

DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
OF

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MONIKA TODD CLK&REG MESA COUNTY-CO

THE SEASONS AT TIARA RADO FILING NO. 3

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND EASEMENTS of THE SEASONS at Tiara Rado Filing No. 3 (the "Declaration") is made as of May 18, 1993, by THE SEASONS at Tiara Rado Associates, a Colorado general partnership (the "Declarant").

RECITALS

A. Declarant is owner of that certain real property located entirely within Mesa County, Colorado, more particularly described on the attached Exhibit A (the "Property").

B. 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").

C. Declarant desires pursuant to an 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 (as provided in Article XIII below), 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. 3 Homeowners Association, Inc., 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.

D. "Association" means THE SEASONS at Tiara Rado Filing No. 3 Homeowners Association, Inc., 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 Area" means all the real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

I. "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 Common Area and 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.

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

K. "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements of THE SEASONS at Tiara Rado Filing No. 3.

L. "Default Assessment" means the Assessments levied by the Association pursuant to Article IX, Section 9.6. below.

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.

- N. "Exterior Maintenance Area" means the exterior of any Residence (excluding window panes, decks 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. "THE LINKS" shall mean the planned community created by this Declaration, consisting of the Property, the Residences, and any other improvements constructed on the Property.
- R. "Lot" means the fifteen (15) plots of land subject to this Declaration and designated as a "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 "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.
- 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 on Exhibit A attached to this Declaration. 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 in the office of the Clerk and Recorder of Mesa County, Colorado, at Book 14, Page 84.

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 fifteen (15).

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

DD. "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.

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

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 Links 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.

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 Common Area, including any recreational facilities which may be constructed on such property, and 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  
COMMON AREA

Section 4.1. Conveyance of Common Area. From time to time, Declarant may, but shall not be obligated to, convey to the Association by written instrument recorded with the Clerk and Recorder of Mesa County, Colorado, certain parcels of the Property as Common Area for use by all of the Owners, as more fully set forth in Article V below, subject to the limitations set forth in that Article.

Section 4.2. Maintenance. The Association shall maintain and keep the Common Area in good repair, and the cost of such maintenance shall be funded with assessments as provided in Article IX. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements located in the Common Area. In the event the Association does not maintain or repair the Common Area, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

ARTICLE V  
PROPERTY RIGHTS OF OWNERS  
AND RESERVATIONS BY DECLARANT

Section 5.1. Owner's Easement of Enjoyment. Every Owner has a right and easement of enjoyment in and to the Common Area, and access over the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions.

Section 5.2. 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 5.3. 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.

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 Common Area and 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 Association shall contract with the Master Association for the delivery of irrigation water to the Property, which delivery point shall be near the southwest corner of Lot 2 of the Property. The Master Association will own, operate and maintain the pumping station and the ditches and other delivery facilities to such point of delivery.

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 5.4. Declarant's Rights Incident to Construction.

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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 Common Area, together with the right to store materials on the Common Area, to build and maintain temporary walls, and to make such other use of the Common 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 5.5. Reservation of Easements, Exceptions, and Exclusions. Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interest of all the Owners and the Association, in order to serve all the Owners.

Section 5.6. 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 5.7. 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 purpose of performing maintenance to the landscaping or the exterior of the Residence on such Lot, as required by the Association Documents.

Section 5.8. Encroachment and Wall Easement. If any improvement constructed by Declarant on any Lot or Common Area encroaches onto any other Lot or Common Area, 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 5.9. 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.

Section 5.10. 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 5.11. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 5.12. 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 5.13. 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, which Lot is adjacent to, but not included in, The Links.

ARTICLE VI  
EXTERIOR MAINTENANCE AREA AND SPECIAL EASEMENT

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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), and roof repair. 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 repair or replacement of broken window panes.

Section 6.3. Landscaping, Sidewalks and Driveways. The Association shall maintain landscaping of the Lot surrounding the perimeter of the Residence, including, but not limited to, lawns, trees and shrubs, and the Association shall also maintain all walls, gates and sidewalks (subject to any obligations and rights of Mesa County or any other governmental subdivision relative to maintenance of the sidewalks). 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.

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. 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 Common Area shall be purchased by the Board of Directors or its duly authorized agent. The Board of Directors, the Manager, and Declarant shall not be liable for failure to obtain any coverages 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 coverages from reputable insurance

companies, or if such coverages are available only at demonstrably unreasonable cost.

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 coverages 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 Common 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 common areas, in full force and effect broad form property insurance on all insurable improvements within the Common 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 Common 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 common 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 insureds 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 such as The Links in construction, location and use.

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, invitees, 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:

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, invitees, 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 insureds 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 as Common Area or conveyed to the Master Association as common area 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 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. No Owner shall obtain separate insurance policies on the Common Area.

ARTICLE VIII  
INCIDENTS OF OWNERSHIP

DECLARANT  
(5/17/93)

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.

