

APN: 1220-21-111-001 through -059

WHEN RECORDED, RETURN TO:

**WILBUR M. ROADHOUSE, ESQ.**  
317 South Third Street  
Las Vegas, Nevada 89101

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KAREN ELLISON, RECORDER

**SECOND AMENDED & RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
COTTAGES AT CARSON VALLEY**

*(a Nevada Residential Common-Interest Planned Community)*  
**DOUGLAS COUNTY, NEVADA**

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EXHIBIT "A" - ORIGINAL PROPERTY

EXHIBIT "B" - ANNEXABLE AREA



**SECOND AMENDED & RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
COTTAGES AT CARSON VALLEY**

THIS SECOND AMENDED & RESTATED DECLARATION ("Declaration"), made as of the \_\_\_\_ day of August, 2016, by LANDSMITH APPRECIATION FUND, LLC, a Nevada limited liability company ("Declarant"),

**WITNESSETH:**

**WHEREAS:**

A. On approximately September 4, 2009, Kit Carson Development Ltd. ("Original Declarant") caused to be recorded an Amended and Restated Declaration of Covenants, Conditions and Restrictions, in Document #0750268, Official Records, County Recorder of Douglas County, Nevada; and on approximately December 1, 2009, the Original Declarant caused to be formed the Kit Carson Village Homeowners Association Inc.; and

B. In approximately 2011, the Original Declarant went out of business and/or was designated a "Revoked Entity" by the Nevada Secretary of State; and

C. The undersigned Declarant is the successor in title to the real property essentially comprising the subdivision and project, and desires to further amend and restate the existing Declaration in the particulars set forth herein, including, but not limited to renaming the project "Cottages at Carson Valley" and renaming the homeowners association "Cottages at Carson Valley Homeowners Association" and

D. The total maximum number of Units that may (but need not) be created in the Community is up to eighty-one (81) aggregate Units ("Units That May Be Created"); and

E. The Original Property (as designated on Exhibit "A" hereto), and, following annexation of record from time to time, in Declarant's sole discretion, any and all Annexed Property within the Annexable Area (as designated on Exhibit "B" hereto, which Annexable Area may be developed to include up to approximately 22 additional Lots) shall collectively comprise the "Properties"; and

F. Declarant intends to develop and convey the Properties pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges; and

G. Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Properties pursuant to the provisions of this Declaration, to revive the previously defunct Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements (as defined herein),



administering and enforcing the covenants and restrictions, and collecting and disbursing the Assessments and charges hereinafter created; and

H. This Declaration is intended to set forth a dynamic and flexible plan for governance of the Community, and for the overall development, administration, maintenance and preservation of a unique residential community, in which the Owners enjoy a quality life style as "good neighbors";

I. This Declaration shall be effective upon Recordation, and thereupon shall supersede in its entirety the Amended and Restated Declaration of Covenants, Conditions and Restrictions previously Recorded on September 4, 2009, in Official Records of Douglas County, Nevada, in Book 0909, at Page 1361, as Document No. 0750268, and any amendments thereto;

**NOW, THEREFORE**, Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Annexed Property (collectively, "Properties") shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the provisions of this Declaration and to the following covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale and lease of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth in this Declaration shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, and their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by Declarant, the Association, each Owner, and their respective heirs, executors and administrators, and successive owners and assigns. All Units within this Community shall be used, improved and limited exclusively to single Family residential use.

## **ARTICLE 1** **DEFINITIONS**

Section 1.1 "Act" shall mean NRS Chapter 116. Except as otherwise indicated, capitalized terms herein shall reasonably have the same meanings ascribed to such terms in the Act.

Section 1.2 "Allocated Interests" shall mean the following interests allocated to each Unit: a non-exclusive easement of enjoyment of all Common Elements in the Properties; allocation of Limited Common Elements, if any, pursuant to the Plat and as set forth herein; liability for Assessments pro-rata for Common Expenses in the Properties and allocation of Annual Assessments and any Capital Assessments pursuant to the allocation formula set forth in this Declaration (in addition to any Special Assessments as set forth herein); and membership and one vote in the Association, per Unit owned, which membership and vote shall be appurtenant to the Unit.

Section 1.3 "Annexable Area" shall mean all or any portion of that real property described in Exhibit "B" attached hereto and incorporated by this reference herein, all or any portion of which real property may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof. The Annexable Area may be developed to include up to approximately 22 additional Lots. At no time shall any portion of the Annexable Area be deemed to be a part of the Community or a part of the Properties until such portion of the Annexable Area has been duly annexed of Record hereto pursuant to Article 15 hereof.

Section 1.4 "Annexed Property" shall mean any and all portion(s) of the Annexable Area from time to time added to the Properties covered by this Declaration, by Recordation of Annexation Amendment(s) pursuant to Article 15 hereof.

Section 1.5 "ARC" shall mean the Architectural Review Committee created pursuant to Article 8 hereof.

Section 1.6 "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the office of the Secretary of State of Nevada, as such Articles may be amended from time to time.

Section 1.7 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments and/or Special Assessments.

Section 1.8 "Assessment, Annual" shall mean the annual or supplemental charge against each Owner and his or her Unit, representing a portion of the Common Expenses, which are to be paid in equal periodic (monthly or quarterly, as determined from time to time by the Board) installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner, and at the times, and proportions provided herein.

Section 1.9 "Assessment, Capital" shall mean a charge against each Owner and his or her Unit, representing a portion of the costs to the Association for installation, construction, or reconstruction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.10 "Assessment, Special" shall mean a charge against a particular Owner and his or her Unit, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, subject to applicable law, plus interest and other charges on such Special Assessments as provided for herein.

Section 1.11 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.12 "Association" shall mean COTTAGES AT CARSON VALLEY HOMEOWNERS ASSOCIATION (formerly known as Kit Carson Village Homeowners Association, Inc.) or substantially similar name, a Nevada non-profit corporation, and its successors and assigns.

Section 1.13 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article 6 hereof.

Section 1.14 "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.15 "Board" or "Board of Directors" shall mean the Board of Directors of the Association, elected or appointed in accordance with the Bylaws and this Declaration. The Board of Directors is an "Executive Board" as defined by NRS § 116.045.

Section 1.16 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared and approved pursuant to the provisions of this Declaration, including, but not limited to, Section 6.4 below.

Section 1.17 "Buyer" shall mean a Purchaser, as defined by NRS § 116.079.

Section 1.18 "Bylaws" shall mean the Bylaws of the Association which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.19 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Buyer.

Section 1.20 "Common Elements" shall mean all real property or interests therein conveyed to and/or owned by the Association, including all Common Area designated on the Plat, and any Improvements thereon, and shall or may include private entry monumentation (if any), private entry areas and gates for the Properties; Private Streets, Front Yard Areas, Front Yard Landscaping, Common Element gardens, private sidewalk(s), street signs, Common Element curbs and gutters (if any), Common Element landscape strips, certain other easements and areas to be maintained by the Association, private landscape and/or drainage easements granted to the Association, public drainage easements, and similar easement areas delineated as such and/or as Common Area on the Plat, but shall exclude Units. The Common Elements shall constitute Common Elements with respect to the Properties, as provided in NRS §116.017.

