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Reno, NV 89501

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FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
GLENBROOK COTTAGE & TOWNHOME ASSOCIATION

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**FIRST RESTATED DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS OF  
GLENBROOK COTTAGE & TOWNHOME ASSOCIATION**

**RECITALS**

**R1.** Whereas, Glenbrook Cottage & Townhome Association is a successor to Glenbrook Properties, a Nevada corporation, hereinafter, "Declarant";

**R2.** Whereas, Declarant executed the *Declaration of Covenants, Conditions and Restrictions of Glenbrook*, (hereinafter, the "Community Declaration") recorded on June 17, 1977, as Instrument No. 10264, in Book 677, at Page 1119, et seq., in the Official Records of the County of Douglas, State of Nevada;

**R3.** Whereas, Declarant executed a *Rules and Regulations for Use of Recreational and General Forest Areas at Glenbrook, Nevada*, (hereinafter, the "Rules and Regulations of Recreational and General Forest Areas at Glenbrook") recorded on June 23, 1977, as Instrument No. 10405, in Book 677, at Page 1463, et seq., in the Official Records of the County of Douglas, State of Nevada;

**R4.** Whereas, Declarant executed an *Amendment to Declaration of Covenants, Conditions and Restrictions of Glenbrook*, (hereinafter, the "Amendment to Community Declaration") recorded on July 6, 1977, as Instrument No. 10826, in Book 777, at Page 234, et seq., in the Official Records of the County of Douglas, State of Nevada, which amended Section 2.16 of the Community Declaration;

**R5.** Whereas Declarant executed the following supplemental declarations of annexation of the Community Declaration, in the Official Records of the County of Douglas, State of Nevada, which among other things, annexed property so that it became subject to the Community Declaration:

(1) *Supplemental Declaration of Annexation of Covenants, Conditions and Restrictions of Glenbrook*, recorded on May 26, 1978, at Book 578, Pages 2320 et seq., as Instrument No. 21219;

(2) *Second Supplemental Declaration of Annexation of Covenants, Conditions and Restrictions of Glenbrook*, recorded on March 27, 1979, at Book 379, Pages 1306 et seq., as Instrument No. 31033;

(3) *Third Supplemental Declaration of Annexation of Covenants, Conditions and Restrictions of Glenbrook*, recorded on January 31, 1980, at Book 180, Page 1602 et seq., as Instrument No. 41079;

(4) *Fourth Supplemental Declaration of Annexation of Covenants, Conditions and Restrictions of Glenbrook*, recorded on June 13, 1980, at Book 680, Page 1266, as Instrument No. 45298;

(5) *Fifth Supplemental Declaration of Annexation of Covenants, Conditions, and Restrictions of Glenbrook*, recorded on September 17, 1980, as Instrument No.48656, at Book 980, Pages 1390, et seq.;



(6) [Further] Supplemental Declaration of Annexation of Covenants, Conditions, and Restrictions Glenbrook, recorded on April 8, 1996, as Instrument No.384989, at Book 496, Pages 1255, et seq.;

**R6.** Whereas, Declarant executed a *Declaration of Cottage Covenants, Conditions and Restrictions – Glenbrook*, (hereinafter, “Original Declaration”, recorded on May 26, 1978, as Instrument No. 21218, in Book 578, at Page 2319, et seq., in the Official Records of the County of Douglas, State of Nevada;

**R7.** Whereas Declarant executed the following supplemental declarations of annexation of the Original Declaration, in the Official Records of the County of Douglas, State of Nevada, which among other things, annexed property so that it became subject to the Cottage Declaration:

(1) *Supplemental Declaration of Annexation of Cottage Covenants, Conditions and Restrictions of Glenbrook*, recorded on March 27, 1979, as Instrument No. 31034, in Book 379, at Page 1321, et seq., in the Official Records of the County of Douglas, State of Nevada;

(2) *Second Supplemental Declaration of Annexation of Cottage Covenants, Conditions and Restrictions of Glenbrook*, recorded on January 31, 1980, as Instrument No. 41078, in Book 180, at Page 1601, et seq., in the Official Records of the County of Douglas, State of Nevada;

(3) *Third Supplemental Declaration of Annexation of Cottage Covenants, Conditions and Restrictions of Glenbrook*, recorded on September 17, 1980, as Instrument No. 48655, in Book 980, at Page 1389, et seq., in the Official Records of the County of Douglas, State of Nevada;

**R8.** Whereas, Declarant executed an *Amendment of Declaration of Covenants, Conditions and Restrictions of Glenbrook*, (hereinafter, the “Amendment to Community Declaration”) recorded on July 6, 1977, as Instrument No. 10826, in Book 777, at Page 234, et seq., in the Official Records of the County of Douglas, State of Nevada, which amended Section 2.16 of the Community Declaration;

**R9.** Whereas, Declarant executed a *First Amendment to Declaration of Covenants, Condition, and Restrictions of Glenbrook*, (hereinafter, the “First Amendment to Community Declaration”) recorded on October 13, 1982, as Instrument No. 71650, in Book 1082, at Page 562, et seq., in the Official Records of the County of Douglas, State of Nevada. which added Section 2.38 and amended Section 4.1 of the Community Declaration;

**R10.** Whereas, the Original Declaration established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, the Lien and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property consisting of one-hundred-thirty-four (134) Lots and various Cottage Common Elements located in the Town of Glenbrook, County of Douglas, State of Nevada, and more particularly described as the following, plus any annexations thereto:

All of that real property situated in the County of Douglas, State of Nevada that is described as follows:

Private Lots 1 through and including 28,  
43 through and including 54,  
61 through and including 68,  
Cottage Common Area Lots I, K, L, N, O, P and Q;

as shown on the Official Plat of Glenbrook Unit 2, recorded on  
May 26, 1978 in the Official Records of Douglas County, Nevada  
as Instrument 21216, Book 578, at Page 2285.

**R11.** Whereas, the Owners of Glenbrook Cottage & Townhome Association, constituting at least seventy-five percent (75%) of the total voting power of the Association, desire to restate the limitations, easements, covenants, restrictions, conditions, the Lien and charges within the Original Declaration which runs with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property;

**R12.** Therefore, the Owners of Glenbrook Cottage & Townhome Association, constituting at least seventy-five percent (75%) of the Ownership in the Glenbrook Cottage Owners Association, do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, the Lien and charges set forth in the Original Declaration are hereby restated in their entirety. In the place and stead of the limitations, easements, covenants, restrictions, conditions, the Lien and charges set forth in the Original Declaration, the Owners hereby adopt and substitute this First Restated Declaration of Covenants, Conditions & Restrictions of Glenbrook Cottage & Townhome Association;

**R13.** It is further hereby declared that all of the real property described herein constitutes a "Planned Community" within the meaning of NRS 116.110368;

**R14.** It is further hereby declared that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Declaration of Covenants, Conditions & Restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the said real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the said real property and any part thereof;

**R15.** It is further hereby declared that all of the Covenants, Conditions and Restrictions herein set forth shall constitute enforceable equitable servitudes as defined in Nevada law and shall constitute covenants that shall run with the real property and shall be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns; and

**R16.** It is further hereby declared that each Owner, by acceptance of a deed to a Lot, shall be deemed to have agreed, for any and all purposes, for Owner and for the members of Owner's family, Owner's contract purchasers, tenants or lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this Declaration of Covenants, Conditions and Restrictions which subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for

the benefit of other Owners or occupants of the Glenbrook Cottage & Townhome Development, either individually or as a class, Glenbrook Cottage & Townhome Association or the public generally, regardless of whether the deed refers specifically to this Declaration of Covenants, Conditions and Restrictions or to any such duty, obligation or agreement.

**ARTICLE 1:DEFINITIONS.**

**Section 1.1. "Annexed Properties"** means those Lots and/or Cottage Common Elements which are subsequently made subject to this Declaration as provided by Article 20 of this Declaration.

**Section 1.2. "Articles"** means the Articles of Incorporation of Glenbrook Cottage & Townhome Association, which are filed in the Office of the Secretary of State of Nevada, as such Articles may be amended.

**Section 1.3. "Assessment"** means a Regular, Special, or Special Individual Assessment assessed by the Association against an Owner and their Lot in accordance with Article 5 of this Declaration.

**Section 1.4. "Association"** means Glenbrook Cottage & Townhome Association, a Nevada nonprofit mutual benefit corporation. Glenbrook Cottage & Townhome Association is an "Association" as defined in NRS 116.110315. **"Community Association"** means the Glenbrook Homeowners Association.

**Section 1.5. "Association Rules" or "Rules "** means the rules and policies adopted by the Board, pursuant to Section 4.4(a)(ii)(E) of this Declaration, as the such may be amended.

**Section 1.6. "Board of Directors" or "Board"** means the body designated in this Declaration to act on behalf of the Association.

**Section 1.7. "Bylaws"** means the Bylaws of the Association, as such may be amended.

**Section 1.8. "Cottage Common Elements"** means the real property described in the Map other than Lots, to the extent such property is designated on the Map is shown as **"Cottage Common Area"** and is available for the common use and enjoyment of Owners. Cottage Common Elements also means real property which has been or will be annexed to the Association and is shown on the Map as **"Cottage Common Area"** but was originally excluded from property which was originally subject to the Original Declaration. The Cottage Common Elements include the walkways, paths, landscaped areas, and utility facilities in or around the Cottage Lots and Townhome Lots as shown on the Map. The Cottage Common Elements include driveways and parking areas designated as **"Cottage Common Area"** on the Map. The Cottage Common Elements include garages for Townhome Lots, to which Owners of Townhome Lots have exclusive easements. These garages are Limited Cottage Common Elements. The Cottage Common Elements exclude all property, including driveways and parking areas designated as **"Property Common Area"** on the Map.

**Section 1.9. "Common Expense"** means any use of Common Funds authorized by Article 5 hereof and Section 6.1 of the Bylaws and includes, without limitation: (a) all expenses or charges



incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Cottage Common Elements, Cottage Common Facilities, or any portion of any Lot that the Association is obligated to maintain or repair, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Cottage Common Elements and Cottage Common Facilities or any portion of Lots that the Association is obligated to maintain, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

**Section 1.10. "Cottage Common Facilities"** means landscaping, fences, utilities, berms, pipes, lines, irrigation systems, lighting fixtures, buildings, structures, and other facilities constructed or installed, to be constructed or installed, or currently located within the Cottage Common Elements.

**Section 1.11. "Declaration"** means this Declaration of Covenants, Conditions and Restrictions of Glenbrook Cottage & Townhome Association, recorded in the Office of the County Recorder of Douglas, State of Nevada, as such may be amended.

**Section 1.12. "Design Review Committee"** means the committee created pursuant to Article 8 herein.

**Section 1.13. "Design Review Committee Rules"** means the rules adopted by the Design Review Committee pursuant to Article 8 herein.

**Section 1.14. "Development"** means all real property and the improvements located thereon which comprise Glenbrook Cottage & Townhome development and are intended to create a common-interest community as defined in NRS 116.11032.

**Section 1.15. "Director"** means a member of the Association's Board of Directors.

**Section 1.16. "Family"** means two (2) or more persons who live together and maintain a common household on a Lot whether or not they are all related to each other by birth, marriage or legal adoption.

**Section 1.17. "Governing Documents"** is a collective term that means and refers to this Declaration, the Articles, Bylaws, Association Rules, and the policies and resolutions adopted by the Board and distributed to the Members.

**Section 1.18. "Improvement"** means an addition to or alteration of the real property comprising the Development and includes, but is not restricted to, any building, structure, shed, driveway, parking space or parking area, paving, walk, fence, wall, stair, arbor, deck, balcony, patio, pole, sign, tank, ditch, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, solar heating equipment, antennas, utilities, utility lines, gates, statues, markers, pipes, lines, lighting fixtures, and any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of a Residence and which do not involve the roof or any load-bearing wall thereof.



**Section 1.19.** The "**Lien**" means the *Declaration of Cottage Covenants, Conditions and Restrictions – Glenbrook* which was filed in the Official Records of the County of Douglas, State of Nevada.

**Section 1.20.** "**Limited Common Element**" means the portion of the Cottage Common Elements which are for the exclusive use of one Lot. Limited Common Element includes garages appurtenant to Townhome Lots.

**Section 1.21.** "**Lot**" means the portion of the Development designated for separate ownership or occupancy, the boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105, pursuant to NRS 116.093. Unless specifically designated as either "Cottage Lots" or "Townhome Lots," the term "Lots" include both "Cottage Lots" and "Townhome Lots."

"**Cottage Lots**" means Lots 1 through 28, 67, and 68 on the Map and any Lots annexed to the Association upon which separate detached single family Residences are, or are intended to be, constructed.

"**Townhome Lot**" means Lots 43 through 54, and 61 through 66 of the Map and any Lots annexed to the Association upon which duplex or triplex attached Residences (also known as "attached cottages") are, or intended to be, constructed, together with an exclusive appurtenant easement to use a garage designated for each such Lot as set forth in the deed conveying title to each Townhome Lot to an Owner.

**Section 1.22.** "**Map**" means the Official Plat of Glenbrook Unit 2, recorded on May 26, 1978 in the Official Records of Douglas County, Nevada as Instrument 21216, Book 578, at Page 2285, and any maps which contain any property which has been annexed to the Glenbrook Cottage & Townhome development.

**Section 1.23.** "**Member**" means an "Owner" as defined in Section 1.25, below. When more than one (1) Person is an Owner of a Lot, all such persons shall be Members, although in no event shall more than one (1) vote be cast with respect to any Lot. Member rights may be temporarily suspended as described in Section 16.6, below and Section 4.3 of the Bylaws.

**Section 1.24.** "**Mortgage**" means any security device encumbering all or any portion of the Development, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably. "**First Mortgage**" means a mortgage having priority over all other Mortgages (except as provided by Section 5.11). "**Mortgage Lien**" means the lien or charge or equivalent security interest of any mortgage or deed of trust. "**Mortgagor**" shall refer to the trustor under a deed of trust, as well as a mortgage. "**Mortgagee**" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense. "**First Mortgagee**" means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage which constitutes an encumbrance upon one or more Lots first in priority of lien (except as provided by Section 5.11) over all other encumbrances upon said Lots securing payment of money other than this Declaration and liens for real estate taxes and assessments.

**Section 1.25. "Owner"** means a "Unit's Owner" as defined in NRS 116.095. **"Owner of Record"** and/or **"Member of the Association"** includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested according to Association records.

The term "Owner" includes, except where the context otherwise requires, the Owner's family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, licensees, and contract purchasers, only with respect to the obligation for Assessments.

**Section 1.26. "Person"** means any individual, corporation, partnership, association, or other entity recognized by the laws of the State of Nevada.

**Section 1.27. "Regular Assessment"** means an Assessment levied on an Owner and their Lot in accordance with Sections 5.2.1 and 5.2.2 hereof.

**Section 1.28. "Residence"** means a private Residential dwelling constructed on any Lot. **"Resident"** means any Person who resides in a Residence. **"Residential Use"** means occupation and use of a Lot for Residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of Persons who may occupy Residential dwellings.

**Section 1.29. "Rules"**, also known as "Association Rules," means the rules that the Association adopts pursuant to Section 4.4(a)(ii)(E) of this Declaration.

**Section 1.30. "Special Assessment"** means an Assessment levied on an Owner and their Lot in accordance with Sections 5.3.1 and 5.3.2 hereof.

**Section 1.31. "Special Individual Assessment"** means an Assessment made against an Owner and their Lot in accordance with Section 5.4 hereof.

