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- p. Provide for the indemnification of the Association's officers and the Executive Board and maintain Directors' and officers' liability insurance.
- q. Assign the Association's right to future income, including the right to receive Common Expense Assessments, only upon the affirmative vote of the Lot Owners of Lots to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.
- r. Exercise any other powers conferred by the Documents.
- s. Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Association.
- t. Exercise any other power necessary and proper for the governance and operation of the Association.
- u. By resolution, establish permanent and standing committees of Directors to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. As committees must maintain and publish notice of their action to Lot Owners and the Executive Board. However, actions taken by a Committee may be appealed to the Executive Board by any Lot Owner within forty-five (45) days of publication of a notice. If an appeal is made, the committee's action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

5.4 Professional Management and Contract Termination Provisions. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause, and without payment of a termination fee, upon sixty (60) days' prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto without cause and without payment of a termination fee upon sixty (60) days' prior written notice.

5.5 Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board of determine their qualifications, powers and duties or the terms of office of Executive Board members, but the Executive Board may fill vacancies in the membership for the unexpired portion of any term.

5.6 Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance or repair of the Common Elements or any improvement located thereon is caused by the willful or negligent act, omission or misconduct of any member of such Lot Owner's family, or by a guest or invitee of such Lot Owner, or any tenant or tenant's family, the costs of such repair and maintenance shall be the personal obligation of such Lot Owner, and any costs, expenses and

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fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall be a lien against such Owner's Lot as provided in this Declaration. A determination of the willful or negligent act, omission or misconduct of any Lot Owner or any member of a Lot Owner's family, or a guest or invitee of any Lot Owner, or tenant or tenant's family, and the amount of the Lot Owner's liability therefor, shall be determined by the Executive Board after notice to the Lot Owner and right to be heard before the Executive Board in connection therewith.

ARTICLE VI. PROPERTY RIGHTS IN COMMON ELEMENTS

- 6.1 Dedication of Common Elements. The Declarant hereby dedicates the Common Elements to the common use and enjoyment of the Members; as hereinafter provided.
- 6.2 Owners' Easements of Enjoyment. Every Lot Owner shall have a right and easement of enjoyment in, and to the Common Elements and such easement in and to the Common Elements and such easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:
- a. The right of the Association to promulgate and publish reasonable Rules and Regulations as provided in this Declaration.
 - b. The right of the Association to suspend voting rights and rights to use the Common Elements by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.
 - c. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the Owners entitled to cast at least eighty percent (80%) of the votes of the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant, agree to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Lot Owner at least thirty (30) days in advance of any action taken; and provided further that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements must be evidence by execution and recordation of an agreement or ratification thereof, in the same manner as a deed by the requisite number of Lot Owners. Such agreement must specify a date after which the agreement will be void unless recorded before that date. The right of the Association to close or limit use of the common Elements while maintaining, repairing and making replacements in the Common Elements.
- 6.3 Delegation of Use. Any Lot Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Elements to the

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members of his or her family, tenants, or contract purchasers who reside on his or her Lot.

- 6.4 Title to Common Elements. The Declarant hereby covenants for itself, its successors and assigns, that it shall convey the Common Elements to the Association free and clear of liens prior to the conveyance of the first Lot by the Declarant to a Lot Owner.
- 6.5 Common Area Improvements. In addition to the required out lot improvements, the Declarant will cause to be improved the following Common Areas:
- a. A Fox Ridge monument sign fronting on County Road 21.
 - b. Entrywalls and monument signs on the entrances to the Common Interest Community from County Road 74.

ARTICLE VII. COVENANT FOR MAINTENANCE OF ASSESSMENTS

- 7.1 Creation of Lien and Personal Obligation of Assessments and Special Assessments. The Declarant, for each Lot owned within the Property, shall be deemed to covenant and agree, and each Owner of any Lot, except those exempt under section 7.13 of this Article, by acceptance of a deed thereof, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided. Said assessment, interest, and costs of collection, including reasonable attorneys' fees, shall be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for any delinquent assessment shall not pass to his or her successors in title unless expressly assumed by them. No Lot Owner may become exempt from liability for payment of the common Expense Assessment by waiver of the use or enjoyment of the common Elements or by abandonment of the Lot against which common Expense Assessments are made.
- 7.2 Purpose of Assessments. The assessments levied by the Association through its Executive Board shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Common Interest Community; for any other maintenance obligations or common services which may be deemed necessary by the Association for the common benefit of the Lot Owners, or the maintenance of property values, or for the payment of expenses which may be incurred by virtue of an agreement with or requirement of any city, county or other local government authority or for payment of rent by the Association to the Declarant for use of real property owned or controlled by the Declarant. The assessments shall further be used to provide adequate insurance of various types, and in such amounts deemed necessary by the Executive board, with respect to the Common Elements located within the Common Interest Community. Also, a portion of the assessment shall be used to provide an adequate reserve fund for replacement, repair and maintenance of the Common Elements which must be repaired or replaced by the



