

ALBANY COUNTY, LARAMIE, WY
JACKIE R. GONZALES, ALBANY COUNTY CLERK

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
WESTFIELD VILLAGE BUSINESS PARK**

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR
WESTFIELD VILLAGE BUSINESS PARK**

PREAMBLE

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS (the "Declaration") is made on the date hereinafter set forth by **CENTENNIAL DRIVE, LLC**, a Wyoming limited liability company. ("Declarant")

RECITALS

A. Declarant is the Owner of the Property described on **Exhibit A**, located in the City of Laramie, Albany County, State of Wyoming.

B. This Declaration is executed pursuant to and in furtherance of a common and general plan (a) to protect and enhance the quality, value, desirability and attractiveness of all property which may be subject to this Declaration; (b) to provide for an association as a vehicle to perform certain functions, including, but not limited to, operation, administration, maintenance, repair, and replacement of Landscaping and Improvements on the Common Element and Association Maintenance Areas, for the benefit of Owners of the Property which is or may become subject to this Declaration; (c) to define duties, powers and rights of the Association; (d) to define certain duties, powers and rights of Owners of property which may become subject to this Declaration with respect to the Association and with respect to the functions undertaken by the Association; and (e) to create a planned community as defined in this Declaration.

C. Declarant, for itself, its successors and assigns, hereby declares that all Property herein or hereafter made subject to this Declaration, in the manner hereinafter provided, and each part thereof shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, easements and other provisions set forth in this Declaration for the duration thereof, all of which shall run with the title to such property and be binding upon all parties having any right, title or interest in said property, or any part thereof, and upon their heirs, personal representatives, successors and assigns and shall inure to the benefit of each party having any such right, title or interest in said property or any part thereof.

D. Declarant with this Declaration states that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and other provisions hereinafter set forth.

ARTICLE 1 DEFINITIONS

The following words when used in this Declaration or any Association Documents shall have the following meaning:

1.1 *Allocation Interest* with respect to each Building shall mean that percentage equal to a fraction the numerator of which is the square footage of each Building and the denominator of which is the total square footage of all Buildings on the Property as more particularly stated in Section 3.3 below. The square footage of each Building and its Allocation Interest are set forth on Exhibit C. The decision of the Declarant shall be conclusive as to the square footage of each Building during the period of Declarant Control and the decision of the Executive Board shall control thereafter. Square footage of each Building shall include the total area of all floors in a Building that is at or above ground level and all below ground level space used for purposes other than storage.

1.2 *Design Review Committee* shall mean the Executive Board acting as the Design Review Committee.

1.3 *Articles of Incorporation* shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended.

1.4 *Assessable Building* shall mean a Building that is being developed by or is owned by a Person other than the Declarant.

1.5 *Association* shall mean and refer to Westfield Village Business Park Association, a Wyoming nonprofit corporation, its successors and assigns.

1.6 *Association Documents* shall mean this Declaration and any Supplemental Declaration, Development Agreement, Articles of Incorporation, Bylaws, Final Plat, Map, Design Guidelines, and any rules, regulations or policies adopted under such documents by the Association and any amendments to any of said documents.

1.7 *Association Maintenance Area* shall mean any Landscaping, Improvements, parking areas, sidewalks and access drives located on a Lot and situated outside any Building Envelope. The Association Maintenance Area shall not include any service facilities such as trash enclosures, and drive-up or drive-through facilities. Notwithstanding any definitions, descriptions or other provisions to the contrary herein, the Executive Board's determination of whether any particular area shall constitute a part of the Association Maintenance Area shall be conclusive for all purposes.

1.8 **Assessment** shall mean and refer to any assessment levied, charged or assessed against an Owner in accordance with the provisions of this Declaration.

1.9 **Board** shall mean the Executive Board of the Association.

1.10 **Building** shall mean any structure or portion of a structure that is constructed on a Lot, either by the Declarant or the Owner.

1.11 **Building Envelope** shall mean the perimeter of the Building defined by its exterior finish or any extension such as a canopy, balcony, service facilities such as trash enclosures, drive-up or drive-through facilities or similar structure that extends beyond its exterior finish.

1.12 **Bylaws** shall mean and refer to the duly adopted Bylaws of the Association, as the same may from time to time be amended.

1.13 **Clerk** shall mean the office of the County Clerk in the County of Albany, State of Wyoming.