**Section 1.32. "Visible from Neighboring Property"** means with respect to any given object, such object is or would be visible to a person six (6) feet tall standing on an assumed floor elevation two (2) feet above the surface of any neighboring property in the area, assuming that the property had an elevation equal to the highest elevation of the ground surface of that portion of the area upon which the object is located.

## **ARTICLE 2: OWNERS' PROPERTY RIGHTS & OBLIGATIONS.**

**Section 2.1. Elements of Separate Interest.** Ownership of each separate interest within the Development includes:

(a) Lot. A separate Lot as described herein and identified by number on the Map.

(b) Nonexclusive Easements. Nonexclusive easements appurtenant to the Lot for the use and enjoyment of the Cottage Common Elements and as more particularly described in Section 2.2.



(c) Limited Cottage Common Elements, as defined in Section 1.20.

The Limited Cottage Common Elements are set aside for the exclusive use and enjoyment of the Owners and occupants of the appurtenant Lot and the non-exclusive easements are subordinate to and must not interfere with the Limited Cottage Common Elements. The Limited Cottage Common Elements appurtenant to a Lot must not unreasonably interfere with Limited Cottage Common Elements appurtenant to another Lot. Except as provided in Section 16.6, no one may prevent access by an Owner to a Limited Common Element appurtenant to that Owner's Lot.

**Section 2.2. Owners' Nonexclusive Easements of Enjoyment to Cottage Common Elements.** Subject to the provisions of this Declaration, the Cottage Common Elements shall be held, maintained and used to meet the common interests of the Owners as provided in the Governing Documents. Each Owner has a non-exclusive easement to walk and use the central path system to the beach.

**(a) Limitations on Nonexclusive Easements.** Every Owner has a nonexclusive right and easement of enjoyment in and to the Cottage Common Elements, including ingress and egress to and from the Owner's Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights and restrictions:

(i) The right of the Association to adopt Rules as provided in Section 4.4(a)(ii)(E) hereof, regulating the use and enjoyment of the Development for the benefit of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner, to temporarily suspend the voting rights and/or right to use the Cottage Common Facilities, by any Owner, subject to compliance with the due process requirements of Section 16.6 hereof.

(ii) The right of the Association to borrow money for the purpose of improving, restoring or maintaining the Cottage Common Elements and Cottage Common Facilities and/or the interests of the Owners and/or for the benefit of the Association, and in aid thereof, to mortgage said property; provided, however, that the rights of any such Mortgagee in said property shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Sections 5.3.1 and 5.3.2 hereof.

(iii) The right of the Association to dedicate or transfer all or any part of the Cottage Common Elements (other than Limited Cottage Common Elements) to the Community Association, any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds (2/3's) of the voting power of the Members, consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot.

(iv) The non-exclusive easements granted herein shall be subordinate to and shall not interfere with exclusive easements, if any.

(v) The Owner of each Lot served by utility or service connections shall be entitled to the full use and enjoyment of such portions of said connections within the Common Elements as service the Owners' Lots.

(vi) The right of the Association to charge reasonable admission, use and/or other fees for the use of the Cottage Common Elements or any portion thereof.

(vii) The right of the members of the Community Association to use to walk and use the central path system to the beach.

**(b) Waiver of Right to Sever.** No Owner, or other person, may by conveyance, transfer or any other action, including an action at law for partition, sever any Lot or Lots from the Cottage Common Elements or from the Association. Each Owner, by acceptance of a deed to a Lot hereby expressly waives all rights to do so.

**Section 2.3. Persons Subject to Governing Documents.** All Owners shall be subject to, and shall comply with, each and every provision of the Governing Documents unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.).

The mere accepting of a deed to any Lot; the entering into a lease, sublease or contract of sale with respect to any Lot; the occupancy of any Lot; and/or the acceptance of any guest pass shall constitute the consent and agreement of such Owner that the provisions of this Declaration shall be binding upon said person and that said person will observe and comply with the Governing Documents.

The liability and obligation of any Owner for performance of the provisions of the Governing Documents shall terminate upon the sale, transfer, or other divestiture of such Owner's entire interest in a Lot.

#### **Section 2.4. Delegation of Use.**

##### **(a) Delegation of Use and Ownership Rights and the Leasing or Sale of Lots.**

**(i) Assignment of Rights to Family Members.** Any Owner may delegate their rights to use and enjoy the Cottage Common Elements and Cottage Common Facilities to members of the Owner's Family residing at the Development.

**(ii) Use by Invitees and Guests.** The invitees and guests of an Owner shall have the right to use and enjoy the Cottage Common Elements and Cottage Common Facilities. Any such guests or invitees shall be subject to the same obligations imposed on the Owner to observe the Rules, restrictions, and regulations of the Association.

**(iii) Assignment of Rights to Tenants/Lessees.** Any Owner who has leased or rented their Lot to another person or persons is deemed to have delegated to their tenants the rights of use and enjoyment of the Cottage Common Elements.

**(iv) Assignment of Rights to Contract Purchasers.** Any Owner who has sold that Owner's Lot to a contract purchaser may delegate to such contract purchaser the Owner's rights and privileges of membership in the Association. Such Owner shall be deemed to have delegated all rights to use and enjoyment of the Cottage Common Elements to a contract purchaser who has assumed occupancy of a Lot. No delegation of any membership rights or privileges to a non-Resident contract purchaser shall be binding, however, until the Board of Directors has been notified in writing pursuant to Section 2.5, below.

Notwithstanding any delegation, until fee title to the Lot has been transferred of record, a contract seller shall remain liable for all assessments, fines and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of the Owner's Lot.

**(b) Discipline of Lessees.** An Owner who leases their Lot to any person or entity shall be responsible for assuring compliance by the lessee with the provisions of the Governing Documents.

In the event that any lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include suspension of the Lessee's privileges to use any recreational Cottage Common Facilities, or the imposition of fines and penalties, except that any such action shall be taken only after such Owner has been afforded the notice and hearing rights described in Article 16 of the Declaration. Where a lessee has engaged in repeated violations the corrective action may include initiation of an eviction proceeding, suspension of the lessee's privileges to use Cottage Common Facilities, or the imposition of fines and penalties against the Owner.

Any fine or penalty levied pursuant to this Section 2.4 shall be considered a Special Individual Assessment as defined in Section 5.4, below.

Whether or not such right is stated in any lease agreement, every Owner who leases their Lot automatically grants to the Association the right to determine a lessee's default under the lease and Governing Documents and of terminating the tenancy and evicting the lessee for such default. If the Association brings such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment.

**(c) Association Rules.** The right of any person to use and enjoy the Cottage Common Elements and Cottage Common Facilities shall at all times be subject to the Governing Documents. With the exception of the right of use of any vehicular or pedestrian ingress or egress to go to and from the Lot, including any area used for parking, the Association may impose monetary penalties or to suspend the use and enjoyment of any Cottage Common Elements and Cottage Common Facilities for the failure of an Owner to pay any Assessments when due, or to comply with any other rule imposed upon such Owner pursuant to the Governing Documents; provided, however, that any such suspension shall be imposed only after such person has been afforded the notice and hearing rights described in Article 16 of the Declaration.

**Section 2.5. Obligations of Owners.** Owners of Lots shall be subject to the following:

**(a) Owner's Duty to Notify Association of Contract Purchasers.**

At least ten (10) days prior to the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Lot, the transferring Owner shall provide the following information to the Association:

- (i) The name of each transferor and transferee;
- (ii) The street address of the Lot to be transferred;
- (iii) The mailing address of each transferee;
- (iv) The name and address of the escrow holder, if any, for such transfer and the escrow number; and
- (v) The proposed date for consummation of the transfer.

**(b) Effect of Failure to Notify.** Until such time as the Association receives the notification required in Subsection (a), above, a transferee shall be deemed to have received any and all notices or other communications required or permitted to be given by the Association hereunder which are duly provided to the transferor.

Pursuant to Section 4.4(a)(ii)(E), the Board has the power to adopt Association Rules consistent with this Declaration relating to enforcement of these notice requirements and/or to impose penalties, including fines, for failures to give timely notice.

**(c) Delegation of Rights to Contract Purchasers.** A contract seller may delegate the seller's Member rights, including voting rights, pursuant to Subsection 2.4(a)(iv), above. Notwithstanding any delegation of rights to the contract purchaser, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

**(d) Notification Regarding Governing Documents.**

(i) As more particularly provided in NRS 116.4109, and except as provided by NRS 116.4101, an Owner must furnish a purchaser before execution of any contract for sale of a Lot:

- (a) A copy of Governing Documents, and the information statement required by NRS 116.41095;
- (b) A statement setting forth the amount of the Regular Assessments and any unpaid assessment of any kind currently due from the selling Owner;

(c) The current operating budget of the Association and a financial statement for the Association; and

(d) A statement of any unsatisfied judgments or pending legal actions against the Association and the status of any pending legal actions relating to the Association of which the selling Owner has actual knowledge.

(ii) The Association must within ten (10) days after a request by an Owner, furnish a certificate containing the information set forth in Subsection (d)(i), above. The Association may impose a fee for providing copies of those documents equal to the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of a Lot.

**(e) Payment of Assessments and Compliance with Governing Documents.** Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and their Lot and shall observe, comply with and abide by any and all Governing Documents.

**(f) Responsibility for Conduct of Others.** Owners are fully responsible for informing members of their Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and shall be fully responsible for any violation of the provisions of the Governing Documents by members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees. Each Owner shall further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees.

**(g) Indemnification for Damage & Injury.** Owners are liable to the remaining Owners and the Association for any damage to the Cottage Common Elements that result by reason of the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees (to the extent any such damage is not covered by insurance). Each Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees, shall indemnify each and every other Owner and/or the Association against, and hold them harmless from, and defend them against, any claim of any person for personal injury or property damage occurring within the Development due to the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees, unless the injury or damage incurred is fully covered by insurance.

Each Owner, by acceptance of his or her deed, agrees personally and for Family members, contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner, including Limited Cottage Common Elements, if any, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner.

**(h) Joint Ownership of Lots.** In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners are joint and several.

**(i) Prohibition on Avoidance of Obligations.** No Owner, by non-use of the Cottage Common Elements or Cottage Common Facilities, renunciation or abandonment of the Owner's Lot, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Association Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and their Lot. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to any third person.

**(j) Obligation To Permit Entry by Association and/or Adjacent Owners.** Each Owner shall be obligated to permit the Owners of adjacent Lots to enter the Owner's Lot for purposes of performing installations, alterations or repairs to mechanical or electrical services which are reasonably necessary for the use and enjoyment of their Lot, provided that the adjacent Owner furnishes the Owner whose Lot is being entered upon with at least twenty-four (24) hours written notice of their intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform the use and schedule the entry in a manner that respects the privacy of the Residents of the Lot and the convenience of the Owner of the Lot. Each Owner shall also honor the right of the Association and its agents to enter Lots as provided in Section 4.3(b) of this Declaration.

**(k) Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

**Section 2.6. Transfer or Conveyance of Lot Terminates Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Lot after the date of recording of the deed evidencing said transfer. No person, after the termination of said person's status as an Owner and prior to said person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration. The voluntary conveyance of a Lot to a new Owner will not extinguish any obligations of the transferring Owner for unpaid Assessments that were levied against the Lot prior to the subject transfer.

### **ARTICLE 3: RESTRICTIONS & USE OF PROPERTY.**

In addition to the restrictions established by law or set forth in the Rules, the following restrictions are hereby imposed upon the use of the Development.

**Section 3.1. Residential Use.** Each Lot shall be used exclusively for Residential purposes except as provided in Section 3.2, below. A Lot may not be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.

Timesharing is defined as any ownership, occupancy, use, interest, right, and/or privileges of, in, or related to, a Lot by more than four (4) Families. Ordinary and customary non-recurring leases or guest

usage are not within this definition. Ownership interests or rights in a Lot in the following or similar form are within this definition:

- (a) Timesharing ownership of a fee simple estate transferred by deed;
- (b) Interval ownership involving the purchase of ownership rights in a recurring estate for years;
- (c) Leasehold timesharing involving the right to use for a specific time period each year for a designated period of years;
- (d) Vacation licenses involving the privilege or license to use a Lot for a specific number years provided for by contract; and
- (e) Club memberships involving a certificate of membership in a club for a specific number of years which entitles the member to use a Lot.

No Lot may be used for any form of Timesharing. Any attempt to sell, convey, transfer, contract or make another type of transaction involving a timeshare interest in a Lot shall be set aside upon the Association's application to a court of competent jurisdiction.

**Section 3.2. Restriction on Businesses.** No Owner may establish, maintain, operate, permit, or conduct any business of any kind within the Development except home offices or similar businesses (as may be permitted by applicable statutes and/or ordinances) provided, however, that there shall be no posted external evidence of such home or business office, including, but not limited to, the following: increased pedestrian and/or vehicular traffic; activities which are apparent or detectable by sight, sound, or smell from outside of the Lot; activities which increase the Association's insurance obligations and/or premiums; and/or activities which are inconsistent with the Residential nature of the Development.

**Section 3.3. Offensive Conduct, Nuisance, Obstructions, or Hazards.** The following activities are prohibited and shall not be performed on, upon or within the Development:

- (a) Activities which are noxious, harmful, offensive, nuisances, harassment, unreasonable disturbances, unreasonable annoyances, and/or interferences with Residents' use and enjoyment of the Development;
- (b) Activities which will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;
- (c) Activities which are in violation of any governmental statute, ordinance, rule and/or regulation;
- (d) Use or storage of machinery or equipment, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence;

(e) Activities which obstruct the Cottage Common Elements, including entranceways, streets, and/or vehicular driveways, except such obstruction as may reasonably be required in connection with repairs;

(f) Activities which interfere with the drainage patterns or facilities through the Development, without the prior written consent of the Association;

(g) Activities or conditions which would induce, breed, or harbor infectious plant diseases, noxious insects, rodents and/or vermin;

(h) Any Excavation, Fill, Improvement which in any way alters any Cottage Common Elements or Common Facility, without the prior written consent of the Design Review Committee;

(i) Emission of unreasonable levels of exhaust fumes and/or noise and/or the parking, keeping and/or storage of dilapidated, unlicensed, non-operational and/or disabled vehicles;

(j) Division of Lots in any manner;

(k) Use of any substance for the removal of ice or snow within the streets that may cause damage to the vegetation within the Development;

(l) Outside clothes drying, except where not Visible from Neighboring Property;

(m) Fences, hedges, or walls, other than those initially installed by the Declarant or approved by the Design Review Committee;

(n) Any exterior fires except barbecue fires contained within receptacles designed for such purpose or fireplaces approved by the Design Review Committee; and

(o) Any exterior newspaper tubes or free-standing mailboxes except those approved by the Design Review Committee.

Without limiting any of the foregoing, no Owner or other Resident shall cause and/or permit noise, sound(s) or sight(s) which would unreasonably disturb another's enjoyment of the Development.