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Association on a periodic basis and the Executive board shall be obligated to establish such reserve fund.

7.3 Annual Assessment. The total annual assessment against all Lots shall be based upon the Association's advance budget of the cash requirements need by it to provide for the administration and performance of its duties during such assessment year, which estimates may include, among other things:

- a. Expenses of management;
- b. Premiums for all insurance which the Association is required or permitted to maintain;
- c. Repairs and maintenance;
- d. Wages for association employees, if any;
- e. Legal and accounting fees;
- f. Any deficit remaining from a previous assessment year;
- g. The creation of reasonable contingency reserve or working capital funds; and
- h. Any other costs, expenses and fees, which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Lot Owners under or by reason of this Declaration.

Such assessments shall be collected at such intervals as is determined by the Executive board but not less frequently than on an annual basis.

7.4 Special Assessments.

- a. In addition to the assessments authorized above, the Association may any time, from time to time, determine, levy and assess a special assessment for the purpose of defraying in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Common Elements or for "Capital Improvements." Any such special assessment made by the Executive board must be approved by sixty seven percent (67%) of the Members who are voting in person or by proxy at a meeting duly called for that purpose. No special assessment for legal action pursued by the Association shall be required of the Declarant without written approval by the Declarant. The amounts determined, levied and assessed pursuant hereto shall be assessed equally against each Lot.
- b. "Capital Improvements," as used herein, shall mean the construction, erection or installation of substantial structure(s) or other substantial improvement(s) in the Common Elements, but



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shall not include the construction, reconstruction, erection, installation, maintenance, repair or replacement of the Common Elements presently located on the Property or which may hereafter be constructed, erected or installed on the Property by the Declarant in its development of the Common Elements. Notice in writing setting forth the amount of such special assessment per Lot and the due date for payment thereof shall be given to the Lot Owners not less than thirty (30) days prior to such due date.

- c. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than five (5) nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies, if permitted, entitled to cast sixty percent (60%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, the meeting shall be continued to another date to be decided by the voting Members at the first meeting, and it will be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of all votes of the membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- 7.5 Rate of Assessment. Both annual Common Expense Assessments and special assessments shall be fixed at a uniform rate for all Lots.

- 7.6 Date of Commencement of Annual Assessments and Budget. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Lot to a Lot Owner other than the Declarant occurs. The first assessment shall be prorated according to the number of days remaining in the assessment period established by the Executive Board. The Executive Board shall fix the amount of the annual Common Expense Assessment against each Lot at least yearly. Written notice of assessment shall be sent to every Lot Owner subject thereto. Annual assessments shall be collected at such intervals and in such installments as the Executive Board shall determine. The due dates shall be established by the Executive Board. After the first budget year of the Association, within thirty (30) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to each Lot Owner and shall set a date for a meeting of the Lot Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) nor more than fifty nine (59) days after the mailing of the summary. Unless at that meeting a majority of all Lot Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Lot Owners continues until the Lot Owners ratify a new budget proposed by the Executive board.

- 7.7 Association Lien and Effect of Non-Payment of Assessments. The Common Expense Assessments, charges, fees, fines, impositions, interest, costs, late charges, expenses and reasonable attorneys' fees which may arise under the provisions of this Declaration, shall be burdens running with, and perpetual liens in favor of the Association upon the specific Lot to which such assessments apply. Recording of the Declaration constitutes record notice and perfection of the Association's lien. Further recording of