1.14 **Common Element** shall mean all interests in real and personal property, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners. Common Element shall also mean and refer to any and all fixtures, personal property and Improvements owned or leased by the Association and shall include, by way of example but without limitation, any exterior signage which identifies the Property, streets, drives, parking areas, walkways, lighting on access drives, sprinkler systems, storm water drainage lines and any other personal property owned by the Association. The Common Element are to be devoted to the common use and enjoyment of the Owners (subject to the provisions hereof) and is not dedicated for use by the general public except as indicated on the Final Plat and the real estate records of the County Clerk of Albany County, Wyoming. The definition of Common Element shall expressly exclude any public streets or alleys as shown on the Final Plat. The Common Element which is described on Exhibit B shall be owned by the Association.

1.15 **Common Expenses** shall mean (i) all expenses expressly declared to be Common Expenses by this Declaration or by the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Element and Association Maintenance Area; (iii) insurance premiums for the insurance required or permitted under this Declaration; and (iv) all expenses lawfully determined to be Common Expenses by the Executive Board. Common Expenses benefiting fewer than all the Buildings may, in the discretion of the Executive Board, be assessed exclusively against those Buildings benefited ("Limited Common Expenses").

1.16 **Common Water Line** shall mean a Water Line that services the Common Element or more than one Lot. A Common Water Line is a Common Element.

1.17 **Condominium or Condominium Community** is defined as provided by the Wyoming Condominium Ownership Act, W.S. §34-20-102, et seq., as amended.

1.18 **Declaration** shall mean this Declaration and related amendments and supplements.

1.19 **Declarant** shall mean and refer to Centennial Drive, LLC, a Wyoming limited liability company, its successors and assigns; provided, however, that no successor or assignee of a Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or assignment or which pass by operation of law.

1.20 **First Mortgage** shall mean and refer to any unpaid mortgage, deed of trust or other security instrument recorded in the records of the office of the County Clerk of Albany County, Wyoming, having priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.21 **First Mortgagee** shall mean and refer to a lender who holds either a first deed of trust or first mortgage on a Lot.

1.22 **Improvements** shall mean and refer to all Improvements now or hereafter constructed including, without limitation, all streets, drives, parking areas, exterior lighting, benches, walkways, sprinkling systems, and irrigation ditches within the Property owned by the Association.

1.23 **Landscaping** shall mean and refer to a space of ground covered with lawn, ground cover, shrubbery, trees, flowers and other plant materials which may be complimented with earth berms, masonry, rock or bark mulch or other ground cover and other similar landscaping materials, together with irrigation/sprinkler systems associated with the same, all harmoniously combined with other Improvements.

1.24 **Limited Common Element** shall mean a portion of the Common Element allocated by this Declaration or the Plat, for the exclusive use of one or more Buildings, but fewer than all of the Buildings.

1.25 **Lot** shall mean and refer to any numbered portion of the Property designated for separate ownership or occupancy as shown on the recorded Plat. Lot shall not include any Common Element. If a Condominium Community is created on a Lot, the condominium community shall be one Building for purposes of this Declaration.

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

1.27 **Member** shall mean and refer to the Person designated as such pursuant to the terms of this Declaration.

1.28 **Mortgage** shall mean and refer to a mortgage, deed of trust or other similar security instrument held or owned by a Mortgagee which encumbers any Lot.

1.29 **Mortgagee** shall mean and refer only to a Mortgagee under a Mortgage or a beneficiary under a deed of trust or similar security instrument. For the purpose of this Declaration and the Bylaws, no Person shall be deemed a Mortgagee until written notice of such interest has been given to the Association together with the name and address of the Mortgagee.

1.30 **Notice** shall mean and refer to (i) written notice hand delivered or sent by prepaid United States mail to the mailing address of a Building or to any other mailing address designated in writing by the Owner or to the last known address of the intended recipient, or (ii) notice through an Association publication which is hand delivered or sent by prepaid United States mail to the Buildings; or (iii) notice delivered by electronic mail or facsimile to an Owner at the electronic mail address or facsimile number designated by the Owner.

1.31 **Owner** shall mean any individual, corporation, limited liability company, partnership, association, trust, contract seller or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee and assign of any Owner but *shall not* refer to any Mortgagee as herein defined, or other Person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. All rights, restrictions, duties, and obligations which govern an Owner's use, occupancy, maintenance, and enjoyment of the Property, including the Owner's Unit and the Common Element shall also apply to his employees, agents, servants, guests, tenants, and invitees wherever such interpretation may reasonably apply.

1.32 **Period of Declarant Control** shall mean the period of time commencing as of the date of recordation of this Declaration and continuing until thirty (30) days after all Lots in the Property have been conveyed to Persons other than Declarant and a certificate of occupancy had been issued for a Building on every Lot.