Section 1.21 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, insurance, management, operation, repair and replacement of the Common Elements; painting over or removing graffiti on Perimeter Wall Visible Surfaces, pursuant to Section 9.10 below; unpaid Special Assessments, and/or Capital Assessments; irrigation and maintenance of landscaping and/or ground cover on Common Elements; the costs of any commonly metered utilities, if any, and any other commonly metered charges for the Properties; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to the Community Manager, accountants, attorneys, consultants, and employees; costs of all utilities, gardening, trash pickup and disposal, and other services benefitting the Common Elements (including, but not limited to, the costs of maintaining Front Yard Areas and Front Yard

Landscaping); costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Association, Common Elements, or Properties, or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, Community Manager, or any other Person handling the funds of the Association; any statutorily required ombudsman fees; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties or deemed prudent and necessary by the Board; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; adequately funded reserves; and any and all other expenses for which the Association is responsible pursuant to this Declaration or pursuant to: (a) requirement of the County or other governmental authority with jurisdiction and/or (b) requirement of applicable law.

Section 1.22 "Community" shall mean the Properties from time to time comprising COTTAGES AT CARSON VALLEY, a Common-Interest Community, as defined in NRS § 116.021, and a Planned Community, as defined in NRS § 116.075.

Section 1.23 "Community Manager" shall mean the Person, if any, whether an employee or independent contractor, hired as such by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 1.24 "County" shall mean Douglas County, Nevada.

Section 1.25 "Declarant" shall mean Landsmith Appreciation Fund, LLC, a Nevada limited liability company, and its successors and any Person(s) to which it shall have assigned any rights hereunder by express written and Recorded assignment (but specifically excluding Purchasers (i.e., Buyers), as defined in NRS §116.079).

Section 1.26 "Declarant Control Period" shall have the meaning set forth in Section 3.7, below.

Section 1.27 "Declaration" shall mean this instrument as it may be amended from time to time.

Section 1.28 "Deed of Trust" shall mean a Recorded mortgage or a deed of trust, as the case may be.

Section 1.29 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.30 "Dwelling" shall mean a residential building located on a Unit designed and intended for use and occupancy as a residence by a single Family, subject to applicable law.

Section 1.31 "Eligible Holder" shall mean each Beneficiary, insurer and/or guarantor of a first Mortgage encumbering a Unit, which has filed with the Board a written request for notification as to relevant matters as specified in this Declaration.

Section 1.32 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable Ordinances.

Section 1.33 "FHA" shall mean the Federal Housing Administration.

Section 1.34 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporations.

Section 1.35 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.36 "FNMA" or "GNMA" FNMA shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation. GNMA shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.37 "Front Yard Area(s)" shall mean those portions of the Common Elements generally comprising "front yard" areas (including designated "front yard" walkway and driveway areas, and Front Yard Landscaping) and generally located between an Owner's Unit and the abutting Private Street.

Section 1.38 "Front Yard Landscaping" shall mean that certain Common Element landscaping generally located in Front Yard Areas, as set forth in further detail in Section 9.8, below.

Section 1.39 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and any Rules and Regulations and any other governance documents of the Association. Any irreconcilable inconsistency among the Governing Documents shall be governed pursuant to Sections 17.10 and 17.14, below.

Section 1.40 "Identifying Number", pursuant to NRS § 116.053, shall mean the number which identifies a Unit on the Plat.

Section 1.41 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, located in the Properties, including but not limited to Dwellings and other structures, walkways (if any), sprinkler pipes, garages, swimming pools (if any are permitted), spas, and other recreational facilities, carports, Private Streets, driveways, parking areas, hardscape, Perimeter Walls, Party Fences, curbs, gutters, walls, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hardscape features, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, permitted signs, exterior air conditioning and water softener fixtures or equipment.



Section 1.42 "Lot" shall mean the residential real property of any residential lot to be owned separately by an Owner, as shown on the Plat, and duly subjected of Record to the Community and to this Declaration (subject to this Declaration and the other Governing Documents, and any area, designated in this Declaration, or shown on the Plat or set forth in any other instrument of Record, as a Common Element or other easement).

Section 1.43 "Member," "Membership," "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.44 "Mortgage," "Mortgagee," "Mortgagor." "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his or her Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his or her Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor;" and "Beneficiary" shall be synonymous with "Mortgagee." For purposes of this Declaration, "first Mortgage" or "first Deed of Trust" shall mean a Mortgage or Deed of Trust with first priority over other mortgages or deeds of trust on a Unit in the Properties and "first Mortgagee" or "first Beneficiary" shall mean the holder of a first Mortgage or Beneficiary under a first Deed of Trust.

Section 1.45 "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.46 "NRS Chapter 116" shall mean: (a) Nevada's Uniform Common-Interest Ownership Act, Chapter 116 of Nevada Revised Statutes; (b) Common Interest Communities: Regulation of Community Managers and Other Personnel, Chapter 116A of Nevada Revised Statutes; and (c) Chapters 116 and 116A of the Nevada Administrative Code; as all or any portion of which respectively from time to time may be duly amended or supplemented by appropriate legal authority with jurisdiction.

Section 1.47 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.48 "Ordinance(s)" shall mean all applicable ordinances and rules of the County, and/or other applicable governmental authority with jurisdiction.

Section 1.49 "Original Property" shall mean that real property described on Exhibit "A" attached hereto and incorporated by this reference herein, which shall be the initial real

property made subject to this Declaration, immediately upon the Recordation of this Declaration.

Section 1.50 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees. Pursuant to Article 3 hereof, a vendee under an installment land sale contract shall be deemed an "Owner" hereunder, provided the Board has received written notification thereof, executed by both vendor and vendee thereunder.

Section 1.51 "Party Fence(s)" shall have the meaning set forth in Section 9.5 below.

Section 1.52 "Perimeter Wall(s)" shall mean those certain walls and/or fences, initially constructed by Declarant or to be constructed by Declarant, and located: (a) generally around the exterior boundary of the Properties, and/or (b) approximately on the property line between a Unit and a contiguous Common Element, wherever such Units and contiguous Common Elements may be located within the Properties.

Section 1.53 "Perimeter Wall Visible Surface" shall mean those surface(s) of Perimeter Wall facing, and reasonably visible from, a Common Element and/or any street (and shall not include surface(s) of the Perimeter Wall not reasonably visible from a Common Element or any street).

Section 1.54 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.55 "Plat" shall mean the Final Map of HERITAGE NEVADA SENIOR HOUSING, a Planned Development #PD 05-003, recorded in the Office of the Douglas County Recorder, State of Nevada, on September 11, 2006, in Book 0906, Page 2968, as Document No. 684198, Official Records; and any and all other plat maps of the Community Recorded from time to time by Declarant; as said plat map(s) from time to time may be amended or supplemented of Record by Declarant; together with any other map(s) which may, in the future, be Recorded by Declarant with respect to the Annexable Area.