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a claim of lien for a Common Expense assessment under this section is not required. Any assessment charge or fee provided for in this Declaration, or any installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate of eighteen percent (18%) per annum from the due date, and the Association may assess a late charge thereon. In the event of default in which any Lot Owner does not make payment of any Common Expense Assessment levied against his or her Lot within ten (10) days of the due date, the Executive Board shall have the right to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable. Further, the Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue assessments, charges or fees, or installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. As action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid assessments, charges or fees, or installments thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving, the Association's lien therefor. In the event that any such assessment, charge or fee, or installment thereto, is not fully paid when due and the Association shall commence such action (or shall counterclaim or crossclaim for such relief in any action) against any Lot Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Lot, then all unpaid assessment, charges and fees, and all unpaid installments thereof, and any and all late charges and accrued interest under this section, the Association's costs, expenses and reasonable attorney' fees incurred for any such action and /or foreclosure proceeding shall be taxed by the court as a part of the cost of any such action or foreclosure proceeding and shall be recoverable by the Association from any Lot Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter gain foreclosing or attempting to foreclose its lien for any subsequent assessment, charge or fee, or installment thereof, which is not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Common Expense Assessments becomes due, except that if an Owner of a Lot subject to a lien under this section filed a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until ninety (90) days after the automatic stay of proceedings under section 362 of the Bankruptcy Code is lifted. In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Lot to collect all sums alleged to be due from the Lot Owner or a tenant of the Lot Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments, based on a periodic budget adopted by the Association.



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7.8 Subordination of Lien to Security Interests. A lien under this section is prior to all other liens and encumbrances on a Lot except:

- a. Liens and encumbrances recorded before the recordation of this Declaration;
- b. A First Security Interest on the Lot recorded before the date on which the Common Expense assessment sought to be enforced became delinquent.
- c. Liens for real estate taxes and other governmental assessments or charges against the Lot.

A lien under this section is also prior to all Security Interests to the extent that the Common Expense Assessments are based on the periodic budget adopted by the Association and which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest, and statutory liens recognized under Colorado law. If a holder of a First Security Interest in a Lot forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against the Lot which became due before the sale, other than the assessments which are prior to the Security Interest under this section of the Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common expenses collectible from all Lot Owners, including the purchaser. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that a sale or transfer of any Lot pursuant to foreclosure of any First Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contracts shall only extinguish the lien of assessment charges which become due more than six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest, and statutory liens recognized under Colorado law. No such sale, transfer, foreclosure or other proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof. This section does not affect the priority of mechanics' or materialmen's liens.

7.9 Record of Receipts and Expenditures. The association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair of expenses of the Common Elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available on request for examination by the Lot Owners and others with an interest, such as prospective lenders.

7.10 Notice to Security Interest. Upon the request of a holder of a First Security Interest on a Lot, and upon payment of reasonable compensation therefor, the association shall report to such party any unpaid assessment or other defaults under the terms of this Declaration which are not cured by the Lot Owner within thirty (30) days.



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- 7.11 Certificate of Status of Assessments. The Association, upon written request to the Association's registered agent, personally delivered by certified mail, first class postage prepaid, return receipt requested, and upon payment of a reasonable fee, but in no event less than Ten dollars (\$10.00), shall furnish to a Lot Owner or such Lot Owner's designee or to a holder of a Security Interest or its designee, a statement, in recordable form, setting out the amount of the unpaid Common expense Assessments against the Lot. The statement must be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Executive Board and each Lot Owner. A properly executed certificate of the association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. Omission or failure to fix an assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of a Lot Owner from his or her obligation to pay the same.
- 7.12 Homestead. The lien of the Association assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said lien.
- 7.13 Exempt Property. The following property subject to the Declaration shall be exempted from the assessments, charges and liens created herein:
- a. All properties to the extent of any easement or other interest therein dedicated and accepted by a municipal or quasi-municipal corporation or other local public utility or authority and devoted to public use.
 - b. All Common Elements.
- 7.14 Common Expenses Attributable to Fewer than All Lots.
- a. An assessment to pay a judgment against the Association may be made only against the Lots in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.
 - b. If a Common Expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.
 - c. Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against a Lot Owner pursuant to the Documents and the Act are enforceable as Common Expense Assessments.
- 8.1 Insurance Requirements Generally. To the extent reasonably available, the Association shall obtain and maintain insurance as hereinafter provided. Of such insurance is not reasonably available, and the Executive Board determines that any insurance described in this Article will not be maintained, the Executive Board shall cause notice of that fact to be hand delivered or sent, postage prepaid, by United States mail to all Lot Owners at their respective last known addresses. All such insurance shall be under written, to the extent possible, with companies licensed to do