**Section 3.4. Regulation of Owner Activity.** In order to promote the Owners' use and enjoyment of the Development and the esthetic and recreational purposes thereof, the Association, in its Rules, shall be entitled to set forth provisions that regulate or limit, but may not prohibit, subject to legal limitations, activities within the Development, including any of the following:

(a) The rights of Owners (and Owner's Family, contract purchasers, lessees, tenants and/or guests) to use portions of the Cottage Common Elements;

(b) The number of guests each Owner may allow to use the Cottage Common Elements, including, but not limited to, recreational facilities and the number of persons who occupy a Residence;



(c) The color and type of all doors, screen doors, and drapes, blinds, curtains, shades, shutters or other window coverings Visible from Neighboring Property;

(d) The decoration, furnishing, landscaping or embellishment of Lots;

(e) The display or flying of flags, windsocks and/or similar items within the public view from any portion of the Development, except that this limitation shall not prohibit or prevent the flying of a flag of the United States;

(f) The erection, construction, maintenance or placement of any radio and/or electronic receiving and/or broadcasting service, including antennas, wiring or other means and/or any electrical, telephone or other wiring or similar items on the exterior of any Lot or any part thereof, except to the extent allowed by state or federal law;

(g) The erection, construction, maintenance or placement of any television service and/or wireless internet service, including multipoint video distribution service, antennas, masts, towers, poles, satellite dishes and/or wiring, except to the extent allowed by law; and

(h) The erection, placement or maintenance of outbuildings, tents, shacks, sheds, trailer or other temporary building of any kind.

**Section 3.5. Pets.** The keeping, maintaining or breeding of animals, including, but not limited to, livestock, reptiles, domestic dogs and cats, rodents, or birds. While in the Cottage Common Elements, all dogs must be on a leash or otherwise controlled by a responsible person. Pet owners are responsible for the removal and/or proper disposal of their pets' bodily wastes.

The Association has the right to prohibit the maintenance or presence of any animal within the Development which, after notice and hearing in compliance with Article 16, is found to be a nuisance to and/or threat to the safety of other Owners/Residents. In particular, no aggressive and/or attack trained dogs are permitted in the Development.

Each person bringing or keeping a pet into the Development is strictly liable to other Owners for any personal injury or property damage caused by the pet; and

Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article 16 hereof.

**Section 3.6. Vehicles.** As long as applicable ordinances and laws are observed, including but not limited to NRS 487.038 or comparable superseding statute, the Association may cause the removal of any vehicle which is in violation of the Governing Documents.

No vehicle may be parked within the Development except within parking areas designated by the Association. Owners may not park mobile homes, non-passenger vehicles, campers, trailers (of any kind), boats, recreational vehicles, or commercial vehicles, except if (i) they are not visible from other Owners' Lots or from the Cottage Common Elements, and/or (ii) where required temporarily for

deliveries, the construction, repair, refinishing, or maintenance of any part of the Development or for moving furnishing, equipment, or supplies into or out of the Development.

No vehicles are permitted on any Cottage Common Elements other than paved streets. No snowmobiles may be operated within the Development.

**Section 3.7. Garages.** Each Owner must maintain their garage areas in a neat, orderly condition with all storage areas completely enclosed. Garages may only be used for the purposes of parking motor vehicles, and, so long as they are not Visible from Neighboring Property, mobile homes, non-passenger vehicles, campers, trailers, boats, recreational vehicles, truck or truck camper larger than a one-ton pick-up truck, commercial vehicles, and other storage and workshop purposes, and pursuant to the Association Rules.

**Section 3.8. Owner Improvements.** Owners may make alterations or modifications to their Lots, Residences, or Improvements on their Lots which are visible from another Lot or from the Cottage Common Elements only pursuant to Article 8 of this Declaration. No Owner may undertake any activity or work with respect to the Owner's Lot that will impair the noise-reducing capacity, structural soundness or integrity of the Cottage Common Elements and/or another Lot.

**Section 3.9. Termination of Mechanics' Lien Rights and Indemnification.** No labor performed or materials furnished to and incorporated on a Lot with the consent or at the request of the Lot's Owner or their agents, contractors, or subcontractors, shall be the basis for filing a lien against the Lot of any other Owner if said Owner has not expressly consented to or requested the same, or against the Cottage Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Lot of any other Owner or against the Cottage Common Elements for construction performed, or for labor, materials, services, equipment, or other products incorporated onto the Owner's Lot, at such Owner's request or with its consent. The provisions of this section shall not apply to any labor performed or materials furnished at the request of the Association. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Lot on which the labor was performed or to which materials were furnished, through Special Individual Assessments against the Lot, the amount necessary to discharge any such lien, including all costs incident thereto.

**Section 3.10. Trash Disposal.** No Owner or Resident shall permit or cause garbage, trash or other waste to be kept upon any portion of the Development, except in suitable containers as reasonably determined by the Design Review Committee. With the exception of bear-proof trash containers authorized by the Design Review Committee, trash containers may not be maintained so as to be Visible from Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Development to a public dump or trash collection area by the Owner at their expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.



**Section 3.11. Signs.** Except as otherwise provided by law, no signs whatsoever (including, without limitation, commercial, political, and similar signs) that are Visible from Neighboring Property shall be kept on Lots, except:

- (a) such signs as be required by legal proceedings;
- (b) residential identification signs, subject to the approval of the Design Review Committee;
- (c) reasonable job identification signs during the time of construction of a Residence or other Improvement; and
- (d) not more than one (1) "For Sale" or "For Rent" sign having a maximum size as provided by the Rules.

**Section 3.12. Temporary Occupancy and Temporary Structures.** No temporary building or structure or any kind such as a tent, house trailer, portable living unit, shack, garage, or barn and no incomplete building shall be used at any time for a Residence, either temporarily or permanent. Owners must obtain the prior written approval of the Design Review Committee in order to install temporary buildings and structures used during the construction of a Residence or Improvement on a Lot, and such buildings and structures must be removed immediately after the completion of the construction.

**Section 3.13. Variances.** The Board may grant reasonable variances from the restrictions set forth in this Article 3, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

**Section 3.14. Enforcement of Property Use Restrictions.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners with the environmental standards and property use restrictions contained herein. If the Association becomes aware of a use infraction that does not necessitate immediate corrective action under Section 16.6 hereof, the Owner responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provisions. The Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any enforcement action, including taking into consideration the potential benefits to the Association resulting from any such enforcement action as compared with the anticipated financial costs.

#### **ARTICLE 4: HOMEOWNERS ASSOCIATION.**

**Section 4.1. Association Membership.** Every record Owner of a Lot is a Member of the Association. The Owners of a Lot will hold jointly one membership in the Association for each Lot owned. The membership will be appurtenant to each Lot and may not be separated from ownership of the Lot to which it relates. Persons who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through

foreclosure or deed. Lessees who are delegated rights of use do not thereby become Members, although the lessee and other Residents are subject to the restrictions within the Governing Documents.

Each Owner will remain a Member of the Association until their ownership in every Lot ceases, at which time their membership in the Association will automatically cease. Membership in the Association will not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot fails or refuses to transfer the membership registered in the Owner's name to the purchaser of their Lot, the Association will have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller will be null and void.

**Section 4.2. Voting.** Only Members in Good Standing will be entitled to vote, and only one vote may be cast for each Lot owned by said Member, as more particularly set forth in the Bylaws. When more than one person holds an interest in any Lot, all such persons will be Members, although in no event may more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 16.6, below.

#### **Section 4.3. Powers and Authority of the Association.**

**(a) Powers Generally.** The Association has the responsibility of managing and maintaining the Cottage Common Elements and Cottage Common Facilities and must discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable law. In the discharge of such responsibilities and duties, the Association and its Board will have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of Nevada, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

The Association and its Board have the power to do any and all lawful things which may be authorized, required, or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon will be as set forth in this Declaration and Section 6.1 of the Bylaws.

**(b) Association's Limited Right of Entry.** The Association has the right, when necessary, to enter any Lot or Residence, to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article 3 and Article 8 hereof; (iii) obligations with respect to construction, maintenance and repair of adjacent Cottage Common Elements, Cottage Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subsection (b) is immediate in case of an emergency originating in or threatening the Lot or Residence where entry is required, or any adjoining Lots or Cottage Common Elements, and the Association's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all non-emergency situations, the Association must furnish the Owner or Owner's lessee with at least twenty-four (24) hours written notice of the Association's intent to enter the Lot or Residence, specifying the purpose and scheduled time of such entry and will make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Lot.

The Association's rights of entry under this subsection (b) expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Association) by permit, license, easement, or otherwise, for the benefit of the Development and the Owners of Lots.

**(c) Association as Attorney-in-Fact for Owners.** Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to (i) manage, control, and deal with the interest of the Owners in the Cottage Common Elements so as to permit the Association to fulfill all of its duties and obligations and to exercise all of its rights; (ii) deal with the Development upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles 9 and 10 hereof, and condemnation and condemnation awards, as provided in Article 13 hereof. The acceptance by any person or entity of any interest in any Lot constitutes an appointment of the Association as the Owner's attorney-in-fact as provided above.

**Section 4.4. Board of Directors.** The affairs of the Association will be managed by or under the direction of the Board. The number and qualifications of the Directors will be as established in the Bylaws.

**(a) Powers of the Board.** The Board will have all of the powers and duties set forth in the Governing Documents:

**(i) Exclusive Power.** Except as expressly otherwise provided herein, the powers and duties of the Association which the Governing Documents do not reserve to the Members are exclusively reserved for the Board (or such Committees or officers as the Board may establish, elect or appoint). Any power to be exercised or duty to be performed which are reserved to the Board, may not be exercised or performed by any Owner without the written consent of the Board.

**(ii) General Powers of the Board.** Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board has the following powers:

**(A)** To call meetings of the Members.

**(B)** To appoint and remove all officers, committees, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such fidelity bonds as it may deem expedient.



(C) To establish, fix, levy, assess and collect assessments against the Owners and to enforce payment of such Assessments in accordance with Article 5 of this Declaration.

(D) To authorize and cause the Association, subject to Section 4.5, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Cottage Common Elements. No contract for management may have a term of more than three (3) years and each such contract will be subject to all the other provisions hereof and may be terminable by either party without cause or payment of a termination fee on sixty (60) days written notice.

Any reference to the "term" of a contract as used in this Section 4.4(a)(ii)(D) will not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to the contract.

(E) To adopt, amend, and repeal Association Rules consistent with this Declaration relating to (1) the maintenance, repair, management and use of the Cottage Common Elements and all facilities thereon by Owners, their lessees, guests and invitees or any other persons who have rights of use and enjoyment of such Cottage Common Elements and Cottage Common Facilities, including the right to restrict the use of certain land, facilities, air space, or structures to the Association or its officers, agents or employees; (2) minimum standards for the maintenance of landscaping or other improvements on Lots; (3) architectural control and the rules governing architectural review under Article 8; (4) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article 3 hereof; (5) the conduct of an Owner and its family, contract purchasers, lessees, and their guests, invitees or licensees, with respect to the Development and the other Owners or occupants of the Development; (6) the conduct of disciplinary proceedings in accordance with Section 16.6 hereof; (7) reasonable charges for labor, services, or expenditures incurred at the request of an Owner or as a result of the actions of an Owner; (8) collection and disposal of refuse; (9) the interpretation of provisions of, and terms used in, this Declaration (said interpretation will be conclusively presumed to be correct so long as it is consistent with this Declaration); and (10) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

The Association Rules may not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Owners thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents will be deemed to prevail over those in the Association's Rules.

(F) To delegate its powers to committees, officers, or employees of the Association.

(G) To incur debt for the purpose of maintaining and improving the Cottage Common Elements, and to encumber the Development, including specifically member assessments, of the Association as security for the repayment of such debt.

**(H)** To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Development as a planned community.

**(I)** Except as expressly otherwise provided herein, the Board will have the exclusive right and obligation to manage and administer the Cottage Common Elements and to contract for all goods, services, and insurance, payment for which is to be made from the assessments.

**(J)** Open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

**(K)** Bring and defend actions on behalf of two (2) or more Owners or the Association to protect the interests of the Owners or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Owners for the cost of such litigation. However, the Board will have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its Owners) resulting from any such enforcement action as compared with the anticipated financial costs. Prior to filing litigation regarding any disciplinary action against a Member, the Board must comply with the requirements set forth in Section 16.6.

**(iii) No Active Business.** The Board may not conduct an active business for profit on behalf of the Association or the Owners. However, the Association may acquire, own, lease and/or sell any Lot.

**(b) Duties of the Board.** The Board must:

**(i) Association Duties.** Cause all duties imposed on the Association by Governing Documents to be properly performed.

**(ii) Records.** Cause a complete record of all its acts and corporate affairs to be kept, and to prepare budgets and financial statements for the Association.

**(iii) Supervise.** Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

**(iv) Assessments.**

**(A)** Fix, levy and collect assessments pursuant to the provisions of Article 5 of this Declaration.

**(B)** Approve the annual budget and fix the amount of the assessment against each Owner for each assessment period in compliance with Nevada law;

**(C)** Prepare a roster of the Owners and assessments applicable thereto that will be available for inspection by any Owner, pursuant to Section 12.1 of the Bylaws regarding Owner's inspection rights;

(D) Send written notice of each assessment to every Owner subject thereto; and

(E) Issue certificates as required by Sections 5.12 and 8.15.

(v) **Insurance.** Contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Association with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

(vi) **Vacancies.** Fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by a Member recall.

(vii) **Discharge of Liens.** Pay any amount necessary to bond or discharge any claim which may be or become a lien or encumbrance levied against the Development as a whole or any part thereof which constitutes a lien against the Cottage Common Elements, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they will jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens will be assessed against each such Owner and its Lot as provided in Section 5.4. No decision resulting in such liability or assessment may be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 16.6 of this Declaration.

(viii) **Enforcement.** Maintain actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of the Governing Documents, the orders and awards of arbitration, or resolutions of the Board, or to enforce, by injunction or otherwise, the provisions of the foregoing.

The Board has the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its Owners) resulting from any such enforcement action as compared with the anticipated financial costs.

The Board may suspend the voting rights of an Owner or suspend the privileges of an Owner to use the recreational facilities located on the Development, or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing; provided that the accused Owner or other person is given fair notice and the opportunity to be heard (in satisfaction of the minimum requirements of Section 16.6 of this Declaration) with respect to the alleged violation before a decision to impose discipline is made. The Board may delegate some or all of its enforcement rights to a disciplinary committee.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Association will have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Lot, including access thereto over and across the Cottage Common Elements, except when such loss or forfeiture is the result of (A) a judgment of a court, (B) a decision arising out of arbitration, (C) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments.



If legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action will include all costs of collection, court costs, and reasonable attorneys' fees incurred by the Association.

**(ix) Operating Requirements.** Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay by law, local requirement, or pursuant to the terms of this Declaration, or as is necessary for the operation of the Development, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Lots, the costs thereof will, as is reasonable, be assessed to such Lots and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

**Section 4.5. Limitations on Powers of the Association.** Neither the Board nor the Association will have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Members:

**(a)** Entering into a contract with a third person to furnish goods or services for the Cottage Common Elements, the Lots or the Association for a term longer than one (1) year with the following exceptions:

**(i)** A management contract as long as such contract contains provisions that allow the Association to terminate the management services under the contract upon a notice period that does not exceed sixty (60) days.

**(ii)** A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission (and contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service provider); provided, however, that the term of the contract will not exceed the shortest term for which the supplier will contract at the regulated rate.

**(iii)** Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured.

**(iv)** Lease agreements for equipment not to exceed five (5) years' duration.

**(v)** Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years' duration.

For purposes of this subsection, the one (1) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time to the contract term so long as the contract contains provisions allowing the Association to non-renew and/or cancel the contract upon the expiration of the term.

(b) Selling, during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

The Board shall not convey, exchange, lease, mortgage, encumber, transfer upon trust or otherwise dispose of any of the real property of the Association without the affirmative vote or written consent of two-thirds (2/3's) of the Members. No proxy vote shall be counted upon such issue at either an annual or special meeting unless the meeting notice shall have stated specifically that such a transaction would be considered and shall set forth the details thereof.