Section 1.56 "Private Streets" shall mean the Private Streets, rights of way, street scapes, and vehicular ingress and egress easements in the Properties, shown as such on the Plat. Although the streets within this Community are Private Streets, and privately gated, they are readily accessible by and to outsiders and to the public in general. Although the Private Streets are Common Elements (maintained and repaired by the Association) and the Association may promulgate and enforce parking and other use rules and restrictions over Private Streets, in accordance with the Governing Documents and with applicable law, there will be no private security on or over the Private Streets and/or the Community. There is no budget for any private security. Declarant and Association shall have no responsibility or liability whatsoever arising from or related to the absence of private security on or over the Private Streets and/or Community.

Section 1.57 "Properties" shall mean all of the Original Property described in Exhibit "A," attached hereto, together with such portions of the Annexable Area, described in Exhibit

"B" hereto (as may be supplemented of Record from time to time) as may hereafter be annexed from time to time thereto pursuant to Article 15 of this Declaration.

Section 1.58 "Public Streets" shall mean the public streets and dedicated rights of way located adjacent to and outside of the Properties. Public Streets are not Common Elements and are not part of the Community. Neither Declarant nor the Association has any jurisdiction, authority, responsibility, or liability whatsoever for maintenance, repair, or regulation of or over any Public Street.

Section 1.59 "Purchaser" shall have that meaning as provided in NRS § 116.079.

Section 1.60 "Record," "Recorded," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Douglas County, Nevada.

Section 1.61 "Resident" shall mean any Owner, tenant, or other person, who is physically residing in a Unit.

Section 1.62 "Rules and Regulations" (or "Rules") shall mean the rules and regulations, if any, which may, but need not necessarily, be adopted by the Board pursuant to this Declaration and Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.63 "Unit" shall mean that residential portion of this Community to be separately owned by each Owner (as shown and separately identified as such on the Plat, subject to any and all easements, as shown on the Plat and/or described or referred to in this Declaration or other applicable Recorded instrument), and shall include the relevant Lot and Dwelling and all other Improvements thereon. With regard to certain Units, such Improvements shall include the portion, if any, of Perimeter Walls located on or within the Unit's boundaries, pursuant to Section 9.6 below. Subject to the foregoing, and subject further to Section 9.5 hereof, the boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

Section 1.64 "Units That May Be Created" shall mean the total "not to exceed" maximum number of aggregate Units within the Original Property and the Annexable Area (which Declarant has reserved the right, in its sole discretion, to create) (i.e., 81 Units), subject to Section 14.1(h) below.

Section 1.65 "VA" shall mean the United States Department of Veterans Affairs.

Any capitalized term not separately defined in this Declaration shall have the meaning ascribed thereto in applicable provision of NRS Chapter 116.

## **ARTICLE 2**

### **OWNERS' PROPERTY RIGHTS**

Section 2.1 Ownership of Unit; Owners' Easements of Enjoyment. Title to each Unit in the Properties shall be conveyed in fee to an Owner. Ownership of each Unit within the Properties shall include (a) the Unit, (b) one Membership in the Association, and (c) any easements appurtenant to such Unit over the Common Elements as described in this



Declaration, the Plat, and/or in the deed to the Unit. Each Owner shall have a non-exclusive right and easement of ingress and egress and/or of use and enjoyment in, to and over the Common Elements, including, but not limited to, Private Streets, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject to applicable law and subject further to the following:

(a) the right of the Association (acting through the Board, in its discretion) to reasonably limit the number of guests and tenants an Owner or his or her tenant may authorize to use or enjoy the Common Elements;

(b) the right (but not the duty) of the Association (acting through a majority of the voting power of the Board, in its discretion) to establish and /or amend Rules and Regulations regarding use, maintenance and/or upkeep of the Common Elements and to amend (by majority vote of the Board), any such Rules and Regulations from time to time; provided that any such Rules and Regulations shall not irreconcilably conflict with this Declaration or the other Governing Documents;

(c) the right of the Association in accordance with the Declaration, Articles, and Bylaws, with the vote of at least two-thirds (2/3) of the voting power of the Association and a majority of the voting power of the Board, to borrow money for the purpose of improving or adding to the Common Elements, and in aid thereof, and subject further to the Mortgagee protection provisions of Article 13 of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners;

(d) subject to the voting and approval requirements set forth in subsection 2.1(c) above, and the provisions of Articles 13 and/or 14 of this Declaration, the right of the Association to dedicate, release, alienate, transfer or grant easements, licenses, permits and rights of way in all or any portion of the Common Elements to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members;

(e) subject to the provisions of Article 14 hereof, the right of Declarant and its sales agents, representatives and prospective Buyers, to the non-exclusive use of the Common Elements, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and/or any other development(s) until the last Close of Escrow for the marketing and/or sale of a Unit in the Properties or such other development(s); provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(f) the other easements, and rights and reservations, of Declarant as set forth in Article 14 and elsewhere in this Declaration;

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Elements in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and if not materially in

accordance with such original design, finish or standard of construction only with the vote or written consent of Owners holding seventy-five percent (75%) of the voting power of the Association, and the vote or written consent of a majority of the voting power of the Board, and the approval of a majority of the Eligible Holders;

(h) the right of the Association, acting through the Board, to replace destroyed trees or other vegetation and to plant trees, shrubs and other ground cover upon any portion of the Common Elements;

(i) the right of the Association, acting through the Board, to place and maintain upon the Common Elements such signs as the Board reasonably may deem appropriate for the identification, marketing, advertisement, sale, use and/or regulation of the Properties or any other project of Declarant;

(j) the right of the Association, acting through the Board, to reasonably restrict access to and use of portions of the Common Elements;

(k) the right of the Association, acting through the Board, subject to applicable law, to reasonably suspend voting rights and to impose fines as Special Assessments, and to suspend the right of an Owner and/or Resident to use Common Elements (other than reasonable ingress and egress over Private Streets, as may be applicable), for nonpayment of any Assessment levied by the Association against the Owner's Unit, or if an Owner or Resident is otherwise in breach of obligations imposed under the Governing Documents;

(l) the right of all Owners to similarly use and enjoy the Common Elements, subject to the Governing Documents;

(m) the obligations and covenants of Owners as set forth in Article 9 and elsewhere in this Declaration;

(n) the use restrictions set forth in Article 10 and elsewhere in this Declaration;

(o) the easements reserved or referenced in Sections 2.2 through 2.7, inclusive, Article 14, Article 15, and/or in any other provision of this Declaration and/or in the Plat or any relevant instrument of Record; and

(p) the rights of any other easement holders.

**Section 2.2 Easements for Parking.** Subject to the parking and vehicular restrictions set forth in Article 10 below and other portions of this Declaration, and subject further to applicable law the Association, through the Board, shall have the right and power (but not necessarily the duty) to establish Common Element "parking" areas (if any) and/or "no parking" areas within the Common Elements (including, but not necessarily limited to, Private Streets) and to establish Rules and Regulations governing such matters, as well as to reasonably enforce such parking rules and limitations on Private Streets by all means which would be lawful for such enforcement by public authorities on Public Streets, including the removal of any violating vehicle, by those so empowered, at the expense of the owner of the

violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

**Section 2.3 Easements for Vehicular and Pedestrian Traffic.** In addition to the general easements for use of the Common Elements reserved herein, there are hereby reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, non-exclusive, appurtenant easements for vehicular and pedestrian traffic over the private main entry gate areas, and all Private Streets, driveways and entry areas to an Owner's Unit, designated Common Element parking areas (if any) and common walkways within the Common Elements, subject to the parking, vehicular, and/or use provisions set forth in Section 2.2 above, and the use restrictions set forth in Article 10 below, and/or in any other applicable Governing Document, subject to applicable law.

