant. Declarant reserves the right, to be exercised at any time or times before December 31, 2001, to withdraw from the jurisdiction of this Declaration Lots which Declarant has not sold or made subject to a contract of sale.

#### ARTICLE XV MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Lots. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to this Declaration and also to the Articles and Bylaws of the Association.

Section 15.1. Approval Requirements. Unless at least 67% of the Mortgagees holding First Mortgages against any portion of the Property (based on one vote for each Mortgage owned), and at least 67% of the Owners (other than Declarant) have given their prior written approval, the Association shall not be entitled to:

A. Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner;

B. By act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design, appearance or maintenance of the Exterior Maintenance Area;

C. Fail to maintain fire and extended coverage on insurable property on the Exterior Maintenance Area in an amount not less than 100% of current replacement cost unless the cost of such insurance is determined to be uneconomical; or

D. Use hazard insurance proceeds for losses to improvements in the Exterior Maintenance Area for other than the repair, replacement, or reconstruction of such property.

Section 15.2. Title Taken by Mortgagee. Any Mortgagee holding a First Mortgage of record against a Lot who obtains title to the Lot and any improvements on the Lot pursuant to remedies exercised in enforcing the

Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Lot (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosures, whichever is earlier. Such Mortgagee will not be liable for any unpaid dues or charges attributable to the Lot which accrue prior to the date the Mortgagee acquired title or could have acquired title under the Colorado foreclosure statutes, whichever is earlier. Sale or transfer of any Lot pursuant to a deed in lieu of foreclosure for the purpose of enforcing a First Mortgage shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer, and the amount of the extinguished lien may be reallocated and assessed to all Lots, as a Common Expense at the direction of the Board of Directors.

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Section 15.3. Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Exterior Maintenance Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Exterior Maintenance Area, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 15.4. Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Lots for losses to, or taking of, all or part of the Exterior Maintenance Area, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Lot.

#### ARTICLE XVI DURATION OF COVENANTS AND AMENDMENT

Section 16.1. Term. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2016, after which time they shall be automatically extended for successive periods of time of 10 years each, subject to the following provisions.

Section 16.2. Amendment. This Declaration, or any provision of it, may be amended at any time during the first 20-year period by an instrument signed by Owners holding not less than 67% of the votes possible to be cast under this Declaration. Any amendment must be recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association.

Section 16.3. Revocation. This Declaration shall not be revoked, except as provided in Article XII regarding total condemnation, without the consent of all of the Owners evidenced by a written instrument duly recorded.

#### ARTICLE XVII LIMIT ON TIMESHARING

No Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing" or "interval ownership" plan, or any similar plan.

#### ARTICLE XVIII COVENANTS RELATING TO THE MASTER ASSOCIATION

Section 18.1. Master Association Matters. Each Owner, by accepting a deed to a Lot, recognizes that (a) the Property is subject to the Master Association documents, (b) by virtue of his ownership, he has become a Member of the Master Association, (c) such Owner is subject to any rules and regulations of the Master Association and, (d) pursuant to Article VIII of the Master Declaration, an Owner is a Member of the Master Association and is entitled to all of the benefits and subject to all of the burdens of membership. Each Owner, by accepting a deed to a Lot, acknowledges that he has received a copy of the Master Association documents. The Owner agrees to perform all of his obligations as a Member of the Master Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Master Association documents.

Section 18.2. Enforcement of Master Association Declarations. The Association shall have the power, subject to the primary power of the Board of Directors of the Master Association, to enforce the covenants and restrictions contained in the Master Association Declaration, but only if

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said covenants and restrictions relate to the Property, and to collect assessments on behalf of the Master Association.

ARTICLE XIX  
GENERAL PROVISIONS

Section 19.1. Enforcement. Except as otherwise provided in this Declaration, the Board of Directors, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board of Directors of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 19.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 19.3. Conflicts Between Documents. In case of conflict between the Master Association Documents and the Association Documents, the Master Association Documents shall control, to the extent not prohibited by C.R.S. § 38-33.3-101, etseq., known as the Colorado Common Interest Ownership Act. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

THE SEASONS AT TIARA RADO  
ASSOCIATES

By: Transmontane Development  
Corporation, a Colorado  
corporation, General  
Partner

By: [Signature]  
Jack Acuff  
President



My Commission Expires  
August 22, 1998

STATE OF COLORADO )  
 ) ss.  
COUNTY OF mesa )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 19 95, by Jack Acuff as President of Transmontane Development Corporation, a Colorado corporation, General Partner of The Seasons at Tiara Rado Associates, a Colorado General Partnership.

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: August 22, 1998

[Signature]  
Notary Public