(c) Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

(d) Filling a vacancy on the Board caused by the removal of a Director by the Members.

**Section 4.6. Nonliability of Officials.** To the fullest extent permitted by law, neither a Director, officer, Committee of the Association, member of a Committee of the Association, the Board, nor any person formerly serving in any such capacities (collectively and individually referred to as the "Released Party"), may be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and within which such person or entity reasonably believed to be with a view to the interests of the corporation when serving in such capacities.

No Released Party will be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability will extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Cottage Common Elements and Cottage Common Facilities and enforcement of the Governing Documents.

The indemnification rights (including the right to advancement of expenses) of Directors, Officers, employees and/or agents will be governed by Nevada law.

As set forth in Article 9, the Association has the right to purchase and maintain insurance on behalf of its Directors, officers, employees and/or agents against liability asserted against or incurred by any Director, officer, employee and/or agent in its capacity or status as such.

The provisions of this section are intended to reflect the protections accorded to volunteer directors and officers of common interest communities under Nevada law. In the event that Nevada law is amended, this section will be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

**ARTICLE 5: ASSESSMENTS.**

**Section 5.1. Assessments Generally.**

**(a) Covenant to Pay Assessments.** Each Owner of one (1) or more Cottage Lots or Townhome Lots, by acceptance of a deed or other conveyance therefor (whether or not it will be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Cottage Regular Assessments, (ii) Cottage Special Assessments, and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance will be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board may deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the Liens hereinafter provided for. Each such Assessment will be established and collected as hereinafter provided. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Cottage Common Elements or by abandonment.

Each Owner of one (1) or more Townhome Lots, by acceptance of a deed or other conveyance therefor (whether or not it will be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Townhome Regular Assessments, and (ii) Townhome Special Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance will be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board may deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the Liens hereinafter provided for. Each such Assessment will be established and collected as hereinafter provided. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Cottage Common Elements or by abandonment.

**(b) Extent of Owner's Personal Obligation for Assessments.** The obligation to pay Assessments and charges and the right and power of the Association to initiate all actions and procedures for collection will run with the land, so that each successive Owner or Owners of record of any Lot will, in turn, become liable to pay all Assessments and charges assessed during the time they are record Owner of such Lot. All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, will be a separate, distinct and personal debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied.

Any Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) will be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and will not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability.

After a record Owner transfers, of record, any Lot they own, they will not be liable for any Assessments levied after the transfer with respect to that Lot. Any unpaid Assessment of a previous Owner will remain the debt of such previous Owner against whom assessed and the previous Owner will remain personally liable. A contract seller of any Lot will continue to be liable for all Assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Douglas County.

**(c) Authority of Board.** The Board will have the power, duty and authority to levy Regular and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. The Board may not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. In the event, however, that an Assessment exceeds the amount necessary to defray the costs for which it is levied, the Board may reasonably allocate the Assessment toward other costs. The Board will also have the power and authority to levy Special Individual Assessments against Owners.

**(d) Creation of Assessment Lien.** Since May 26, 1978, when the Declaration of Covenants, Conditions and Restrictions for Glenbrook Cottage Owners Association was filed in the Official Records of the County of Douglas, State of Nevada, all Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, have been, and continue to be, charges on the Lots and the Declaration of Covenants, Conditions and Restrictions for Glenbrook Cottage Owners Association, including all amendments, such as the Declaration, has been, and continues to be, a continuing lien (the "Lien") upon the Lot against which such Assessment is made. The Lien is subject to foreclosure as provided in Section 5.9(b) hereof. The Lien will continue to secure all Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, made on any Lot notwithstanding the transfer of record title to such Lot, and any such transfer will be subject to the Lien.

**(e) No Avoidance of Assessment Obligations.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by them from the Lien and charges hereof, by waiver of the use and enjoyment of the Cottage Common Elements or any facilities thereon or by abandonment or non-use of their Lot or any other portion of the Development.

**(f) Offsets.** All Assessments levied by the Association will be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment will be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents.

**Section 5.2.1. Regular Assessments Applicable to Cottage Lots and Townhome Lots ("Cottage Regular Assessments").**

**(a) Purpose of Cottage Regular Assessments.** All Cottage Regular Assessments levied by the Association will be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Development and, in particular, for the maintenance, operation and improvement of the Lots, Cottage Common Elements, and any real or personal property in which the Association holds an

interest. The purposes of the Cottage Regular Assessments exclude the obligations of the Association with respect to exterior maintenance of the Residences located on Townhome Lots and with respect to insurance for Townhome Lots.

**(b) Annual Budget.** In accord with the timing provisions of NRS 116.31151 (or comparable superseding statute), if any, the Board must estimate the total amount required to fund the Association's anticipated Cottage Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Cottage Common Facilities), prepare, and then distribute to all Members a proposed budget satisfying the requirements of Section 11.2 of the Bylaws.

**(c) Membership Approval Requirements.** Within thirty (30) days after adoption of the proposed budget, the Board must provide a summary of the budget to all Owners, and must set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all 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 Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

Except as provided in subsection (d) below, the Board may not impose a total aggregate Cottage Regular Assessment that is more than twenty percent (20%) greater than the total aggregate Cottage Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members casting a majority of a quorum of the votes at a duly called meeting or election of the Association pursuant to Section 5.7 hereof. For purposes of this subsection, the phrase "total aggregate Cottage Regular Assessment" means the amount of Cottage Regular Assessment assessed to and due from all Lots for that particular year.

**(d) Assessments to Address Emergency Situations.** The requirement of a membership vote to approve Cottage Regular Assessment increases in excess of twenty percent (20%) of the previous year's Cottage Regular Assessment will not apply to Assessment increases necessary to address emergency situations. For purposes of this subsection (d), an emergency situation is any of the following:

- (i)** An extraordinary expense required by an order of a court.
- (ii)** An extraordinary expense necessary to repair or maintain the Cottage Common Elements or any portion of the separate interests (other than exteriors of Townhome Lots) which the Association is obligated to maintain where a threat to personal safety is discovered.
- (iii)** An extraordinary expense necessary to repair or maintain the Cottage Common Elements or any portion of the separate interests (other than exteriors of Townhome Lots) which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subsection (a), above, provided that, prior to the imposition or collection of an assessment under this subsection (d)(iii), the Board will pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the

expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution will be distributed to the Members together with the notice of assessment.

**(e) Allocation of Cottage Regular Assessment.** The total estimated Cottage Common Expenses, determined in accordance with subsections 5.2.1(a) and (b), above, will be divided and then allocated equally among, assessed against, and charged to each Owner/Lot.

**(f) Failure to Make Estimate.** If, for any reason, the Board fails to make an estimate of the Cottage Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year will be automatically assessed against each Owner and their Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment will be payable on the regular payment dates established by the Association.

The failure of the Board to fix Cottage Regular Assessments hereunder before the expiration of any year, for that or the next year, is not a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner will not affect the validity of Assessments based thereon so long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

**(g) Cottage Regular Assessment Due Date, Installment Payments & Delinquency.** The Cottage Regular Assessments levied against each Owner and their Lot for the current fiscal year may be divided into four (4) equal quarterly installments so long as the respective Owner is not in default (*i.e.*, current on all assessments). Each monthly installment is due and payable on the first day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Board.

Installments of Cottage Regular Assessments will be delinquent if not actually received by the Association or its designated agent by the thirtieth (30th) day of the month in which the Assessment is due (or the next business day thereafter). In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Section 5.9, below, as to the delinquency.

**Section 5.2.2. Regular Assessments Applicable to Townhome Lots ("Townhome Regular Assessments").**

**(a) Purpose of Townhome Regular Assessments.** All Townhome Regular Assessments levied by the Association will be used exclusively for the purpose of maintaining the exteriors of Townhome Lots as set forth in Article 6 and for maintaining insurance for Townhome Lots as set forth in Article 9.

**(b) Annual Budget for Townhome Regular Assessments.** In accord with the timing provisions of NRS 116.31151 (or comparable superseding statute), if any, the Board must estimate the total amount required to fund the Association's anticipated expense items set forth in Section 5.2.2(a) for the next succeeding fiscal year, prepare, and then distribute to all Members who own Townhome Lots a proposed budget satisfying the requirements of Section 11.2 of the Bylaws.

**(c) Membership Approval Requirements for Townhome Regular Assessments.** Within thirty (30) days after adoption of the proposed budget, the Board must provide a summary of the budget for the expense items set forth in Section 5.2.2 to all Owners of Townhome Lots, and must set a date for a meeting of the Owners of Townhome Lots to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Owners who own Townhome Lots 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 Owners who own Townhome Lots must be continued until such time as the Owners who own Townhome Lots ratify a subsequent budget proposed by the Board.

Except as provided in subsection (d) below, the Board may not impose a total aggregate Townhome Regular Assessment that is more than twenty-five percent (25%) greater than the total aggregate Townhome Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of a majority of a quorum of Members who own Townhome Lots casting a majority of the votes at a duly called meeting or election of the Association pursuant to Section 5.7 hereof. For purposes of this subsection, the phrase "total aggregate Townhome Regular Assessment" means the amount of Townhome Regular Assessment assessed to and due from all Townhome Lots for that particular year.

**(d) Assessments to Address Emergency Situations.** The requirement of a membership vote to approve Townhome Regular Assessment increases in excess of twenty-five percent (25%) of the previous year's Townhome Regular Assessment will not apply to Assessment increases necessary to address emergency situations. For purposes of this subsection (d), an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair, maintain, or insure the Townhome Lots, where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair, maintain, or insure the Townhome Lots that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subsection (a), above, provided that, prior to the imposition or collection of an assessment under this subsection (d)(iii), the Board will pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution will be distributed to the Members who own Townhome Lots together with the notice of assessment.

**(e) Allocation of Townhome Regular Assessment.** The total estimated expenses for the expense items set forth in Section 5.2.2, determined in accordance with subsections 5.2.2 (a) and (b), above, will be divided and then allocated equally among, assessed against, and charged to each Townhome Owner/Lot.

**(f) Failure to Make Estimate.** If, for any reason, the Board fails to make an estimate of the of the expenses for the expense items set forth in Section 5.2.2.(a) for any fiscal year, then the Townhome Regular Assessment made for the preceding fiscal year will be automatically assessed against



each Townhome Owner and their Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment will be payable on the regular payment dates established by the Association.

The failure of the Board to fix Townhome Regular Assessments hereunder before the expiration of any year, for that or the next year, is not a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner will not affect the validity of Assessments based thereon so long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

**(g) Assessment Due Date, Installment Payments & Delinquency.** The Townhome Regular Assessments levied against each Owner and their Lot for the current fiscal year may be divided into twelve (12) equal monthly installments so long as the respective Owner is not in default (*i.e.*, current on all assessments). Each monthly installment is due and payable on the first day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Association.

Installments of Townhome Regular Assessments will be delinquent if not actually received by the Association or its designated agent by the tenth (10th) day of the month in which the Assessment is due (or the next business day thereafter). In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Section 5.9, below, as to the delinquency.

**Section 5.3.1. Special Assessments Applicable to Cottage Lots and Townhome Lots ("Cottage Special Assessments").**

**(a) Purposes for which Cottage Special Assessments may be Levied.** Subject to the membership approval requirements set forth in subsection 5.3.1(b), below, the Board may have the authority to levy Cottage Special Assessments against the Owners and their Lots for the following purposes:

**(i) Cottage Regular Assessment Insufficient in Amount.** If, at any time, the Cottage Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 5.3.1(c), the Board will levy and collect a Cottage Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this Section 5.3.1(a)(i) will be subject to membership approval requirements under the circumstances described in Section 5.2.1(b).

**(ii) Capital Improvements.** Pursuant to Section 6.5, the Board may also levy Cottage Special Assessments for additional capital improvements within the Cottage Common Elements (*i.e.*, improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Cottage Common Facilities). The Cottage Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for





normal maintenance, replacement, and repair of the Cottage Common Elements or existing Cottage Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Cottage Common Elements and existing Cottage Common Facilities in accordance with Article 9 hereof.

**(b) Membership Approval.** In order for the Board to levy Cottage Special Assessments described in Section 5.3.1(a)(i) hereof, the Board must adopt a proposed budget, and within thirty (30) days after adoption of the proposed budget, the Board must provide 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 thirty (30) days after mailing of the summary. Unless at that meeting a majority of all 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 Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

No Cottage Special Assessments described in Section 5.3.1(a)(i) hereof, which in the aggregate when added to the total Cottage Regular Assessment causes the total Cottage Regular Assessment for said calendar year to be more than twenty-five percent (25%) higher than the Cottage Regular Assessment for the prior year for the fiscal year in which the Cottage Special Assessment(s) is levied may be made without the vote or written approval of a majority of a quorum of the Owners pursuant to Section 5.7 hereof. This Owner approval requirement will not apply to any Cottage Special Assessment levied to address "emergency situations" as defined in Section 5.2.1(d).

**(c) Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Cottage Special Assessment will be divided among, assessed against and charged to each Owner and their Lot in the same manner prescribed for the allocation of Cottage Regular Assessments pursuant to Section 5.2.1(e), above. Notice of the Cottage Special Assessment so levied must be mailed to each Owner.

Unless the time for payment is extended by the Board, payment of all Cottage Special Assessments will be due no sooner than fifteen (15) days after the Association gives the Owners written notice thereof.

The Board may, in its discretion, prorate the amount of any Cottage Special Assessment over a period of months. If prorated, the monthly prorated amount of any Cottage Special Assessment will be due and payable at the same time as the Cottage Regular Assessment monthly installments.

Installments of Cottage Special Assessments will be delinquent if not actually received by the Association or its designated agent by the thirtieth (30th) day after the date that a Cottage Special Assessment is due. In the event of a default in the payment of any Cottage Special Assessment, the Association may pursue the remedies set forth in Section 5.9, below, as to the delinquency.

**Section 5.3.2. Special Assessments Applicable to Townhome Lots ("Townhome Special Assessments").**

**(a) Purposes for which Townhome Special Assessments may be Levied.** Subject to the membership approval requirements set forth in subsection (b), below, the Board may have the authority

to levy Townhome Special Assessments against the Owners and their Lots if, at any time, the Townhome Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 5.3.2(b), the Board will levy and collect a Townhome Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this Section 5.3.2(a) will be subject to membership approval requirements under the circumstances described in Section 5.2.2(b).

**(b) Membership Approval.** In order for the Board to levy Townhome Special Assessments described in Section 5.3.2(a) hereof, the Board must adopt a proposed budget, and within thirty (30) days after adoption of the proposed budget, the Board must provide 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 thirty (30) days after mailing of the summary. Unless at that meeting a majority of all 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 Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

No Townhome Special Assessments described in Section 5.3.2(a) hereof, which in the aggregate when added to the total Townhome Regular Assessment causes the total Townhome Regular Assessment for said calendar year to be more than twenty-five percent (25%) higher than the Townhome Regular Assessment for the prior year for the fiscal year in which the Townhome Special Assessment(s) is levied may be made without the vote or written approval of a majority of a quorum of the Owners pursuant to Section 5.7 hereof. This Owner approval requirement will not apply to any Townhome Special Assessment levied to address "emergency situations" as defined in Section 5.2(d).

**(c) Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Townhome Special Assessment will be divided among, assessed against and charged to each Owner and their Lot in the same manner prescribed for the allocation of Townhome Regular Assessments pursuant to Section 5.2.1(e), above. Notice of the Townhome Special Assessment so levied must be mailed to each Owner.