**Section 2.4 Easement Rights of Declarant Incident to Construction, Marketing and/or Sales Activities.** An easement is hereby reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective buyers of Units, guests, and other invitees, for access, ingress, and egress over, in, upon, under, and across the Properties, including the Private Streets and private entry gate(s) to the Properties and the other Common Elements, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, advertising, marketing and/or sales related to the Properties, or any portions thereof, or any other project of Declarant; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his or her Family, guests, or invitees, to or of that Owner's Lot, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 14.1(a) below. Without limiting the generality of the foregoing, until such time as the Close of Escrow of the last Unit in the Properties and Annexable Area: Declarant shall retain the exclusive unilateral right to control the Private Streets and the private entry gate(s) to the Properties, and to keep such entry gate(s) open during such hours from time to time established and/or designated by Declarant in its sole discretion, and neither the Association nor any one or more of the Owners shall at any time, or in any way (without the prior written approval of Declarant, in its sole discretion) impede, hinder, obstruct, or interfere with Declarant's marketing, sales and/or construction activities.

**Section 2.5 Easements for Public Service Use.** In addition to the foregoing easements over the Common Elements, there shall be, and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements for: (a) placement, use, maintenance and/or replacement of any fire hydrants and/or mail box units on portions of certain Lots and/or Common Elements, and other purposes regularly or normally related thereto; and (b) local governmental, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees and agents, to enter upon any part of the Common Elements or any Lot for the purpose of carrying out their official duties.

**Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes.** In addition to the foregoing easements, there shall be and Declarant hereby reserves and

covenants for itself, the Association, and all future Owners within the Properties, easements reasonably upon, over and across Common Elements and portions of Units, for installation, maintenance, repair and/or replacement of public and private utilities, electric power, telephone, cable television, water, sewer, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district of ingress or egress over the Properties, including portions of Lots, for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Properties). There is hereby created a blanket easement in favor of Declarant and the Association upon, across, over, and under all Units and the Common Elements, for the installation, replacement, repair, and maintenance of utilities (including, but not limited to, water, sewer, gas, telephone, electricity, "smart" data cabling, if any, and master and cable television systems, if any), provided that said easement shall not extend beyond, across, over, or under any structure located on any Unit. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances in the Properties and to install, repair, and maintain water, sewer and gas pipes, electric, telephone and television wires, circuits, conduits and meters. Notwithstanding anything to the contrary contained in this Section, no sewer, electric, water or gas lines or other utilities or service lines may be installed or relocated within the Properties until the Close of Escrow of the last Unit in the Properties, except as approved by Declarant. This easement shall in no way affect any other Recorded easements in the Properties. There is also hereby reserved to Declarant during such period the non-exclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant in connection with the orderly development of any property in the Properties. Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant thereof. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Lots, for the control, installation, maintenance, repair and replacement of water and/or sewage lines and systems and related devices for watering or irrigation of any landscaping on, and/or sewage disposal or drainage from or related to, Common Elements. In the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

Section 2.7 Additional Reservation of Easements. Declarant hereby expressly reserves for the benefit of each Owner and his or her Unit reciprocal, non-exclusive easements over the adjoining Unit(s) for the support, control, maintenance and repair of the Owner's Unit and the utilities serving such Unit. Declarant further expressly reserves for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, non-exclusive easements over all Units and the Common Elements, for the control, installation, maintenance and repair of utility services and drainage facilities serving any portion of the Properties (which may be located on portions of Lots, pursuant to the Plat), for drainage of water resulting from the normal use thereof or of neighboring Units and/or Common Elements, for the use, maintenance, repair and replacement of Private Streets, and other Common Elements, and/or Perimeter Walls (subject to Section 9.6 below), any Improvements on Common Elements, and/or Perimeter Walls



(subject to Section 9.6 below), and for any required customer service work and/or maintenance and repair of any Dwelling or other Improvement, wherever located in the Properties. In the event that any utility or third person exceeds the scope of any easement pertaining to the Properties, and thereby causes bodily injury or damage to property, the injured or affected Owner or Resident shall pursue any and all resultant claims against the offending utility or third person, and not against Declarant or the Association. In the event of any minor encroachment upon the Common Elements or Unit(s), as a result of initial construction or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist so long as the minor encroachment exists. Declarant and each Owner of a Unit on which there is constructed an Improvement along or adjacent to the property line, shall have an easement appurtenant to such property, over such property line to and over the adjacent Unit and/or adjacent Common Elements, for the purposes of accommodating any natural movement or settling of such Improvement, any encroachment of such Improvement due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, patio walls and architectural features comprising parts of the original construction of such Improvement. Declarant further reserves (a) a non-exclusive easement on and/or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit of Declarant and its agents and/or contractors, for any inspections and/or required repairs, and (b) a non-exclusive easement on and/or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit (but not the obligation) of Declarant, the Association, and their respective agents, contractors, and/or any other authorized party, for the maintenance and/or repair of any and all landscaping and/or other Improvements located on the Common Elements and/or Units.

Section 2.8 Waiver of Use. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements or any Improvement thereon, or by abandonment of his or her Unit or any other property in the Properties.

Section 2.9 Easement Data. The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any and all easements and licenses shown on and created by the Plat are the same as the Recording data for the Plat.

Section 2.10 Owners' Right of Ingress and Egress. Each Owner shall have an unrestricted right of ingress and egress to his or her Unit reasonably over and across the Private Streets, and reasonably over and across those portions of the Common Element Front Yard Areas comprising designated "front yard" walkway and driveway located generally between the Unit and the abutting Private Street; which right shall be appurtenant to the Unit and shall pass with any transfer of title to the Unit.

Section 2.11 No Transfer of Interest in Common Elements. No Owner shall be entitled to sell, lease, encumber, or otherwise convey (whether voluntarily or involuntarily) his or her interest in any of the Common Elements, or in any part of the component interests which comprise his or her Unit, except in conjunction with conveyance of his or her Unit. No transfer of Common Elements, or any interest therein, shall deprive any Unit of its rights of

access. Any attempted or purported transaction in violation of this provision shall be void and of no effect.

Section 2.12 Ownership of Common Elements. The Association shall own the Common Elements (provided that certain Common Elements, as set forth generally on the Plat and/or in this Declaration or other instrument(s) of record, shall or may be located on or easements over certain portions of certain Lots). Except as otherwise limited in this Declaration, each Owner shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his or her Unit as a place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Unit.

Section 2.13 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or similar assessments of any Owner may, in the opinion of the Association, become a lien on the Common Elements, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Special Assessment.