Section 8.2. No Partition. The Common Area shall be owned by the Association, and no Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Area.

Section 8.3. No Subdivision. No Lot shall be subdivided between or among the Owners of the Lot.

Section 8.4. Residential Use/Declarant's Use. A Residence may be used for permanent or short-term occupancy by its Owner, its family, servants, agents, guests, invitees, 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 or property management office on any unsold Lot or Common Area, as well as other facilities (including signage and model Residences) which, in the sole opinion of Declarant, may be reasonably necessary, convenient or incidental for constructing sales or property management purposes.

ARTICLE IX  
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 Common Area and 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, and for the improvement and

maintenance of the Common 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 Common Area and Exterior Maintenance Area; expenses of management; taxes and special governmental assessments pertaining to the Common Area and Exterior Maintenance Area and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, common lighting within the Common Area and Exterior Maintenance Area; routine repairs and renovations within the Common Area and Exterior Maintenance Area; wages; common water and utility charges for the Common Area and Exterior Maintenance Area; legal and accounting 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 Common Area and Exterior Maintenance Area on a periodic basis, as needed.

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 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 Common Area or 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 invitees) 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.

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 Association, 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 or by waiver of the use or enjoyment of all or any part of the Common Area. 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 IX, Section 9.10. 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 IX, 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 installments 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.

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, return receipt, to 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 Common Area improvement, or other 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 IX, 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 Common 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.

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.

Section 11.5. Decision Not to Rebuild Common Area. If Owners representing at least 80% of the total allocated votes in the Association (other than Declarant) and 80% of the Mortgagees holding First Mortgages (based on one vote for each Mortgage which encumbers a Lot) agree in writing not to repair and reconstruct improvements within the Common Area and if no alternative

improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in equal shares per Lot benefitted by the Common Area prior to the destruction, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE XII  
CONDEMNATION

Section 12.1. Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2. Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed, and the award shall be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty days after such taking Declarant and Owners who represent at least 67% of the Class A votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Board of Directors, and the Master Association Design Review Committee operating under the Master Association documents. If such improvements are to be repaired or restored, the provisions in Article XI above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.3. Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Article XI, Section 11.5. above.

ARTICLE XIII  
ARCHITECTURAL CONTROL

Section 13.1. General. No exterior addition to or change or alteration to the Residence shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three or more representatives appointed by the Board of Directors of the Association. The Property, and each Lot therein, is also subject to the provisions, including those related to architectural control, in the Master Association Documents.

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 The Links.

A. Walls on Golf Course. No walls or fences may be constructed on or around any Lot where such Lot abuts the Tiara Rado Golf Course, except for a single wall, of uniform height, no higher than five (5) feet, made of volcanic rock known as "scoria", with wrought iron inserts, and must be in the style, dimensions and configuration, and built to the uniform specifications, shown on Exhibit "B" hereto.

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

ARTICLE XV  
WITHDRAWAL

Section 15.1. Right of Declarant. Declarant reserves the right, to be exercised at any time or times before December 31, 1999, to withdraw from the jurisdiction of this Declaration Lots which Declarant has not sold or made subject to a contract of sale.

ARTICLE XVI  
MORTGAGEE'S RIGHTS

BOOK 1977 PAGE 916

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 XVI apply to this Declaration and also to the Articles and Bylaws of the Association.

Section 16.1. 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. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common Area (provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this clause);

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

C. 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 Common Area or the Exterior Maintenance Area;

D. Fail to maintain fire and extended coverage on insurable property on the Common Area in an amount not less than 100% of current replacement cost; or

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

Section 16.2. 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

DECLARANT  
(5/17/93)

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.

Section 16.3. 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 Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 16.4. 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 Common 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 XVII  
DURATION OF COVENANTS AND AMENDMENT

Section 17.1. Term. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2010, after which time they shall be automatically extended for successive periods of time of 10 years each, subject to the following provisions.

Section 17.2. 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 17.3. 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 XVIII  
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 XIX  
COVENANTS RELATING TO THE MASTER ASSOCIATION

Section 19.1. 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 19.2. 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 said covenants and restrictions relate to the Property, and to collect assessments on behalf of the Master Association.

ARTICLE XX  
GENERAL PROVISIONS

Section 20.1. 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 20.2. 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 20.3. 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, et seq., 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

STATE OF COLORADO )  
COUNTY OF MESA ) ss.

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of May, 1993, 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: 5-12-96



[Signature]  
Notary Public

EXHIBIT "A"

BOOK 1977 PAGE 920

Lots 2 through 16, inclusive, of THE SEASONS AT TIARA RADO FILING NO. 3, as shown on the plat of such subdivision, recorded on January 7, 1993, in the books and records of the Office of the Clerk and Recorder of Mesa County, Colorado, at Book 14, Page 84, Reception No. 1625898.