Unless the time for payment is extended by the Board, payment of all Townhome Special Assessments will be due no sooner than fifteen (15) days after the Association gives the Owners written notice thereof.

The Board may, in its discretion, prorate the amount of any Townhome Special Assessment over a period of months. If prorated, the monthly prorated amount of any Townhome Special Assessment will be due and payable at the same time as the Townhome Regular Assessment monthly installments.

Installments of Townhome Special Assessments will be delinquent if not actually received by the Association or its designated agent by the tenth (10th) day of the month in which the Townhome Special Assessment is due. In the event of a default in the payment of any Townhome Special Assessment, the Association may pursue the remedies set forth in Section 5.9, below, as to the delinquency.

#### **Section 5.4. Special Individual Assessments.**

**(a) Circumstances Giving Rise to Special Individual Assessments.** The Board may impose Special Individual Assessments against an Owner in any of the circumstances described in subsections (i) through (v), below or as otherwise provided in the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 16.6 hereof. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

**(i) Damage to Cottage Common Elements or Cottage Common Facilities.** If any damage to, or destruction of, any portion of the Cottage Common Elements or the Cottage Common Facilities, including any portion of a Lot which the Association is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, the Board may cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) may be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(ii) Expenses Incurred in Gaining Member Compliance.** If the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or their Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) may be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(iii) Required Maintenance on Lots.** As more particularly provided in Section 4.3(b) and 6.3(b) (and without limiting the generality of those sections), if the Board, in its discretion, determines that any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash or improper vegetation control, the Association will have the right to enter the Lot, correct the offensive or hazardous condition, and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(iv) Diminution in Insurance Proceeds.** As more particularly provided in Section 9.5, the Association may levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who, in violation of Sections 3.3(b) and 9.5, caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

**(v) Increase in Insurance Burden.** The Association may levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who, in violation of Sections 3.3(b) and/or 6.3, caused any increase in the rate of insurance paid by the Association to reimburse the Association for any such increase in the rate of insurance.



**(b) Levy of Special Individual Assessment and Payment.** Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in Section 5.4(a), notice thereof will be mailed to the affected Owner and the Special Individual Assessment will thereafter be due as a separate debt of the Owner payable in full to the Association within fifteen (15) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments will be delinquent if not received by the Association or its designated agent within fifteen (15) days from the due date. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to the delinquency.

**Section 5.5. Reasonableness of Assessments.** Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation of the Owner of the Lot against which the Assessment is imposed that will be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments will not pass to the Owner's successors in title unless expressly assumed by them.

**Section 5.6. Exemption of Certain Parts of the Development From Assessments.** The following real property subject to this Declaration will, unless used as a Residence, be exempt from the Assessments: (a) Any portion of the Development dedicated and accepted by a local public authority; (b) The Cottage Common Elements and Cottage Common Facilities; and (c) Any Lot owned by the Association.

**Section 5.7. Notice and Procedure for Member Approval.** If Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 5.2.1, 5.2.2, 5.3.1, or 5.3.2, approval of the requisite percentage of the Members must be solicited either by written ballot conducted in accordance with Section 4.6 of the Bylaws, by solicitation of written consents, or at a meeting of the Members called for that purpose, duly noticed in accordance with Section 5.4 of the Bylaws. The quorum required for such membership action will be the percentage required by Section 5.5(a)(ii) of the Bylaws.

**Section 5.8. Maintenance of Assessment Funds.**

**(a) Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, must be promptly deposited in insured checking, savings or money market accounts in a bank, savings and loan association or other financial institution selected by the Board which has offices located within the United States of America, which accounts will be clearly designated as either an "operating" or "reserve" account.

The Association must establish and maintain cash deposit accounts into which will be deposited all Assessments. Disbursements from such account will be for the general operation of the Association including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The Association will maintain other accounts necessary to carry out its purposes, including (at minimum) a reserve account for replacement of capital improvements as set forth

in this Article 5. In addition, the Board will be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board may designate, will have exclusive control of the accounts and investments and will be responsible to the Owners for the maintenance at all times of accurate records thereof. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits will be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subsection (b), below.

**(b) Separate Accounts & Commingling of Funds.** Except as provided below, the proceeds of each Assessment will be used only for the purpose for which such Assessment was made, and such funds will be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Cottage Special Assessment or Townhome Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Cottage Regular Assessment and Townhome Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association must maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Cottage Special Assessments and Townhome Regular Assessments made pursuant to Section 5.3 will be accounted for together with the receipts and disbursements of Cottage Regular Assessments and Townhome Regular Assessments.

Unless the Association is exempt from federal taxes, all sums allocated to capital replacement funds will be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

**(c) Checks.** All checks (or other demands for payments of Association money) and/or notes of the Association must be signed by the President or by such other Directors and/or officers or such other person or persons as the Board may from time to time designate. Notwithstanding the foregoing, any withdrawal of funds from Association reserve accounts will require the signatures of two (2) Directors or an Officer (who is not a Director) and a Director.

**Section 5.9. Collection of Assessments; Enforcement of the Lien.**

**(a) Delinquent Assessments.** If any payment of a Cottage Regular Assessment, Townhome Regular Assessment, Cottage Special Assessment, Townhome Special Assessment, or Special Individual Assessment assessed to any Owner is not received by the Association or its designated agent within thirty (30) days after the same becomes due, such payment will be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning thirty (30) days after the due date until the same is paid, and be subject to a late charge not in excess of twenty-five percent (25%) for any delinquent Assessments.

**(b) Effect of Nonpayment of Assessments.**

**(i) Remedies Available to the Association to Collect Assessments.** In the event of default in payment of any Assessment, the Association may commence any procedure for collection. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation by doing both or either of the following: initiating a legal action against the Owner personally obligated to pay the delinquent Assessment and/or foreclosing the Lien against the subject Lot (or accepting a deed in lieu of foreclosure). The Association may perform judicial or nonjudicial foreclosure.

**(ii) Nonjudicial Foreclosure.** Each of the Owners does, by acceptance of a deed to a Lot, give the Association the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose the Lien by private power of sale and further grants to the Association the authority and power to sell the subject Lot of such defaulting Owner, or any part thereof to satisfy the Lien, for lawful money of the United States to the highest bidder. The Association may assign its right and obligation as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and the Association will be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association may employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder. So long as the law so provides, the Association may not foreclose a Lien based on a fine for violation of the Governing Documents unless the violation threatens the health, safety, or welfare of the Residents of the Development.

**(iii) Judicial Foreclosure.** In the event that foreclosure is by action in court, reasonable costs, including attorneys' fees, will be allowed.

**(iv) Actions for Money Judgment.** In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of Assessments.

**Section 5.10. Transfer of Lot by Sale or Foreclosure.** The following will govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

(a) Except as provided in subsection (b), below, the sale or transfer of any Lot will not affect the requirement and obligation with respect to the Lot of the payment of Assessments before the sale or transfer, and the Association can continue to foreclose the Lien in spite of the change in ownership.

(b) However, except as provided by Section 5.11, a holder of a prior encumbrance is not responsible to pay Assessments, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means the earlier of either of the following two (2) recordation dates: (1) the date of recordation of a First Mortgage, or other mortgage or lien; or (2) the date of recordation of the Original Declaration.

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, will relieve the new Owner of that Lot (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due.

(d) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, will affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

**Section 5.11. Priorities.** Assessments are prior to all other liens and encumbrances on a Lot except: (a) liens and encumbrances recorded before the recordation of the Declaration and liens and encumbrances which the Association creates, assumes or takes subject to; (b) A first security interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent, except that Assessments are prior to all such first security interests to the extent of the amount of Regular Assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the Lien; and (c) liens for real estate taxes and other governmental assessments or charges against the Lot. This section does not affect the priority of mechanics' or material men's liens, or the priority of other Assessments made by the Association.

**Section 5.12. Estoppel Certificate.** A certificate executed by the Association setting forth the amount of any due and unpaid assessments with respect to a Lot (or the fact that all Assessments due are paid, if such is the case) will be conclusive against the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner will be entitled to such a certificate within ten (10) days after demand therefore and upon payment of a reasonable fee.

**Section 5.13. Unallocated Taxes.** In the event that any taxes are assessed against the Cottage Common Elements, or the personal property of the Association, rather than being assessed to the Lots, such taxes may be included in the Cottage Regular Assessments and, if necessary, a Cottage Special

Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

**Section 5.14. Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable. Upon Owner's default, the Association after providing written notice to the defaulting Owner may, in its discretion, revoke the authority allowing the defaulting Owner to collect and retain rents and other monies.

Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 5.14 will be subordinate to the rights of any First Mortgagee.

**Section 5.15. Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of the Lien, the benefit of any homestead or exemption law of Nevada in effect at the time any Assessment or installment thereof becomes delinquent.

#### **ARTICLE 6: MAINTENANCE RESPONSIBILITIES.**

The Development must be maintained in an attractive, safe, and sanitary condition as follows.

##### **Section 6.1. Association Maintenance Responsibility.**

**(a) Cottage Common Elements.** Except as is provided in this Section 6.1 and Section 6.2(a), the Association is solely responsible for all maintenance, repair, and replacement within the Cottage Common Elements, including all Improvements, facilities, buildings, streets, parking areas, driveways, landscaping, fences, gates, walkways, paths, pathway lights, sidewalks, signs, maintenance facilities, irrigation facilities, utility facilities (excluding those utility facilities maintained by utility companies or agencies), and snow removal from driveways, parking areas, and pathways servicing Townhome Lots.

No one may use any material for the removal of snow or ice from streets which may cause damage to any landscaping on Cottage Common Elements or on Lots.

Only the Association may construct, reconstruct, refinish, alter or maintain any Improvement upon, or create any excavation or fill or change the natural or existing drainage of any portion of the Cottage Common Elements. No person may remove or install any landscaping upon the Cottage Common Elements, without the Association's express written approval.

The Association is responsible to perform the following maintenance, repair, and replacement of garages (Limited Cottage Common Elements) appurtenant to Townhome Lots: painting and caulking of



exterior siding and trim; and roof coverings, including felt, vents, vent caps, and flashing, but excluding sheathing and all other roof structures, such as skylights, antennas, satellite dishes, and solar devices.

**(b) Cottage Lots.** The Association is responsible to maintain and repair, only the following components of the Cottage Lots: the landscaping in the unenclosed areas of the Cottage Lots (which includes the payment of related utility services). The Association is not responsible to remove, install, or replace any landscaping (including trees), including upon damage or destruction of such landscaping (including trees) (see Article 10 of this Declaration).

The Association is responsible to perform inspections of the maintenance performed by the Owners of Cottage Lots as follows:

The Board (or a committee) shall at least once per year inspect the Cottage Lots to, in its sole discretion, determine whether any maintenance, repairs, and/or replacement should be performed by Owners of Cottage Lots in order to maintain a uniform, and high standard of, appearance of the Lots. Such determination includes, but is not limited to the color, texture, and type of interior window coverings. If any paint is necessary, then the Board (or a committee) shall, in its sole discretion (subject to any review by the Design Review Committee within the Community Association, if required by the Community Declaration), determine the quality and type of paint. If the Community Declaration so requires, then the paint color must be the same as the original paint color, unless approval of a different color is obtained from the Design Review Committee within the Community Association, if required by the Community Declaration. The inspection shall include inspecting the landscaping.

The Board (or a committee) shall send to each Owner of a Cottage Lot a list of items that the Owner is required to maintain, repair, and/or replace. If an Owner disagrees that it must maintain, repair, and/or replace any items on the list, then the Owner may, within fifteen (15) days of receipt of the list, send a written request to Association for a hearing with the Board. If an Owner fails to request such a hearing within fifteen (15) days, then that Owner is deemed to agree that it must maintain, repair, and/or replace the items on the list.

Owners must perform the maintenance, repairs, and/or replacement set forth on the list within forty-five (45) days from the date that the Association sent the list or within forty-five (45) days of a hearing, whichever is later. Owners may request, and the Board may grant, reasonable extensions to the forty-five (45) days.

Upon completion of an Owner's maintenance, repairs, and/or replacement of the items on the list, the Owner must send written notification to the Association.

If an Owner fails to timely maintain, repair, and/or replace any items on the list, then after a hearing pursuant to Article 16 of this Declaration, the Association may perform such maintenance, repairs, and/or replacement and impose a Special Individual Assessment against the Owner and their Lot for any costs that the Association incurs. Also, pursuant to Sections 4.3(b) and 5.4(a)(iii), above, the Association may, when necessary, enter any Cottage Lot to perform the Association's obligations under this Declaration, including making necessary repairs that an Owner has failed to perform and/or perform work because a Lot or any part thereof has become a nuisance, fire or safety hazard and then recover the



cost of such action through imposition of a Special Individual Assessment against the offending Owner and their Lot.

**(c) Townhome Lots.** The Association is responsible to maintain, repair, and replace only the following components of Townhome Lots:

**(i)** Roof coverings of Residences, including felt, vents, vent caps, flashing, but excluding sheathing, and all other roof structures, such as skylights, antennas, satellite dishes, and solar devices;

**(ii)** Painting and caulking of the exterior siding and trim of Residences; and

**(iii)** Driveways and walkways, except that Owners are responsible to keep the driveways and walkways clean and chemical-free.

Pursuant to Sections 4.3(b) and 5.4(a)(iii), above, the Association may, when necessary, enter any Lot to perform the Association's obligations under this Declaration, including making necessary repairs that an Owner has failed to perform under Section 6.2, below, and/or perform work because a Lot or any part thereof has become a nuisance, fire or safety hazard and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner and their Lot.

The Association is responsible to perform inspections of the maintenance performed by the Owners of Townhomes as follows:

The Board (or a committee) shall periodically (such periods to be determined at the sole discretion of the Board (or committee)) inspect the Townhomes to, in its sole discretion, determine whether any maintenance, repairs, and/or replacement should be performed by Owners of Townhomes in order to maintain a uniform, and high standard of, appearance of the Townhomes. Such determination includes, but is not limited to the color, texture, and type of interior window coverings.

As more specifically described in Section 8.5 herein, the Board shall determine and recommend to the Community Association Board the materials and construction methods to be utilized pursuant to Association responsibilities related to Townhome Lots as specified in Section 6.1(c)(i), (ii) and (iii) herein. Such recommendations may include the recommendation to mandate the use of certain materials or methods.

The Board (or a committee) shall send to each Owner of a Townhome a list of items that the Owner is required to maintain, repair, and/or replace. If an Owner disagrees that it must maintain, repair, and/or replace any items on the list, then the Owner may, within fifteen (15) days of receipt of the list, send a written request to Association for a hearing with the Board. If an Owner fails to request such a hearing within fifteen (15) days, then that Owner is deemed to agree it must maintain, repair, and/or replace the items on the list.

Owners must perform the maintenance, repairs, and/or replacement set forth on the list within forty-five (45) days from the date that the Association sent the list or within forty-five (45) days of a

hearing, whichever is later. Owners may request, and the Board may grant, reasonable extensions to the forty-five (45) days.

Upon completion of an Owner's maintenance, repairs, and/or replacement of the items on the list, the Owner must send written notification to the Association.

If an Owner fails to timely maintain, repair, and/or replace any items on the list, then after a hearing pursuant to Article 16 of this Declaration, the Association may perform such maintenance, repairs, and/or replacement and impose a Special Individual Assessment against the Owner and their Lot for any costs that the Association incurs. Also, pursuant to Sections 4.3(b) and 5.4(a)(iii), above, the Association may, when necessary, enter any Townhome to perform the Association's obligations under this Declaration, including making necessary repairs that an Owner has failed to perform and/or perform work because a Townhome or any part thereof has become a nuisance, fire or safety hazard and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner and their Lot.