1.33 **Person** shall mean an individual, corporation, limited liability company, partnership, association, trust or other legal entity or any combination thereof.

1.34 **Plat or Final Plat** shall mean the plat of all or any portions of the real estate described in Exhibit A below as approved by the City of Laramie and recorded and as same may be amended from time to time, in the records of the Office of the County Clerk of Albany County, and any engineering survey or surveys of all or part of the Property, together with such other diagrammatic plans and information regarding the Property as may be required by the Act or other applicable law, or as may be included in the discretion of Declarant, as each such survey may be amended and supplemented from time to time, and all as recorded in the office of the County Clerk of Albany County, Wyoming.

1.35 **Property** shall mean the real property described in Exhibit A below, which is subject to this Declaration, together with such additional property as is subsequently subjected to this Declaration in accordance with the provisions set forth herein below.

1.36 **Quorum of Owners** shall mean the representation by presence or proxy of Members who hold fifty-one percent (51%) of the outstanding Voting Interests entitled to be cast on any issue.

1.37 **Registered Notice** shall mean and refer to any notice which has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered to the address of the intended recipient. Failure by refusal of an intended recipient to acknowledge such Notice shall nevertheless constitute receipt when such refusal is witnessed by one other person.

1.38 **Rules and Regulations** shall mean those Rules and Regulations as may be adopted by the Executive Board for the management, preservation, safety, control and orderly operation of the Property and governing use of the Common Element provided, however, that such Rules and Regulations shall be uniform and nondiscriminatory. Copies of all such Rules and Regulations shall be furnished to Owners prior to the time that they become effective.

1.39 **Unit or Condominium Unit** shall mean and refer to an individual, separately designated air space identified as a numbered portion of the Property designated for separate Ownership or occupancy as shown on the Condominium Map.

1.40 **Voting Interest** shall mean the right of an Owner to vote on an issue. Each Owner's Voting Interest shall be expressed as a percentage equal to a fraction the numerator of which is the square footage of each Building on a particular Lot and the denominator of which is the total square footage of all Buildings on the Property. The Voting Interest of each Owner shall be the same percentage as said Building's Allocation Interest as set forth on Exhibit C.

ARTICLE 2 EXISTING RESTRICTIVE COVENANTS

2.1 **Existing Restrictive Covenants.** The Property is subject to a Declaration of Restrictive Covenants by Petro Shopping Centers, L.P., a Delaware Limited Partnership, dated July 13, 2001 and recorded in the office of the Albany County Clerk on July 20, 2001, at Document No. 2001-4182.

ARTICLE 3 NAME, BUILDINGS AND ALLOCATION OF INTERESTS

3.1 **Name.** The name of the Property is Westfield Village Business Park. The Property is a planned community.

3.2 Existing Property. The Property that is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Laramie, Albany County, Wyoming, and is shown on the Final Plat and more particularly described on **Exhibit A**.

3.3 Allocation of Interests and Formula for Allocation of Interests. Each Owner's Allocation Interest in the Common Element and the Common Expenses of the Association, and the Voting Interests of Owners in the Association are allocated as set forth on Exhibit C. The formula that was used to establish the Allocation Interest is as follows:

- a. *Interest in Common Element.* The undivided percentage ownership interest in the Common Element for each Building shall be equal to its Allocation Interest.
- b. *Allocation of Common Expenses for Association Maintenance of Landscape and Parking Areas.* The Association shall seek bids for maintenance, repair, or replacement, of Landscaping, Improvements, parking areas, sidewalks and access drives for each Lot and such bids shall be the basis for amounts chargeable to the Buildings and Owners as assessments of Common Expenses.
- c. *Allocation of All Other Common Expenses.* All other items of Common Expenses shall be allocated and chargeable to each Assessable Building on the basis of its Allocation Interest.
- d. *Reallocation.* In the event real property is added to or withdrawn from the Property, the formula for determining Allocation Interest set forth in Section 1.1 above shall be used to reallocate the allocated interest and liability for Common Expenses among all Assessable Buildings included in the Property after the addition or withdrawal.
- e. *Condominium Declaration.* Declarant may subdivide one or more lots by means of a condominium plat and declaration. In such case, the allocation of ownership in Common Element and of Common Expenses for condominium units shall be further allocated within each Condominium Community as otherwise provided herein.