Section 2.14 Alteration of Units. Declarant reserves the right to change the interior design and arrangement of any Unit and to alter the boundaries between Units, so long as Declarant owns the Units so altered.

Section 2.15 Avigation Easements. Declarant hereby reserves, for itself, and/or for the Association, the unilateral right, power, and authority to grant avigation easements over Common Elements, to applicable governmental entity or entities with jurisdiction; and each Owner hereby covenants to sign such documents and perform such acts as may be reasonably required to effectuate the foregoing.

Section 2.16 Easements Will or May Affect Use of Portions of Certain Lots. Without limiting any other provision herein: certain additional easements and relevant areas are set forth, described, and/or referenced on the Plat and/or in this Declaration or other Recorded instrument; and certain developmental conditions (or restrictions) are or may be set forth in the County's approval of this development. Easements and relevant areas and developmental conditions (restrictions) will or may limit or otherwise affect use and/or enjoyment of all or certain portions of all or certain Lots. Without limiting the foregoing, or any other provision herein, the Plat sets forth or may set forth certain specific easements encumbering certain specific Lots, and incorporated herein by this reference.

Section 2.17 Conveyance to County or Other Governmental Authority. Declarant hereby reserves, for itself, and/or for the Association, the unilateral right, power, and authority to convey portion(s) of Common Elements to the County or applicable governmental entity or entities with jurisdiction, and/or utility, at the request or with the consent of the County or governmental entity or utility (as applicable); and each Owner covenants to sign such documents and to perform such acts as may be reasonably required by Declarant to effectuate the foregoing.

**ARTICLE 3**  
**COTTAGES AT CARSON VALLEY HOMEOWNERS ASSOCIATION**

Section 3.1 Organization of Association. The Association is or shall be, by not later than the date on which the first Unit is conveyed to a Buyer, incorporated under the name of COTTAGES AT CARSON VALLEY HOMEOWNERS ASSOCIATION, or similar name, as a non-profit corporation under applicable Nevada law. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents and in compliance with applicable law.

Section 3.2 Duties, Powers and Rights. Duties, powers and rights of the Association are those set forth in this Declaration, the Articles and Bylaws, together with its general and implied powers as a non-profit corporation, generally to do any and all things that a non-profit corporation organized under the laws of the State of Nevada may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, including any applicable powers set forth in NRS § 116.3102, subject to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents, or in any applicable provision of NRS Chapter 116 or other applicable law. The Association shall make available for inspection at its office by any prospective buyer of a Unit, any Owner, and any Eligible Holders, during regular business hours and upon reasonable advance notice, current copies of the Governing Documents and all other books, records, and financial statements of the Association.

Section 3.3 Membership. Each Owner (including Declarant, by virtue of owning title to any Unit), upon acquiring title to a Unit, shall automatically become a Member of the Association, and shall remain a Member until such time as his or her ownership of the Unit ceases, at which time his or her membership in the Association shall automatically cease. Membership shall not be assignable, except to the Person to whom title to the Unit has been transferred, and each Membership shall be appurtenant to and may not be separated from fee ownership of the Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

Section 3.4 Transfer of Membership. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the buyer or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. An Owner who has sold his or her Unit to a contract buyer under an agreement to purchase shall be entitled to delegate to such contract buyer said Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract buyer may vote. However, the contract seller shall remain liable for all charges and Assessments attributable to his or her Unit until fee title to the Unit sold is transferred. If any Owner should fail or refuse to transfer his or her Membership to the buyer of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the buyer shall not be entitled to vote at meetings of the Association, unless the buyer shall have a valid proxy from the seller of said Unit, subject to applicable law. The Association may levy a reasonable transfer fee against a new Owner and his or her Unit

(which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association. The new Owner shall, if requested by the Board or Community Manager, timely attend an orientation to the Community and the Properties, conducted by an Association Officer or Community Manager and will be required to pay any costs necessary to obtain entry gate keys and/or remote controls (if applicable), if not obtained from the prior Owner at Close of Escrow.

Section 3.5 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters; but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern, subject to applicable law. The Articles and Bylaws shall comply with applicable law.

Section 3.6 Board of Directors.

(a) The affairs of the Association shall be managed by a Board of not less than three (3), nor more than five (5) Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board which shall initially consist of three (3) Directors. The number of Directors may be increased to five (5) by Declarant (during the Declarant Control Period), or by resolution of the Board, and otherwise may be changed by amendment of the Bylaws, provided that there shall not be less than any minimum number of Directors nor more than any maximum number of Directors from time to time required by applicable Nevada law. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interests of the Association. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, any Director, other than a Director appointed by the Declarant, may be removed pursuant to Section 3.8 below. If a Director is sued for liability for actions undertaken in his or her role as a Director, the Association shall indemnify him or her for his or her losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit,



may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is not a record Owner, he or she shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his or her successor.

(b) The term of office of a Director elected by the Owners shall not exceed two (2) years, subject to Section 3.7, below. A Director may be elected to succeed himself or herself. The term of office of a Director appointed by Declarant shall continue until either: (i) said Director is removed or replaced by Declarant; or (ii) said Director is replaced by a Director duly elected by the Owners pursuant to applicable Nevada law. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held at each Annual Meeting, as set forth in Section 4.3 below.

(c) If Directors entitled to cast a majority of the votes on the Board are present at the time a Board vote is taken, then a Board quorum shall be deemed present at such time, subject and pursuant to applicable law.

Section 3.7 Declarant's Control of Board. During the period of Declarant's control of the Association ("Declarant Control Period"), which shall be the maximum time period allowed by law (subject to limitations expressly set forth by applicable law), Declarant shall have the right and power to control the Association, to the fullest extent not prohibited by applicable law (which may include, but not necessarily be limited to, NRS 116.31032). Without limiting the preceding sentence, during the Declarant Control Period: (a) Declarant may at any time and from time to time appoint and remove the Association's officers ("Officers") and Directors; and (b) Officers and Directors appointed by Declarant need not be Owners.

Section 3.8 Control of Board by Owners. Subject to and following the Declarant Control Period: (a) the Owners shall elect a Board of at least three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, in compliance with applicable Nevada law, certify in writing that he or she is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The Board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and Directors. The Owners may remove any Director(s) with or without cause, pursuant to applicable Nevada law; provided, however, that any Director(s) appointed by Declarant may only be removed by Declarant.

#### **ARTICLE 4**

#### **MEMBERS' VOTING RIGHTS; MEMBERSHIP MEETINGS**

Section 4.1 Owners' Voting Rights. Subject to the following provisions of this Section 4.1, and to Section 4.2 below, and to applicable Nevada law, each Member shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member, and may attend any meeting of

the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent, subject to applicable Nevada law.

Section 4.2 Transfer of Voting Rights. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of fee interest in any Unit to a new Owner shall operate to transfer the appurtenant Membership and voting rights without the requirement of any express reference thereto. Each Owner shall, within ten (10) days of any sale, transfer or conveyance of a fee interest in the Owner's Unit, notify the Association in writing of such sale, transfer or conveyance, with the name and address of the transferee, the nature of the transfer and the Unit involved, and such other information relative to the transfer and the transferee as the Board may reasonably request, and shall deliver to the Association a copy of the Recorded deed therefor.