**(d) Community Association Responsibilities.** The Community Association, rather than the Association, is responsible for the following maintenance, repairs, and replacement, among other such maintenance, repairs, and replacement:

(i) Maintain any road Improvement, common driveway easements, landscaping, surface, street lights, access roads to all Lots, pathways on Property Common Areas, and any area used as a road, street, walk, or parking area;

(ii) Keep the roadways, including Property Common Areas, parkways, and pathways reasonably free from snow and ice, to the extent weather and other conditions permit;

(iii) Maintain beach areas, piers, and buoys;

(iv) Maintain Recreational Common Areas and General Forest Areas, owned or controlled by the Community Association.

(v) Remove injured or diseased trees or other vegetation, and plant trees, shrubs, and ground cover within the Property Common Elements; and

(vi) Place and maintain any signs on the Cottage Common Elements as the Board deems appropriate for the proper identification, use, and regulation thereof.

(vii) Periodically review the condition of the forests located upon the Property Common Elements, and may engage a qualified professional forester to conduct such reviews. The Association shall use its best efforts, within reasonable financial limits, to implement and adhere to best management practices with regard to maintenance of its forest areas, as such practices are defined by the Tahoe Regional Planning Agency.

## **Section 6.2. Owner Maintenance Responsibilities.**

**(a) Cottage Common Elements.** Each Owner is solely responsible and liable for the costs incurred in order to repair or replace any portion of the Cottage Common Elements that is due to or caused by the willful or negligent act/omission of an Owner, unless such repair or replacement is covered by insurance carried by the Association. If the repair or replacement is covered by insurance carried by the Association, then the Association is only responsible to the extent of such insurance coverage, and the Owner whose willful or negligent act/omission caused the repair or replacement is responsible to pay the insurance deductible and the amount in excess of insurance coverage.

Each Owner of a Townhome Lot is responsible to maintain, repair, and replace the garage (Limited Common Element) appurtenant to their Lot, except the roof and painting as set forth in Section 6.1(a). Each Owner of a Townhome Lot is responsible to pay all utility charges related to garages.

**(b) Cottage Lots.** Each Owner is responsible to maintain, repair, and replace all components of the Owner's Lot, including, but not limited to, roofs, roof sheathing, siding, trim, driveways, walkways, and parking areas, except for those components that the Association is responsible to maintain, repair, and replace pursuant to Section 6.1 and utility facilities maintained by utility companies or agencies.

**(c) Townhome Lots.** Each Owner is responsible to maintain, repair, and replace all components of the Owner's Lot, including, but not limited to, siding, and trim, except for those components that the Association is responsible to maintain, repair, and replace pursuant to Section 6.1 and utility facilities maintained by utility companies or agencies.

**(d) Components and Personal Property on Lots which are Damaged or Destroyed.** Owners are responsible to maintain, repair, and replace components (other than those components which the Association is responsible to maintain, repair, and replace pursuant to Section 6.1, above) and personal property on Lots which become damaged or destroyed, regardless of whether the damage and destruction is due to water infiltration from any roofs, siding, trim, and/or from outside of a Residence, garage, or Lot, freezing pipes, furnace malfunction, the presence of wood-destroying pests or organisms, including but not limited to dryrot and termites, and/or any other place or cause, unless caused by the gross negligence of the Association and except for such damage or destruction which is covered by the Association's insurance. In the event such damage or destruction to an Owner's Lot is covered by the Association's insurance, then pursuant to Article 9 of this Declaration, the Owner is responsible to pay any deductible amount or amount in excess of the insurance.

## **Section 6.3. Recovery of Costs of Certain Repairs and Maintenance.**

**(a)** In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs will be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.4 and the procedural requirements of Section 16.6.

(b) In the event that an Owner fails to perform any maintenance, repairs, or replacement for which the Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within forty-five (45) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Sections 4.3(b) and 5.4(a)(iii) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 16.6, hereof.

**Section 6.4. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association will cooperate in the performance of maintenance work.

**Section 6.5. Capital Improvements.**

(a) **Petition; Association Approval; Owner Approval.** One-third (1/3) of the Owners may from time to time, in writing, petition the Association for the construction, installation or acquisition of capital improvements on or to the Cottage Common Elements. Such petition will be in such form and will contain such information as the Association may require, including, without limitation, preliminary plans and cost estimates. The Association, through the Board, may from time to time and on its own motion move for the construction, installation or acquisition of a capital improvement.

(b) **Approval of Petition.** The Association may approve the petition if it determines that the proposed capital improvement is desirable for the beneficial use and enjoyment of the Cottage Common Elements and/or the Lots, is economically feasible, is in conformance with applicable zoning, and has received all governmental required approvals.

(c) **Bids.** Upon the approval of such petition by the Association, the Association will obtain firm bids on the total cost of constructing, installing, or acquiring the proposed capital improvement, and the lowest acceptable bid or bids will be deemed the estimated total cost of such capital improvement.

(d) **Approval by Owners.** If during the fiscal year aggregate expenditures for capital improvements exceed twenty-five thousand dollars (\$25,000.00), the Association will present the proposed capital improvements and the estimated total cost thereof to all Owners for approval and obtain the Owners approval. (See Sections 4.7 and 5.5(a)(ii) of the Bylaws for quorum and vote requirements). Upon approval by the Owners, a Special Assessment for Capital Improvement will be levied as provided in Section 5.3.

(e) **Construction.** After the levy of the Capital Improvement Assessment, and at such time and upon such terms and conditions as the Association may deem appropriate, but not at a cost exceeding the estimated total cost of such capital improvement as determined above, the Association will construct, install, or acquire, or contract for the construction, installation or acquisition of the proposed capital improvement.

(f) **Expenses for Development Not Approved.** If for any reason the construction or acquisition of the proposed capital improvement is not approved by the Association, or the Owners, if

required, all expenses incurred by the Association with respect to the proposed capital improvement will be paid proportionately by the petitioning Owners. The Association may levy a Special Individual Assessment pursuant to Section 5.4 against said Owners for the purpose of paying such expenses. If the proposed project was initiated by the Board, such expenses will be paid by the Association.

**ARTICLE 7: EASEMENTS & RESERVATIONS.**

**Section 7.1. Encroachment Easements.** If any portion of the Cottage Common Elements encroaches on any Lot or if any portion of a Lot encroaches on the Cottage Common Elements, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Cottage Common Elements are made subject to such easements. If the dimensions or location of a Lot or other Improvement differs from that shown and depicted on the Map, the actual dimensions and location will prevail over that shown and depicted on the Map for any and all purposes.

If any structure containing a Lot is partially or totally destroyed and then rebuilt and any encroachment on the Cottage Common Elements results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Cottage Common Elements are made subject to such easements.

In no event will a valid easement for encroachment be created in favor of an Owner, if the encroachment occurred due to the willful conduct of the Owner. However, the Board may grant reasonable variances to allow insignificant encroachments.

**Section 7.2. Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewer, storm water drains and pipes, sprinkling systems, heating and gas lines or pipes, gas, telephones, drainage, electricity, cable television systems, and similar public or quasi-public Improvements or facilities.

By virtue of this easement, it will be expressly permissible for a providing utility company and/or service provider to erect and maintain the necessary equipment and underground facilities on the Cottage Common Elements. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated except as initially designed and approved by the Declarant or thereafter approved by the Association, whereby the Association's approval may not be unreasonably withheld. The easements provided for in this Section 7.2 will in no way affect any other recorded easement on the Development.

**Section 7.3. Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Cottage Common Elements, and any Lot, to perform the duties of maintenance and repair of the Lots, Cottage Common Elements and/or Cottage Common Facilities provided that any entry by any Member, the Association or its agents into any Lot may only be undertaken in strict compliance with Section 4.3(b).

**Section 7.4. Townhome Lot Garage Easements.** The Association's ownership of the garages (Limited Cottage Common Elements) appurtenant to Townhome Lots is subject to exclusive use easements in favor of the respective Owners' of the Townhome Lots. Owners of Townhome Lots may only use garages as is typical for residential garages. The Owner of a Townhome Lot to which an exclusive use easement to an appurtenant garage relates shall be solely responsible for all costs and expenses, including taxes, related thereto, except as set forth in Article 6 (maintenance, repair, and replacement of components) and Article 9 (insurance). If any such costs and expenses, including taxes, related to a Lot are imposed against the Association, the Association shall impose a Special Individual Assessments against the Lot.

**Section 7.5. Other Easements.** Each Lot and its Owner, and the Association as to the Cottage Common Elements, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot and Cottage Common Elements as shown on the Map, including but not limited to driveways now or hereafter located upon the Cottage Common Elements for ingress, egress and utility purposes.

#### **ARTICLE 8: DESIGN REVIEW OF IMPROVEMENTS.**

**Section 8.1. Improvements Generally & Approval by Design Review Committee and Board.** No Improvement of any kind may be commenced, erected or maintained within the Development, nor may any addition to or alteration be made in or to the exterior of any Lot or Residence or which would affect the common utility services or installations until plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same have been submitted to and approved in writing as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography, finish grade elevations, and similar characteristics, by the Design Review Committee within the Community Association, if it exists and as required by the Community Declaration in compliance with Article 8 of the Community Declaration.

**Section 8.2. Architectural Review Duties of Board.** The Board's duty and authorization with respect to Improvements as set forth in Section 8.1 herein is limited as set forth in this Section 8.2.

It will be the duty of the Board to consider any deviation from, exception to, or amendment of the rules recommended or authorized by the Design Review Committee. Any deviation from, exception to, or amendment of the Design Review Committee Rules, which relates to the Cottage Lots, shall not be effective or binding unless or until such matters are also approved by a majority of the Board.

**Section 8.3. Non-Waiver.** Any approval by the Board of any plans, drawings or specifications for any work done or proposed or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

**Section 8.4. Meetings.** The Board shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Board will constitute the action of the Board. The Board will keep and maintain a written record of all actions taken.

**Section 8.5. The Board's Recommendations to the Community Association Board.** The Board shall determine and recommend to the Community Association Board the materials and/or construction methods to be utilized pursuant to Association responsibilities related to Townhome Lots as specified in Section 6.1(c)(i), (ii), and (iii) herein. Such recommendations may include the recommendation to mandate the use of certain materials and/or methods.

The Community Association Board has the right, as outlined in Section 8.12 of the Community Declaration, of final determination regarding the approval of Design Review Committee matters, including approval of the Board's determinations related to materials and construction methods pertaining to the Townhome Lots. Such approval for Townhome Lots materials and methods as recommended by the Board shall not be unreasonably withheld.

As Townhome Lot materials and methods recommendations are approved by the Community Association Board, such determinations shall be communicated promptly to the Design Review Committee in writing, including, where applicable, the mandated use of certain materials and/or construction methods.

Once such determinations related to the Townhome Lots are communicated in writing by the Community Association Board to the Design Review Committee, the Design Review Committee shall immediately adopt, apply and enforce such determinations in the execution of its duties as specified in the Community Declaration and include such determinations in the Design Review Committee Rules.

**Section 8.6. Liability.** Neither the Board nor any members thereof will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; and/or (c) the development of any property within the Development, whether or not the facts therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or them.

#### **ARTICLE 9: INSURANCE.**

**Section 9.1. Types of Insurance Coverage.** The Association must purchase, obtain, and maintain, with the premiums therefor being paid out of Association funds, the following types of insurance with the coverages described below:

**(a) Fire and Casualty Insurance.** The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on an all risk, replacement cost basis, on all real property and Improvements within the Cottage Common Elements, the Townhome Lots, and garages (Limited Cottage Common Elements) appurtenant to Townhome Lots.

The insurance must be kept in full force and effect and the full replacement value of the insured property must be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section must contain (1) an agreed amount



endorsement or its equivalent, (2) an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, (3) an extended coverage endorsement, (4) vandalism, malicious mischief coverage, (5) loss or damage by fire coverage, (6) other standard extended-coverage risks and all other perils customarily covered in projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, and (7) a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction, if available.

The policies will name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 9.6 below.

Notwithstanding anything contained in the Governing Documents to the contrary, and except as otherwise determined by the Board, Owners shall be responsible for obtaining their own personal liability insurance, insurance on the personal property contents of their Lot, insurance on fixtures and appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping; and the insurance for any additions to or alterations that the Owners may make which increases the value of the Development or Lot above the value of the Development or Lot as originally constructed. Except as provided in this section, no Owner may separately insure any portion of their Lot which is covered by insurance maintained by the Association. All Owners' insurance must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, and institutional first Mortgagees of such Lot. In all cases, the Owner's insurer shall have the primary responsibility for any loss or claim before the Association's insurance coverage takes effect. An Owner who violates this section shall be liable to the Association for any diminution in insurance proceeds otherwise payable to the Association, and the Association shall levy a Special Individual Assessment against such Owner in the amount of such diminution.

**(b) Public Liability & Property Damage Insurance.** The Association must obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each Director, any manager, the Owners of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Cottage Common Elements and any other Association owned or maintained real or personal property including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance will not be less than three million dollars (\$3,000,000.00) for claims for death, personal injury and property damage arising out of a single occurrence. The insurance must include coverage against water damage liability, liability for non-owned and hired vehicles, liability for property of others, and any other liability customarily covered with respect to similar developments.

**(c) Directors & Officers Insurance.** The Association must obtain and maintain a policy of directors' and officers' errors & omissions insurance naming the Association's directors and officers as insured parties. The limits of such insurance will not be less than one million dollars (\$1,000,000.00). If obtained, directors' and officers' errors & omissions insurance must insure against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any Director or officer, while acting in its capacity as such.

**(d) Personal Property Insurance.** The Board must purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable, or that is required by any institutional First Mortgagee.

**(e) Fidelity Bonds.** The Association may purchase blanket fidelity bonds for such employees, agents, independent contractors, or other persons who either handle, or are responsible for, funds held or administered by the Association, whether or not such persons receive compensation for their services. The bond must name the Association as an obligee, and shall be in an amount at least equal to the sum of the following: (i) the maximum amount of funds that will at any one time, be in the custody of the Association and the persons and entities covered by the bond, (ii) an amount equal to three (3) months' Regular Assessments on all Lots, and (iii) the amount of the Association's reserve fund. Such bond shall include a provision requiring at least ten (10) days' written notice before the bond can be cancelled or modified for any reason, which notice shall be given to the Association and each servicer which services a Mortgage owned by the Federal National Mortgage Association. In addition, a manager of the Association must obtain a fidelity bond in an amount at least equal to the maximum amount of Association funds which will be in the manager's possession at any one time.

**Section 9.2. Owners Right to Copies of Policies & Notice of Significant Changes in Coverage.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) will be retained by the Association and will be available for inspection by Members at any reasonable time. The Association will notify Members if any insurance policies are not immediately renewed or replaced upon cancellation or lapse and/or if there is a significant change in the policy.

**Section 9.3. First Mortgagees' Minimum Coverage Requirements & Right to Obtain Copies of Policies.** A First Mortgagee for a Lot may supply the Association with its minimum insurance requirements. If the Association's insurance policies do not currently meet the minimum requirements of those First Mortgagees who have provided a minimum requirements to the Association, the First Mortgagees can request that the Association increase its coverage to match those minimum insurance requirements. The requesting First Mortgagees must pay any increase in the Association's insurance premiums due to the request. All First Mortgagees for any Lot in the Development have the right, upon written request, to obtain copies of current insurance policies and/or satisfactory evidence of the Association's payment of premiums.