**ARTICLE 4
MEMBERSHIP AND VOTING RIGHTS;
ASSOCIATION OPERATIONS**

4.1 The Association. The name of the Association shall be Westfield Village Business Park Association. Every Owner of a Building shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

4.2 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 Building and then only to the purchaser or Mortgagee of his Lot. The Association shall not create a right of first refusal on any Building and Owners may transfer ownership of their Buildings free from any such right.

4.3 Membership. The Association shall have one class of membership consisting of all Owners, including the Declarant, so long as Declarant continues to own an interest in a Lot. Except as otherwise provided for in this Declaration and the Association Documents, each Member shall be entitled to vote in Association matters as set forth in this Declaration and the Bylaws. Each Owner, including Declarant while Declarant owns any Lot, is subject to all the rights and duties assigned to Owners under the Association Documents.

4.4 Voting. Each Owner shall have a Voting Interest as defined by Section 1.40 above. Notwithstanding the foregoing sentence, the Voting Interests of owners of units within each Condominium Community shall be determined as in Section 4.10 below.

4.5 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the period of Declarant Control. Declarant may voluntarily relinquish such power by recording a notice executed by Declarant with the County Clerk but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

4.6 Executive Board. The number of Directors shall be as provided in the Articles of Incorporation and Bylaws of the Association.

4.7 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.

4.8 Manager. The Association may employ or contract for the services of a Manager to whom the Executive 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 Executive Board.

4.9 Cooperation with Other Associations. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other associations and/or any districts to share the costs and/or responsibility for any maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any persons in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors,

managers or others who may perform services for the Association, any other associations and/or any districts, or to otherwise cooperate with any other associations and/or any districts in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Executive Board in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other associations and/or any districts, as the Executive Board may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other associations and/or any districts to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

4.10 Relationship of Association to a Condominium Community. Nothing contained in this Declaration shall preclude the creation of a Condominium on one or more Lots. However, the creation of the Condominium or Condominium Association shall not in anyway negatively impact the Westfield Village Business Park Association or its Members. The following provisions set forth the relationship between the Westfield Village Business Park Association and any Condominium Community created:

- a. The Condominium and not the individual owners of a Unit shall be the Member of the Association. The Board of Managers of the Condominium Association shall appoint one individual to represent the Condominium as a Member of the Association. The Executive Board of the Condominium Association shall provide the Association with written notification of the Person appointed.
- b. The Westfield Village Business Park Association may enforce the provisions of the Declaration and other Association Documents against the Condominium and/or each of the owners of individual Units.
- c. The Condominium through its Condominium Association shall pay the assessments to the Westfield Village Business Park Association. Each individual Unit Owner shall be jointly and severally liable for the assessments and shall not be relieved of liability by payment of the Owner's pro rata share of the assessment against the Condominium. The lien for assessments shall be a lien against the entire Condominium and each individual Unit. The Association may foreclose the assessment lien against the entire Condominium and/or one or more individual Units.

4.11 Rights of Action. The Association on behalf of itself and any aggrieved Owner, shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or

by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorney fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

4.12 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and by the Wyoming Nonprofit Corporation Act.

**ARTICLE 5
DUTIES AND POWERS OF
WESTFIELD VILLAGE BUSINESS PARK ASSOCIATION**

5.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members of the Association. The Association, acting through its Executive Board or Persons to whom the board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything which may be necessary or desirable to further the common interests of the Members of the Association, to maintain, improve and enhance the Common Element and Association Maintenance Area and to improve and enhance the attractiveness and desirability of the Property. The Executive Board may act in all instances on behalf of the Association to:

- a. Adopt and amend bylaws and Rules and Regulations and Design Guidelines.
- b. Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments.
- c. Hire and terminate Managers and other employees, agents and independent contractors.
- d. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Property.
- e. Make contracts and incur liabilities.
- f. Regulate the use, maintenance, repair, replacement and modification of Common Element and Association Maintenance Area.
- g. Cause additional Improvements to be made as a part of the Common Element, if any.

- h. Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Element, if any, may be conveyed or subjected to a security interest only if Members entitled to cast at least eighty percent (80%) of the Voting Interests agree to that action and if all Owners of Buildings to which any Limited Common Element is allocated agree to convey that Limited Common Element or subject it to a security interest.
- i. Grant easements, leases, licenses and concessions through or over the Common Element, if any.
- j. Annex additional property, pursuant to the terms of this Declaration.
- k. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Element.
- l. Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents.
- m. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments.
- n. Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance.
- o. Assign its right to future income, including the right to receive Assessments.
- p. Delegate powers to a master association.
- q. Exercise any other powers conferred by the Declaration or Association Documents.
- r. Exercise all other powers that may be exercised in the State of Wyoming by legal entities of the same type as the Association.
- s. Exercise any other powers necessary and proper for the governance and operation of the Association.