Section 4.3 Meetings of the Membership. Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting." The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring.

## **ARTICLE 5**

### **FUNCTIONS OF ASSOCIATION**

Section 5.1 Powers and Duties. The Association shall have all of the powers of a Nevada nonprofit corporation, subject only to such limitations, if any, upon the exercise of such powers as are expressly set forth in the Governing Documents or by applicable law. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. The Association's obligations to maintain the Common Elements shall commence on the date Annual Assessments commence on Units; until commencement of Annual Assessments, the Common Elements shall be maintained by Declarant, at Declarant's expense. Without in any way limiting the generality of the foregoing provisions, the Association may act through the Board, and shall have:

(a) Assessments. The power and duty to levy Assessments against the Owners of Units, and to enforce payment of such Assessments in accordance with the provisions of Articles 6 and/or 7 hereof.

(b) Maintenance and Repair of Common Elements. The power and duty to paint, plant, maintain and repair all Common Elements (and any Improvements thereon), in a neat and attractive condition, in accordance with standards adopted by the ARC, and to pay for utilities, gardening, landscaping, and other necessary services for the Common Elements. Notwithstanding the foregoing, the Association shall have no responsibility to provide any of the services referred to in this subsection 5.1(b) with respect to any Improvement which is accepted for maintenance by any state, local or municipal governmental agency or public entity. Such responsibility shall be that respectively of the applicable agency or public entity.

(c) Removal of Graffiti. The power to remove or paint over any graffiti from Perimeter Wall Visible Surfaces, pursuant and subject to Section 9.10 below.

(d) Insurances. The power and duty to cause to be obtained and maintained the insurance coverages in accordance with the provisions of Article 12 below.

(e) Taxes. The power and duty to pay all taxes and similar assessments levied upon the Common Elements and all taxes and similar assessments payable by the Association, and to timely file all tax returns required to be filed by the Association.

(f) Utility Services. The power and duty to obtain, for the benefit of the Common Elements, any commonly metered water, sewage, gas, and/or electric services (or other similar services) and/or refuse collection, and the power, but not the duty, to provide for all cable or master television service, if any, for all or portions of the Properties.

(g) Easements and Rights-of-Way. The power, but not the duty, to grant and convey to any Person: (i) easements, licenses and rights-of-way in, on, over or under the Common Elements, and (ii) with the consent of seventy-five percent (75%) of the voting power of the Association, fee title to parcels or strips of land which comprise a portion of the Common Elements, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (A) walks (if any), driveways (if any), and slope areas; (B) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (C) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and, (D) any similar public or quasi-public Improvements or facilities.

(h) Community Manager. The power, subject to Section 5.5 below, but not the duty, to employ or contract with a certified (as required by applicable Nevada law), professional Community Manager (acting under the specific direction of the Board) to perform all or any part of the duties and responsibilities of the Association, and the power, but not the duty of the Association (acting through the Board), to delegate powers to committees, Officers and employees (if any) of the Association. Any such management agreement, or any agreement providing for services by Community Manager to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than fifteen (15) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon thirty (30) days written notice.

(i) Rights of Entry and Enforcement. Subject to applicable Nevada law, the power, but not the duty, after Notice and Hearing (except in the event of bona-fide emergency which poses an (a) imminent and substantial threat to health, or (b) imminent and substantial threat (as verified by an engineer, architect, or professional building inspector, duly licensed in the State of Nevada) of material property damage; in which event of emergency, Notice and Hearing shall not be required), to peaceably enter upon any area of a Unit, in accordance with applicable Nevada law, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the

preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment pursuant to Article 7 below. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Dwelling without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party. Subject to Section 5.3 and Section 17.16 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(j) Other Services. The power and duty to maintain the integrity of the Common Elements and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration to enhance the enjoyment, or to facilitate the use, by the Members, of the Common Elements.

(k) Employees, Agents and Consultants. The power but not the duty, if deemed appropriate by the Board, to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or exercise of any powers of the Association under this Declaration.

(l) Acquiring Property and Construction on Common Elements. The power, but not the duty, by action of the Board, to acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The power but not the duty, by action of the Board, to construct new Improvements or additions to the Common Elements, or demolish existing Improvements (other than maintenance or repairs to existing Improvements).

(m) Contracts. Subject to applicable Nevada law, the power, but not the duty, to enter into contracts with Owners, to provide services or to maintain and repair Improvements within the Properties which the Association is not otherwise required to maintain pursuant to this Declaration, and the power, but not the duty, to contract with third parties for such services. Any such contract or service agreement must, however, provide for payment to the Association of the cost of providing such service or maintenance.

(n) Records and Accounting. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Reviewed or audited financial statements for the Association shall be regularly prepared and distributed to all Members in accordance with applicable Nevada law.

(o) Maintenance of Other Areas. The power, but not the duty, to maintain and repair slopes, parkways, entry structures and Community signs identifying the Properties, to the extent deemed to be reasonable and prudent by the Board.



(p) Use Restrictions. The power and the duty to enforce use restrictions pertaining to the Properties.

(q) Licenses and Permits. The power and the duty to obtain from applicable governmental authority any and all licenses and permits reasonably necessary to carry out Association functions hereunder.

(r) Compliance with Governmental Requirements. The power and the duty to comply with requirements and/or conditions of the County or other applicable governmental authority with jurisdiction.

Section 5.2 Rules and Regulations. The Board, acting on behalf of the Association, shall have the right and power, but not the duty, from time to time to adopt, amend, repeal, and/or enforce Rules and Regulations, which shall not unreasonably discriminate among Members, for the use and occupancy of the Properties, subject to applicable Nevada law.

Section 5.3 Proceedings. To the maximum extent from time to time as may be permitted or not prohibited by applicable law, the following provisions of this Section 5.3 shall apply. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). Subject to Section 17.16, below, the Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Elements and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an Assessment or an Assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, subject to subsection (1) immediately following, or (iv) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding." The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(1) Notwithstanding the foregoing, if an action is commenced to protect the health, safety, and welfare of the Owners pursuant to subsection (a)(iii) above, without the vote of a majority of the Members in favor of the action, the action must be ratified within ninety (90) days after the commencement of the action by a vote or written consent of the Owners constituting at least a majority of the total voting power of the Members. If the Association, after making a good faith effort, cannot obtain the required vote or agreement to

commence or ratify such a civil action, the Board thereafter shall promptly dismiss the action without prejudice for and on behalf of the Association.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To help protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to help protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to help ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 5.3 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

(1) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Two Thousand Dollars (\$2,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(i) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinions of each and every one of: (A) a licensed Nevada attorney regularly residing in Douglas County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); (B) a reputable appraiser and/or real estate consultant regularly conducting business in Douglas County, Nevada, expressly opining that the marketability and market value of Units will not be substantially or materially affected by such Non-Operational Controversy ("Appraiser's Opinion"); and (C) a senior executive from a reputable lender in the business of regularly making residential loans in Douglas County, Nevada, that financing and refinancing of Units will not be affected by such Non-Operational Controversy, and that such financing and refinancing will be readily available ("Lender's Opinion"). (The Legal Opinion, Appraiser's Opinion, and Lender's Opinion are sometimes collectively referred to herein as the "Opinions). The Board shall be authorized to spend up to an aggregate of Two Thousand Dollars (\$2,000.00) to obtain such Opinions, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors

and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$2,000.00 limit, with the express consent of more than fifty percent (50%) or more of all of the Members of the Association, at a special meeting called for such purpose.