**Section 9.4. Coverage Not Available.** If any insurance policy, or any endorsement thereof, required by Section 9.1 is for any reason not available, then the Association will obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board will notify the Owners of any material adverse changes in the Association's insurance coverage.

**Section 9.5. Cottage Lot Insurance.** Owners of Cottage Lots are solely responsible to maintain fire and casualty insurance on their Lots.

**Section 9.6. Insurance Trustee.** If a dispute arises as to allocation or use of insurance proceeds worth one million dollars (\$1,000,000.00) or more, said insurance proceeds will be paid over to an insurance trustee. The insurance trustee will hold the funds in trust and expend the funds for the benefit



of the Owners, Mortgagees and others, as their respective interests may appear. Said insurance trustee will be a commercial bank or other institution with trust powers within the Douglas County area that agrees in writing to accept such trust.

**Section 9.7. Adjustment of Losses.** The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 9.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

**Section 9.8. Owner's Liability Insurance.**

Except as set forth in Article 9, an Owner may carry whatever personal liability and property liability insurance with respect to their Lot that they desire.

**Section 9.9. Deductibles/Costs in Excess of Insurance Proceeds.**

(a) An Owner responsible for causing an insurable loss will be obligated to contribute the Owner's proportional share of the insurance deductible, and/or costs in excess of insurance proceeds if any, corresponding to the insurance covering the loss. The proportional share (as determined by the Board) of each Owner responsible for causing the insurable loss under this subsection will be based upon the ratio that the responsibility of each Owner responsible for causing the insurable loss bears to the total responsibility of the total of Owners responsible for causing the insurable loss.

(b) With respect to losses other than as set forth in Subsection (a), all Owners of Lots which are insured by the Association and which have suffered a covered loss shall be obligated to contribute their proportionate share of the insurance deductible or costs in excess of insurance proceeds.

(c) If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under subsection (a) or (b) of Section 9.10, any Owner fails or refuses to pay his proportionate share, the Association may, in accordance with Section 16.6, levy a Special Individual Assessment against the Lot of such Owner which may be enforced in any manner provided in this Declaration.

(d) Within fifteen (15) days of the date that the notice to the Owner of his share of the liability is mailed, any Owner may contest the amount of his proportionate liability under subsection (a) or (b) of Section 9.10 by submitting to the Association written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of said written objections, the Board will set a hearing date on the matter. Following such hearing, the Board will give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owner(s). The Board's decision will be final and binding.

**ARTICLE 10: DAMAGE OR DESTRUCTION OF COTTAGE COMMON ELEMENTS**

**Section 10.1. General Provisions.** In the event of damage to or destruction of the Cottage Common Elements and/or Cottage Common Facilities, the Association shall promptly repair and/or

replace any damaged or destroyed Cottage Common Elements and/or Cottage Common Facilities. The Association shall utilize any available insurance proceeds to accomplish the repair and/or replacement. If the insurance proceeds are insufficient to cover the costs for the repair and/or replacement, then the Association may levy a Special Assessment to cover the insufficiency. If the cost of the repair and/or replacement exceeds the available insurance by more than seventy-five thousand dollars (\$75,000.00), then the Association shall prepare a report ("alternative repair/replacement plan") which shows the extent of repair and replacement which is reasonably possible solely utilizing the available insurance proceeds and seventy-five thousand dollars (\$75,000.00). As soon as possible, but no later than one-hundred-and-twenty (120) days after the damage or destruction, the Association shall send a report which describes the costs to fully repair and replace the Cottage Common Elements and Cottage Common Facilities and the alternative repair/replacement plan to the Members in order for them to determine whether to (i) impose a Special Assessment greater than seventy-five thousand dollars (\$75,000.00) to fully repair and/or replace the damaged or destroyed Cottage Common Elements and/or Cottage Common Facilities, or to (ii) utilize solely the insurance proceeds and the seventy-five thousand dollars (\$75,000.00) to make the repair and/or replacement pursuant to the alternative repair/replacement plan. In order for the Association to impose a Special Assessment greater than seventy-five thousand dollars (\$75,000.00), a majority of the Owners must vote for its approval.

#### **ARTICLE 11: DAMAGE OR DESTRUCTION OF TOWNHOME LOTS**

**Section 11.1. General Provisions.** If all or any portion of any Townhome Lot is damaged or destroyed by fire or other casualty, then the following rules shall be applicable:

(a) If the damage or destruction is limited to a single Townhome Lot, any insurance proceeds payable on account thereof shall be paid to the Owner or Owners thereof and any mortgagee, as their respective interests may appear, and such Owner or Owners and mortgagee shall use such proceeds to rebuild, restore or repair the improvements on such Townhome Lot to their state existing prior to such damage or destruction. Owner shall be responsible for any funds in excess of such proceeds that are needed to so rebuild, restore or repair such improvements.

(b) If the damage or destruction extends to two or more Townhome Lots, the following procedures shall apply:

**Section 11.2. Minor Casualty.** If the damage or destruction extends to no more than seventy-five (75%) of the number of Townhome Lots upon which Residences are or were, prior to such damage or destruction, constructed and if the cost of repairing or rebuilding the Residence Units on the Townhome Lots does not exceed by more than twenty-five percent (25%) the amount of insurance proceeds initially offered or paid by the insurance carrier:

(a) All insurance proceeds shall be paid to a commercial bank or trust company designated by the Board, to be held for the benefit of the Owners of the damaged Residences on Townhome Lots and their mortgagees, as their interests appear.

(b) The Board shall levy a Special Assessment against the Owner of each Townhome Lot upon which the casualty has occurred equal to the difference between the cost of



repairing or rebuilding (if necessary, allocated by the Board to each such Townhome Lot) and the amount of available insurance proceeds; said sum shall be secured by the Lien provided for herein and in the Community Declaration and shall be payable into the fund held by the insurance trustee. The Board may (but is not obligated) advance the amount of the Special Assessment to the insurance trustee from the Association general funds or reserves if any such Owner of a Townhome Lot fails to pay said sum and the Board determines that the Townhome Lots as so rebuilt and reconstructed, will furnish adequate security for the repayment of said advances by operation of a Special Assessment.

(c) When the amount held by the insurance trustee is sufficient to pay the costs of repair and reconstruction, the Board, as agent for the Owner(s) shall thereupon contract for the repair or reconstruction of the Townhome Lot(s), paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the Townhome Lot(s) substantially to their appearance and condition immediately prior to the casualty.

(d) The reconstruction, rebuilding or repair of the improvements shall be done in a manner which will provide for an exterior appearance and design substantially the same as that which existed prior to the date of the casualty. Any changes therefrom shall only be made with the prior approval of the Design Review Committee Rules (if required by the Community Declaration) and in compliance with the Design Review Committee Rules (if required by the Community Declaration) for the Cottage Common Elements and shall only be permitted if the Owner has agreed to deposit with the insurance trustee any additional amounts required to complete reconstruction in such a changed manner. The Design Review Committee Rules (if required by the Community Declaration) and the documents to be submitted to it shall apply with respect to any proposed change.

(e) In any event, the Owner or Owners of any damaged Townhome Lots and the Board shall be obligated to proceed with all due diligence hereunder and commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after the damage occurs, unless prevented by causes beyond their reasonable control.

**Section 11.3. Major Casualty.** If Section 11.2 above is inapplicable with respect to any Townhome Lot, then all insurance proceeds with respect thereto shall be paid to the insurance trustee designated in the manner above; and:

(b) The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild and restore the damaged Townhome Lot improvements in accordance with their condition prior to damage and destruction, with modifications only to the extent approved by both the Design Review Committee (if required by the Community Declaration) and the Board, and in compliance with building codes and construction standards in effect at the time of the rebuilding. The Board may also obtain an estimate from the insurance carrier of the work it will perform for the amount of the insurance coverage. The Board shall, as soon as reasonably possible thereafter, call a special meeting of all Owners of Townhome Lots to consider such bids. To be considered, any contractor's bid shall include the premium payable for a performance, labor and material payment bond from a reputable bonding company. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner of a damaged Townhome Lot may obtain such contractors' bids or insurance estimate and call and conduct such meeting as herein provided. Failure to call such meeting or to repair such casualty damage within twelve (12) months from the date of occurrence of such damage shall be deemed a decision not to



rebuild such damaged building or buildings. At the meeting the Owners of Townhome Lots may elect to reject all such bids or estimates and thus not to rebuild. Such actual or constructive decision not to rebuild as a group shall not preclude any one or more Owners from restoring their own Townhome Lots on their own account to the condition existing prior to such damage or destruction. A vote in excess of seventy-five percent (75%) of the total vote shall be required to reject all such bids or estimates; provided, however, a vote in excess of fifty percent (50%) shall be sufficient to elect to reject any such bid or estimate requiring more than twenty-five thousand dollars (\$25,000.00) per Townhome Lot to be restored in excess of reconstruction costs over and above insurance proceeds. Failure to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers more favorable.

(c) If a bid or estimate is accepted, the Board shall levy a Special Assessment, in the same manner as described in subparagraph 11.2(b) above, against the Owner of each Townhome Lot upon which the casualty has occurred equal to the difference between the cost of repairing or rebuilding and the amount of available insurance. The work shall be performed as described in subparagraphs 11.2(c), (d), and (e) above.

(d) In the event that any Owner does not promptly and diligently perform the obligations on his part to be performed pursuant to the terms of this paragraph, and the Cottage Board does not diligently proceed to enforced the terms thereof, then any Owner or mortgagee of any Townhome Lot (including Owners of Townhome Lots not affected by such damage) may bring an action in equity to enforce the performance of such obligation.

**Section 11.4. Uninsured Events with Restoration Costs in excess of \$50,000.00.**

Notwithstanding the foregoing, in the event damages or destruction to one or more Townhome Units is caused by an uninsured event and the cost of restoration exceeds Fifty Thousand Dollars (\$50,000.00), the Townhome Lot owner affected thereby may elect, within sixty (60) days thereof and by written notice to the Cottage Board, to remove from the Townhome Lot all wreckage, debris and remains of the Residence and leave the Townhome Lot in a level, clean and landscaped condition. If the cost is Fifty Thousand Dollars (\$50,000.00) or less, or if the election is not made within such time, the provisions of subparagraphs (a) and (b) above shall apply thereto.

**Section 11.5. Damage or Destruction which is not Reconstructed within Two Years.** In any event, if there is damage or destruction affecting any Townhome Lot which is not fully repaired or reconstructed within two (2) years from the date thereof (with extension for delays not the fault of the Owner thereof), the Board shall have the right, but shall not be obligated, to elect to use any insurance proceeds available by reason of said damage or destruction for the purpose of restoring the site to a level, clean and landscaped condition.

**Section 11.6. Reduction of Assessment.** There shall be no abatement or reduction the assessments herein provided due to the total and partial destruction of improvements on any Townhome Lot; provided, however, that any portion of the assessments which is for the exterior maintenance of the improvements of Townhome Lots shall not be assessed or collected from any Owner who has made the election permitted under Section 11.3, after completion of the requirements set forth therein and for so long as no improvements are located thereon.

## ARTICLE 12: DAMAGE OR DESTRUCTION OF COTTAGE LOTS

**Section 12.1. General Provisions.** In the event of damage or destruction of a Cottage Lot, the Owner of the Lot shall, within sixty (60) days after the date of such damage or destruction or within thirty (30) days the amount of the insurance payment initially offered becomes known, which is later, decide whether to accomplish at their sole expense either of the following alternatives:

(a) Replace the Improvements on the Lot. The Owner of the Lot must obtain approval of the Design Review Committee (so long as required by the Community Declaration) and the Board (or architectural control committee, if one is formed by the Board) in order to make any modifications to the Improvements so that they are not accordance with their condition immediately before the damage or destruction; or

(b) Remove from the Lot all debris and remains of the Improvements, so that the Lot is level, clean, and landscaped.

The Owner of the Lot must promptly remove all debris from the Lot and put the Lot in a safe condition and clean appearance. The Owner of the Lot must commence and complete the repairs or replacement of the Improvements on the Lot within one (1) year from the date of the damage or destruction.

## ARTICLE 13: CONDEMNATION

**Section 13.1. Condemnation of Cottage Common Elements.** The term "taking" as used herein shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Cottage Common Elements, the Owners of Lots hereby appoint the Board to represent all Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Subject to the prior rights of beneficiaries of deeds of trust, if any, any awards received on account of the taking shall be paid to the Association. In the event of taking of less than all of the Cottage Common Elements, the rules as to restoration and replacement of Cottage Common Elements shall apply as in the case of destruction of Cottage Common Elements. In the event of a total taking, the Board shall retain or allocate any award in the general or other fund of the Association or distribute all or part thereof as provided in the Association's Articles, as determined by the Board.

**Section 13.2. Condemnation of Townhome Lots.** In the event of a taking of a part or all of a Residence located on a Townhome Lot, the provisions of Article 11 shall apply with respect to the obligation of the Owner to reconstruct the Residence or, if the cost of restoration exceeds the amount of available condemnation proceeds by fifty thousand dollars (\$50,000.00), to election in the manner described in Section 11.4 of this Declaration above to clear and landscape the Townhome Lot.



#### ARTICLE 14: PARTITION OF COTTAGE COMMON ELEMENTS

**Section 14.1. Suspension of Right of Partition.** Except as expressly provided in this article, an Owner will have no right to partition or divide their ownership of the Cottage Common Elements. Partition of the Cottage Common Elements can be had on a showing that the conditions to such partition as stated in Articles 10, 11, and 12 (relating to damage or destruction) or in Article 13 (relating to condemnation) have been met. Nothing in this Declaration may prevent partition of a cotenancy in a Lot.

**Section 14.2. Distribution of Proceeds Upon Partition.** Proceeds of property resulting from a partition will be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Owners' Lots determined by appraisal, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Cottage Common Elements.

**Section 14.3. Power of Attorney.** Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Development, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had and under the circumstances authorizing partition under this Declaration. The power of attorney will (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all institutional First Mortgagees; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable. This certificate will be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

#### ARTICLE 15: NONSEVERABILITY OF COMPONENT INTERESTS

**Section 15.1. Severance Prohibited.** An Owner will not be entitled to sever their Lot from their membership in the Association for any purpose. None of the component interests in a Lot can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision will be void. Similarly, no Owner can sever any exclusive easement appurtenant to their Lot over the Cottage Common Elements from the Owner's Lot and any attempt to do so will be void. The suspension of such right of severability will not extend beyond the period set forth in Article 14 respecting the suspension of partition.

**Section 15.2. Limitation on Interests Conveyed.** After the initial sales of the Condominiums, unless otherwise expressly stated, any conveyance of a Lot or any portion of it by an Owner will be presumed to convey the entire Condominium. However, nothing contained in this section may preclude the Owner from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of a Lot with any other person or persons.





**ARTICLE 16: BREACH & DEFAULT:**

**Section 16.1. Remedy at Law Inadequate.** Any Owner or the Association may enforce, by any proceeding at law or in equity, the provisions of the Governing Documents against any Owner. The failure of any Owner to strictly comply with any provision of the Governing Documents will be grounds for (1) an action to recover sums due for damages and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner or the Association.

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in the Governing Documents is inadequate.

**Section 16.2. Nuisance.** Without limiting the generality of Section 16.1, the result of every act or omission whereby any covenant contained in the Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or any Owner. Every remedy against nuisance, either public or private, will be applicable against every such act or omission. The Board will not be obligated to take action to abate or enjoin a violation if, in the discretion of the Board, the Board determines that acting to abate or enjoin the violation is not likely to protect the interests of the Association and its Members.