5.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any Common Element, including any Improvements thereon, and personal property or equipment transferred to the Association by Declarant, together with the responsibility to perform any and all of the functions set forth in this Declaration in connection therewith, provided

that such property and functions are not inconsistent with the terms of this Declaration. Real property interests transferred by Declarant to the Association shall consist of fee simple title to the Common Element, and the easements therefor as contained herein. Except as otherwise specifically approved by resolution of the Executive Board of the Association, no real property transferred to the Association by Declarant and no personal property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant nor any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge or fee. The interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the duties set forth hereinafter.

5.3 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and the Association Documents, its Rules and Regulations, and shall take such action as the Executive Board of the Association deems necessary or desirable to cause such compliance by each Member of the Association. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Association Documents, its Rules and Regulations by any one or more of the following means: (a) by entry upon any Lot or into any Building (when a bona fide emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Declaration and the Association Documents or the Rules and Regulations of the Association; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration and the Association Documents or the Rules and Regulations of the Association, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations of the Association; (d) by suspension, after notice and hearing of the voting rights of a Member of the Association during and for up to sixty (60) days following any breach by such Member of this Declaration and the Association Documents or the Rules and Regulations, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting, after notice and hearing, a Default Assessment against any Member of the Association for breach of this Declaration and the Association Documents or such Rules and Regulations by such Member; and (f) by levying and collecting, after notice and hearing as defined in this Declaration, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member of the Association for breach of or failure to comply with this Declaration and the Association Documents or the Rules and Regulations by such Member.

ARTICLE 6 ASSESSMENTS

6.1 Obligation. Each Owner of an Assessable Building is obligated to pay to the Association: (i) the Annual Assessments; (ii) Special Assessments; and, (iii) Default Assessments.

6.2 Budget. Within ninety (90) days after the adoption of any proposed budget for the Property, the Executive Board 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 the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Owners.

6.3 Annual Assessments. Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine. Estimated annual Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Element and the Association Maintenance Area, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, Landscaping of the Property, care and irrigation of grounds within the Common Element and the Association Maintenance Area, routine repairs, replacements and renovations within any of the Common Element and the Association Maintenance Area, water and utility charges for the Common Element and the Association 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 and adequate contingency or other reserve or surplus fund for insurance deductibles, routine maintenance, repairs and replacement of Improvements within the Common Element and Association Maintenance Area, as needed. Annual Assessments shall be payable within thirty (30) days of the Executive Board mailing Notice of said Assessment to the Owners unless the Executive Board authorizes monthly or quarterly payments. 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 prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

6.4 Allocation of Assessments. The Common Expenses shall be allocated among the Assessable Buildings on the basis of the Allocation Interest for Common Expenses in effect on the date of Assessment; provided, however, that the Association reserves the right to allocate expenses related to fewer than all of the Buildings to the Owners of those affected Buildings only ("Limited Common Expenses").

6.5 Special Assessments. In addition to the Annual Assessments, 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 Landscaping, Improvements, parking areas, sidewalks and access drives within the Common Element, if any, or for any other expense incurred or to be incurred as provided in this Declaration. This section 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 the other sections of this Declaration. Any amounts assessed pursuant to this section shall be assessed to Owners according to their allocated interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Buildings any extraordinary maintenance, repair or restoration work on fewer than all of the Lots and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Building or the actions of a particular Owner (or his employees, agents, servants, guests, tenants, and invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners and no payment shall be due less than ten (10) days after such Notice shall have been given.

6.6 Buildings Added Mid-Assessment Period. If, during any Assessment period, the number of Assessable Buildings increases because of an additional Building becoming subject to the Assessments, then each such additional Building shall be subject to a pro rata share of the Annual Assessment commencing on the first day of the month following the month in which the Buildings become subject to the Assessment.

6.7 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 Building 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 ten (10) days prior to the due date.

6.8 Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special, Water or Default Assessment, which is not paid on or before its due date shall be delinquent.

a. **Delinquent Assessment.** If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

(i) Assess a late charge for each delinquency in such amount as the Association deems appropriate.

(ii) Assess an interest charge from the due date at the yearly rate of eighteen percent (18%), or such other lawful rate as the Executive Board may establish.

(iii) Suspend the voting rights of the Owner during any period of delinquency.

(iv) Suspend the rights of the Owner to use any Common Element facilities during any period of delinquency.