(ii) The Legal Opinion shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy, plus potential dollar amount of Association liability to the substantially prevailing party or parties in the event the Association is not the substantially prevailing party ("Potential Adverse Judgment Liability"). Said Legal Opinion shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written Legal Opinion, including the Quoted Litigation Costs and the Potential Adverse Judgment Liability, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(iii) Upon receipt and review of the Attorney Letter, the Appraiser's Opinion, and the Lender's Opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The Board shall provide written notice of the meeting to each Owner at least twenty-one (21) calendar days before the date of such meeting. The Board may only commence a civil action upon a vote or written agreement of the Owners to which at least a majority of the votes of the Members are allocated. Together with the notice, the Board shall provide a written statement to each Owner that includes: a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, the Appraiser's Opinion, and the Lender's Opinion, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment, (C) explaining the potential benefits of the proceeding and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, (D) explaining the duty of each Owner to disclose the litigation, if commenced, to prospective buyers of the Owner's Unit, (E) explaining the potential impact of litigation on marketability of the Lots and availability of financing and insurance for Units in the Community, and (F) making all disclosures that are required to be made upon the sale of the property as required by applicable Nevada law. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Appraiser's Opinion, Lender's Opinion, and Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (x) if not more than fifty percent (50%) of the total voting power of the

Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred ten percent (110%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than monthly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

(iv) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association. The Board shall not approve a settlement which contains any terms and conditions that would irreconcilably prevent the Board from complying with NRS Chapter 116. If a settlement is reached, the Board shall disclose the terms and conditions of the settlement at the next regularly scheduled Board meeting.

(c) In no event shall any Association Reserve Fund, or any other funds of the Association (other than Special Litigation Assessment funds) be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy). Association Reserve Funds, pursuant to Section 6.3 below, are to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3 to personal liability to the Association for all



costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 5.3 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors; and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void.

Section 5.4 Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association, subject to applicable Nevada law:

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of ten percent (10%) of the budgeted gross expenses of the Association for that Fiscal Year; or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than ten percent (10%) of the budgeted gross expenses of the Association for that Fiscal Year.

(b) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public or private utility or cable television company, if the rates charged for the materials or services are regulated by the Nevada Public Service Commission (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) prepaid casualty and/or liability insurance policies of no greater than three (3) years duration.

(c) Subject to applicable Nevada law, pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business.

Section 5.5 Community Manager. The Association shall have the power to employ or contract with a certified Community Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to applicable Nevada law. No Community Manager, or any director, officer, shareholder, principal, partner, or employee of the Community Manager, or related family member, may be a Director or Officer of the Association. By execution of its agreement with the Association, each and every Community Manager shall be deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, prompt and full and faithful accounting for all Association funds within the possession or control of Community Manager) required of the Community Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Community Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Community Manager's error or omission shall be paid (or reimbursed to the Association) by the Community Manager; (3) to comply fully, at its expense, with applicable Nevada law, including NRS Chapter 116; (4) to refrain, without specific prior written direction of a majority of the voting power of the Board, from referring or introducing to the Association, or contacting directly or indirectly for or on behalf of the Association, any attorney regarding any matter in any way related to the Community or any

portion thereof; (5) prior to time of hire, and from time to time thereafter upon request of the Board: (a) to disclose to the Board, in writing, the identities of any and all other communities, managed by Community Manager (at such time, and within the three year period preceding such time), and involved in litigation involving any claim of construction defect, and the current status of any and all such litigation, and (b) to certify in writing to the Board that Community Manager, and its then current and prior employees, have had no relationship to, and have received no benefit or thing of value from, the attorney(s) commencing and/or prosecuting such litigation, and/or any attorney referred to the Association at the specific written direction of the Board (or if there was or is any such relationship or benefit, to disclose and identify the same); and (6) at Community Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Community Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Community Manager until such time as the Community Manager turnover in good faith has been completed).

Section 5.6 Inspection of Books and Records. The Board shall comply with applicable law with regard to maintenance and inspection of Association books and records.

Section 5.7 Continuing Rights of Declarant. For a period of fifteen (15) years following the Close of Escrow of the last Unit in the Properties, Declarant shall have the continuing right, power, standing and authority, in its sole and absolute discretion (and without obligation to do so) to enter upon and/or inspect the Community (including, but not limited to the Common Elements), and/or to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations), and/or all rights and remedies, at law and in equity, regarding any alleged violation by the Association (or any Owner) of the Governing Documents (including, but not limited to, this Declaration and the procedures set forth herein) and/or applicable law. After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. During such period, Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and audited or reviewed annual reports, as required in Section 5.1(n) above. Such notices and information shall be delivered to Declarant, at its most recently designated address.

Section 5.8 Compliance with Applicable Law. The Association and its governance shall comply with all applicable law (including, but not limited to, applicable law prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person) relating thereto. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or applicable Ordinance. Subject to the foregoing, in the

event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law. NOTE: Certain provisions in this Declaration and/or other Governing Documents from time to time may be superseded by contrary provisions of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the internet address: <http://www.leg.state.nv.us/nrs/>.

## **ARTICLE 6**

### **COVENANT FOR ASSESSMENTS**

Section 6.1 Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree, to pay to the Association: (a) Annual Assessments, (b) Special Assessments, and (c) any Capital Assessments; such Assessments to be established and collected as provided in this Declaration. All Assessments, together with interest thereon, late charges, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the relevant Unit, shall be considered Assessments (subject to applicable law), and shall be a continuing lien upon the Unit against which such Assessments are made, in accordance with applicable Nevada law. Each such Assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors in title of any Owner unless expressly assumed by such successors.

Section 6.2 Association Funds. The Board shall establish at least the following separate accounts (the "Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as accounts, in the name of the Association, in compliance with applicable law, at a federally or state insured banking or savings institution located in the State of Nevada, and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association; and (2) a reserve fund ("Reserve Fund") for capital repairs and replacements, as set forth in Section 6.3 below; and (3) any other fund(s) from time to time which may be required by applicable law, or which the Board may deem prudent or appropriate, in its business judgment. Subject to applicable Nevada law, to qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than the Reserve Fund, which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate savings or checking account, at any federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Community

Manager shall not be authorized to make withdrawals from the Reserve Fund. Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer (or, in the absence of either the President or Treasurer, the Secretary may sign in place of the absent Officer). The President, Treasurer, and Secretary must all be Directors and (after the Declarant Control Period) must also all be Owners.