**Section 16.3. Violation of Law.** Any violation of any governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of its enforcement procedures.

**Section 16.4. Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law will be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies will not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration or the Governing Documents.

**Section 16.5. Failure Not a Waiver.** The failure of any Owner or the Association to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in the Association's Governing Documents will not constitute a waiver of the right to enforce the same thereafter, nor will such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

**Section 16.6. Rights and Remedies of the Association.**

**(a) Rights Generally.** In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Board may enforce the obligations of each Owner to obey such Rules or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring

of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Cottage Common Elements or suspension of the Owner's voting rights as a Member. The Association's right to undertake disciplinary action against its Members will be subject to the conditions set forth in this Section 16.6. The initiation of legal action will be subject to Section 16.7, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance will be within the sole discretion of the Board. If the Association declines to take action in any instance, any Owner will have such rights of enforcement as may exist by virtue of Nevada law.

Upon the Board's determination, after prior notice to the affected Member and an opportunity for a hearing pursuant to Sections 16.6(e) and (f), that the Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Member is deemed to be a Member not in good standing. Such Member will be deemed to be a Member not in good standing until the Board determines in writing that the violation which resulted in the Board's determination that the Member was not in good standing has been remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member may again be deemed to be a Member in good standing.

**(b) Schedule of Fines.** Pursuant to the applicable law, the Board may implement a schedule of reasonable fines and penalties for particular offenses for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and will be enforceable as a Special Individual Assessment pursuant to Section 5.4. If the Association adopts a policy imposing fines, the Association must hand-deliver or send by United States mail to each Owner, a schedule of the fines.

**(c) Definition of "Violation" and "General Record of Violations".** A violation of the Governing Documents will be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days will justify cumulative imposition of disciplinary measures.

The Association will take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Cottage Common Elements at the cost of the responsible Owner.

The Board must maintain a general record concerning each violation of the Governing Documents, other than a violation involving a failure to pay an Assessment, for which the Board has imposed a fine or any other sanction. The general record:

**(i)** Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine, the general record must specify the amount of the fine.

(ii) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the Lot, if any, that is associated with the violation.

(iii) Must be maintained in an organized and convenient filing system or data system that allows an Owner to search and review the general records concerning violations of the Governing Documents.

**(d) Limitations of Disciplinary Rights.**

(i) **Loss of Rights: Forfeitures.** The Association will have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of their Lot due to the failure by the Owner to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Rule, except where the loss or forfeiture is the result of (A) the judgment of a court of competent jurisdiction, (B) a decision arising out of arbitration, (C) a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or (D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 16.6(e) and (f).

(ii) **Special Individual Assessments.** A monetary fine or penalty imposed by the Association is a Special Individual Assessment enforceable by the sale of the Lot.

(e) **Hearings.** No penalty or temporary suspension of rights will be imposed pursuant to this Article 16 unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 16.6(g), and not less than thirty (30) days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the Governing Documents that form the basis of the violation.

(f) **Notice of Hearing and Disciplinary Decision.** The notice of hearing required by this article will, at a minimum, set forth the date, time, and place for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision alleged to have been violated, the amount of any potential fine or penalty, and a statement that the Member has a right to attend and may address the Board or committee at the hearing. The notice must be delivered by either personal delivery or first-class mail to the Member at least ten (10) days prior to the hearing. If the Board or committee decides to discipline the Member, the Association must notify the Member of the disciplinary action by either personal delivery or first-class mail within fifteen (15) days following the decision. The discipline will not be effective until five (5) days after the notification of the decision.

The Board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed: (a) Pays the fine; (b) Executes a written waiver of the right to the hearing; or (c) Fails to appear at the hearing after being provided with proper notice of the hearing.

If a fine is imposed and the violation is not cured within fourteen (14) days, or within any longer period that may be established by the Board, the violation shall be deemed a continuing violation. Thereafter, the Board may impose an additional fine for the violation for each seven (7)-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

The Board may appoint a committee, with not less than three (3) members, to conduct hearings on violations and to impose fines. While acting on behalf of the Board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Board and its members.

**(g) Rules Regarding Disciplinary Proceedings.** The Board may adopt rules that set forth the procedures for conducting disciplinary proceedings. The rules, when approved and adopted by the Board, will become a part of the Association Rules and may provide for notices and procedures satisfying the alternative dispute resolution requirements of Nevada law.

**Section 16.7. Court Actions; Mediation.** As long as Nevada law requires alternative dispute resolution, this Section 16.7 will control the initiation of a legal action by the Association and/or its Members. This Section 16.7 will automatically be repealed from this Declaration should Nevada law no longer require alternative dispute resolution.

**(a)** Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon Board approval. Before initiating any court action to enforce the Governing Documents, the Association and/or Members must first comply with the provisions of NRS 38.300 to 38.360, inclusive, relating to alternative dispute resolution. The provisions of this section are intended to satisfy the alternative dispute resolution requirements. All notices issued and procedures followed in the mediation process must comply with the specific requirements imposed by NRS 38.300 to 38.360, inclusive.

**Section 16.8. Joint and Several Liability of Co-Owners.** If a Lot is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Declaration will be joint and several.

**Section 16.9. Costs and Attorneys' Fees in Favor of the Association.** If the Association takes any action because of any alleged breach or default of any Owner or other party hereto under the Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Association will be entitled to recover from that Owner (or other party) the costs, including attorneys' fees, the Association incurred as a result of the alleged breach or default. The Association's remedies to recover its costs and attorneys' fees will include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 5.4.

If an action (including an arbitration) is brought by a Member (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Governing Documents, the court may award to the prevailing party in any such action attorneys' fees and other costs, including, but not limited to, court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.



**ARTICLE 17: NO PUBLIC RIGHTS IN THE DEVELOPMENT.**

**Section 17.1. Dedication of Development.** Nothing contained in this Declaration may be deemed to be a gift or a dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

**ARTICLE 18: NOTICES.**

**Section 18.1. Mailing Addresses.** Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents will be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

(a) **Owners.** To the street address of the Owner's Lot or to such other address as the Owner may from time to time designate in writing to the Association. If the Owner fails to designate an address in writing to the Association, then the address in the Glenbrook telephone directory shall be a sufficient address for such mailings.

(b) **The Association.** The mailing address of the Association is P.O. Box 447, Glenbrook, NV 89413 (or to such other address as the Association may from time to time designate in writing to the Owners).

(c) **Directors/Officers.** To the street address as the Director and/or officer may from time to time designate in writing to the Association.

The foregoing addresses may be changed by written notice given as herein provided. Unless so changed, the last address provided for each party, whether herein or pursuant to notice hereunder, will be deemed to be the address of such party for any and all purposes.

**Section 18.2. Personal Service Upon Co-Owners & Others.** Personal service of a notice to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of a Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of a Lot, will be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

**Section 18.3. Deemed Delivered.** All notices and demands served by mail will be by first-class or certified mail, with postage prepaid, and will be deemed delivered seventy-two (72) hours after deposit in the United States mail unless specified otherwise by this document. All notices and demands served by personal delivery are delivered upon service.

**ARTICLE 19: AMENDMENT OF DECLARATION.**

**Section 19.1. Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of Members representing at least fifty-one percent (51%) of



all eligible Members, pursuant to the Bylaws. Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration shall be at least the percentage of affirmative votes prescribed in said clause or provision. Also, if the effect of any amendment will be to increase substantially the benefits to either the Cottage Lots or the Townhome Lots without a corresponding parallel increase or decrease to the other group respectively, such amendment shall only be effective if the seventy-five percent (75%) vote includes at least a fifty-one percent (51%) vote of Owners within the affected group.

**Section 19.2. Effective Date of Amendments.** Any amendment to this Declaration will be effective upon the recording in the Office of the Recorder of Douglas County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 19.1, above, have been duly met.

Notwithstanding anything to the contrary herein contained, no such amendment will affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment.

If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation may become effective unless such consent or approval is obtained.

**Section 19.3. Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration will be presumed valid by anyone relying on them in good faith.

**ARTICLE 20: ANNEXATION.**

**Section 20.1. Annexation.** Any real property which consists of a parcel or parcels shown on a final subdivision, parcel, or condominium map of Record may be annexed to the Development in accordance with this article, and shall thereupon become subject to this Declaration with the consent of the Owner of the property.

The Association may annex real property to the Development provided that such annexation is approved by a vote or written consent of a majority of the Owners.

**Section 20.2. Method of Annexation.** Any annexation undertaken in accordance with this section shall be effective when a Declaration of Annexation executed by the annexing party and the owner of the interest to be annexed covering the property to be annexed, and includes the following information.

(a) A description of the property to be annexed.

(b) A description of any parcel of the property to be annexed which is Cottage Common Elements, and of any property to be annexed which is designated for maintenance in accordance with Section 6.1.

**Section 20.3. Effect of Declaration of Annexation.** Upon any annexation becoming effective, the Declaration of Annexation shall become a part of this Declaration, and shall be deemed amended by any amendment to this Declaration.

**Section 20.4. Adjustment for Capital Improvements.** Where annexation of a Phase occurs after existing Lots within the Development have been assessed for capital improvements to Cottage Common Elements, the Association may adjust the assessment on the annexed Lots so that the annexed Lots pay their proportionate share of the Improvement minus reasonable depreciation of the Improvement if it has been in use for one year or more at the time of annexation.

#### **ARTICLE 21: RIGHTS AND DUTIES OF FIRST MORTGAGEES**

**Section 21.1. General.** Holders of First Mortgages on the Development and the Lots made for value and in good faith shall be entitled to the rights and privileges set forth in this Article.

**Section 21.2. Notice of Default.** Any mortgagee, and/or their successors and assigns of a First Mortgage on a Lot who has requested in writing to the Association of notice from the Association of any default by the mortgagor of any Lot in the performance of such mortgagor's obligations under the Governing Documents that is not cured within thirty (30) days, shall be entitled to such notice.

**Section 21.3. Non-Liability of Unpaid Assessments.** Any First Mortgagee or who comes into possession of a Lot pursuant to the remedies provided in the Mortgage, through foreclosure of the Mortgage shall take the property free of any claims for unpaid Assessments or charges against the Lot that accrue prior to the time such holder comes into possession of the Lot.

**Section 21.4. Mortgage's Approval.** Unless at least seventy-five percent (75%) of the First Mortgagees, based upon one (1) vote for each Mortgage owned, of Lots 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 any real estate or Improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners thereof. The granting of easements for public utilities or other public purposes consistent with the intended use of such property by the Association and Owners shall not be deemed a transfer within the meaning of this clause;

(b) By act or omission, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to architectural design, or exterior appearance or Improvements located on Lots, the exterior maintenance of Lots, the maintenance of fences and driveways or the upkeep of lawns, plantings or other landscaping in the Development.

(c) Fail to maintain fire and extended coverage insurance on insurable Cottage Common Elements owned by the Association in an amount not less than ninety percent (90%) of the replacement cost.

(d) Use hazard insurance proceeds for losses to any Cottage Common Elements and Improvements owned by the Association for other than the repair, replacement or reconstruction of such property and Improvements.

**Section 21.5. Examination of Records.** First Mortgagees shall have the right to examine the books and records of the Association.

**Section 21.6. Insurance Proceeds and Condemnation Awards.** No provision of this Declaration or the Articles shall give an Owner, or any other party, priority over any rights of the First Mortgagees of Lots pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of the Cottage Common Elements or otherwise.

**ARTICLE 22: GENERAL PROVISIONS.**

**Section 22.1. Effective Date.** This Declaration will become effective upon its recordation in the Official Records of the County of Douglas, State of Nevada.

**Section 22.2. Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, the Lien, charges and equitable servitudes contained in this Declaration will run with, and will benefit and burden the Lots and the Cottage Common Elements as herein provided, and will inure to the benefit of and be binding upon the Owners, the Association, its Board, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Declaration, after which time the same will be automatically extended for successive terms of ten (10) years each unless, within six (6) months prior to the expiration of any term (initial or successive), a recordable written instrument, approved by a majority of all Owners terminating the effectiveness of this Declaration will be filed for recording in the Office of the County Recorder of Douglas County, Nevada.

(a) **Dissolution.** If the Association as a corporate entity is dissolved, then a non-profit unincorporated association shall immediately and automatically, without further action or notice be formed to succeed to all the rights and duties of the Association, herein. The affairs of the unincorporated association shall be governed by the laws of the State of Nevada and, to the extent not inconsistent therewith, by the Articles and Bylaws, as if they were created for the purpose of governing the affairs of an unincorporated association.

In the event of dissolution of the Association and the formation of an unincorporated association, each member of the unincorporated association shall have the underlying beneficial interest in all of the property of the Association transferred to or for the account or benefit of the unincorporated association. Such interest shall be in direct proportion to the number of Lots owned by such member. However, each member and their successors waive the right to judicial partition of such property or of any part thereof.



Immediately prior to any dissolution of the Association as a corporate entity, the Association shall convey all real property vested in it to an independent institutional corporate trustee, to hold such real property in trust for the benefit of the unincorporated association formed pursuant to this section.

**(b) Mergers.** The Association shall have the power to the extent permitted by law, to participate in mergers and consolidations with other non-profit corporations organized for the same purposes as the Association, provided that any such merger or consolidation shall have the approval by affirmative vote or written consent of eighty percent (80%) of all Owners.

### **Section 22.3. Construction of Declaration.**

**(a) Restrictions Construed Together.** All of the covenants, conditions, and restrictions of this Declaration will be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Declaration.

Failure to enforce any provision hereof will not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

**(b) Restrictions Severable.** Notwithstanding the provisions of subsection (a) above, the covenants, conditions, and restrictions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision which will remain in full force and effect.

**(c) Singular Includes Plural/Gender.** The singular will include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter will each include the masculine, feminine and neuter, as the context requires.

**(d) Captions.** All captions, titles or headings used in this Declaration are intended solely for convenience of reference and will not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

**(e) Conflicts.** In the event of any conflict between any of the provisions of this article and any other provisions of this Declaration, the provisions of this article will control. In the event of any conflict between any of the provisions of this Declaration and any other provisions of the Governing Documents, the provisions of this Declaration will control.

Further, neither the Articles nor the Bylaws will be restated so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration will control.

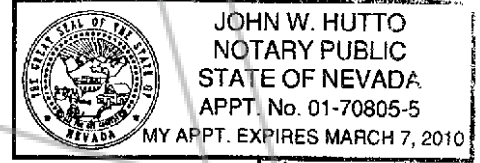
**(f) Exhibits.** All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

**Section 22.4. Power of Attorney.** To the extent necessary to carry out and enforce the provisions of this Declaration and the Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

**Certification**

We, the undersigned hereby certify, under penalty of perjury, that this Declaration of Covenants, Conditions and Restrictions set for herein was duly adopted with the vote or written consent of the Members, (the Members consisting of at least greater than seventy-five percent (75%) of the Membership of the Association).

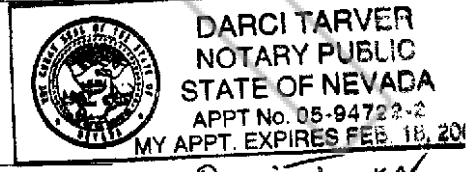
GLENBROOK COTTAGE & TOWNHOME ASSOCIATION



*John W. Hutto*  
1-12-07

Dated: 1-12-07

By: *Sharon Bowman*  
Sharon Bowman, President



Dated: 1/16/07

By: *Garrett Sutton*  
Garrett Sutton, Secretary

*Darci Tarver*  
1-16-07