Section 6.3 Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding: (1) the Association shall establish a reserve fund ("Reserve Fund"); (2) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements (including, without limitation, Private Streets and private entry gate(s) to the Properties); (3) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any purpose whatsoever other than as specifically set forth in (2) above; (4) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing; (5) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); and (6) under no circumstances shall the Community Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund.

(b) The Board shall periodically retain the services of a qualified reserve study analyst ("Reserve Analyst"), who has sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study"). The Reserve Analyst must have the qualifications, including education and experience, as required for the issuance of the relevant permits by the Nevada Real Estate Division.

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event at such intervals as required by applicable Nevada law. The Board shall review the results of the most current Reserve Study at least annually to determine whether those reserves are sufficient; and shall at least annually make adjustments to the Association funding plan as necessary to provide adequate funding for the required reserves (i.e., by increasing Assessments). It shall be an obligation of the Community Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

(d) Each Reserve Study must be conducted by a person who holds the required permits, and who is qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Community Manager who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation: (1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore; (2) an identification of the Major Components which have a remaining useful life of less than 30 years; (3) an estimate of the remaining useful life of each Major Component so identified; (4) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life; and (5) an



estimate of the total Annual Assessment that may be necessary to cover the cost of repairing, replacement or restoration the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study), and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves. The Reserve Study shall comply with applicable Nevada law.

(1) The Association may comply with establishing adequate reserves through a funding plan that is designed to allocate the costs for the repair, replacement, and restoration of the Major Components over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement, and restoration of the Major Components are necessary.

(e) Each Reserve Study shall be prepared in accordance with any legal requirements from time to time as applicable, applied in each instance on a prospective basis. Subject to the foregoing sentence, the Association (upon Recordation of this Declaration) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally agreed that the following, among others, shall be deemed reasonable and prudent for and in connection with preparation of each Reserve Study: (i) utilization, by a Reserve Analyst, of the "pooling" or "cash flow" method, or other generally recognized method, and/or (ii) utilization or reliance, by a Reserve Analyst, of an assumption that there will be future annual increases in amounts from time to time allocated to the Reserve Fund (provided that, subject to and without limiting Sections 6.4 or 6.5 below, no assumption shall be made of such future increases in excess of 10% per year plus a reasonable annual inflationary factor), with corresponding increases in Assessments.

(f) Notwithstanding the foregoing or any other provision in this Declaration, the Association (upon Recordation of this Declaration, and/or by the Association's interest in and/or ownership of the Common Elements) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally accepted and agreed to each and every one of the following subsections, subject to applicable law:

(1) the Reserve Fund shall be adequately funded ("Adequately Funded Reserves," as defined and described further in the following subsections) on that date ("Turnover") which is within thirty (30) days after the end of the Declarant Control Period;

(2) "Adequately Funded Reserves" shall mean a Reserve Fund at Turnover sufficient to maintain the Common Elements at an adequate level without using the Operating Fund and/or without special assessments. The amount of the Adequately Funded Reserves shall be determined by the Board in its business judgment, prior to the end of the Declarant Control Period, as an amount reasonably adequate under the circumstances to meet the reserve needs of the Association as of Turnover. The Adequately Funded Reserves shall be based on the Reserve Study commissioned by the Declarant, prior to, or at a time reasonably following the end of, the Declarant Control Period) ("Turnover Reserve Study"); and

(3) Subject to subsection (4) below, delivery by Declarant to the Association of Adequately Funded Reserves as of Turnover shall be deemed to fully satisfy

any and all requirements under Nevada law (including NRS 116.31038) that the Declarant deliver to the Association "a reserve account that contains the declarant's share of the amounts then due" (or similar requirements under applicable law) at Turnover, at the end of the Declarant Control Period, OR at another agreed upon date between the Declarant and the recently installed Homeowner Controlled Board;

(4) If, as of Turnover, there are infrastructure bonds or other similar subdivision improvement bonds required by local governmental authority still in effect with regard to the Community, with bond release work ("Bond Release Work") yet to be done by Declarant after build-out ("Build-Out") of the entire subdivision, then the following additional provisions shall apply. To reflect the additional cost to Declarant of performing Bond Release Work which will result in extending the useful life of major components of Common Elements (e.g., Private Streets slurry seal coating, common element concrete repair and replacement, and so on) and corresponding additional benefit to the Association, Declarant shall be entitled to a reasonable offset or credit ("Offset") against the amount of the Adequately Funded Reserves as of Turnover. The amount of the Offset will be determined by the Board in its business judgment, prior to the end of the Declarant Control Period, as an amount reasonably projected to reflect the cost benefit to the Association of extending the useful life of major components of the Common Elements, by Declarant performing such Bond Release Work after Build-Out.

#### Section 6.4 Budget; Reserve Budget.

(a) The Board shall adopt a proposed annual Budget (which shall include a Reserve Budget) at least forty-five (45) days prior to the first Annual Assessment period for each Fiscal Year. Within sixty (60) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days, nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed Budget is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as aforesaid, the annual Budget for the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

(b) The Board shall have the annual financial statements of the Association audited and/or reviewed if and as required by, and in accordance with, applicable law.

(c) Notwithstanding the foregoing, except as otherwise provided in subsection (d) below, the Board shall, not less than 30 days or more than 60 days before the beginning of each Fiscal Year, prepare and distribute to each Owner a copy of:

(1) the Budget (which must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the Reserve Fund); and

(2) the Reserve Budget, which must include, but need not necessarily be limited to, the following:

(i) the current estimated replacement cost, estimated remaining life and estimated useful life of each Major Component;

(ii) as of the end of the Fiscal Year for which the Reserve Budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the Major Components;

(iii) a statement as to whether the Board has determined or anticipates that the levy of one or more Capital Assessments will be necessary to repair, replace or restore any Major Component or to provide adequate funding for the reserves for that purpose; and

(iv) a general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (B) above, including, without limitation, the qualifications of the Reserve Analyst.

(d) In lieu of distributing copies of the Budget and Reserve Budget, the Board may distribute to each Owner a summary of those budgets, accompanied by a written notice that the budgets are available for review at the business office of the Association or other suitable location and that copies of the budgets will be provided upon request.

(e) From and after the end of the Declarant Control Period, the Board shall be prohibited from reducing the Budget and/or Reserve Budget by five percent (5%) or more from the immediately prior fiscal year, in the absence of (i) unusual and extenuating circumstances, and (ii) prior written consent of Declarant in its sole and absolute discretion. This Section 6.4 may not be amended in the absence of specific prior written consent of Declarant in its sole and absolute discretion.

Section 6.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a twenty-five percent (25%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessments levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, for ratification in like manner as provided in Section 6.4 above.

Section 6.6 Capital Contributions to Association. At the Close of Escrow for the initial sale of a Unit by Declarant to a Buyer, the Buyer of such Unit shall be required to pay a non-refundable capital contribution ("Capital Contribution") to the Association, in the amount of One Thousand & Twenty-Three Dollars (\$1,023.00). This Capital Contribution shall be deposited at each Close of Escrow into the Association Reserve Fund, and used exclusively to help fund the Association Reserve Fund, and shall not be applied to non-Reserve Fund items

The Capital Contribution is in addition to, and not to be considered an advance payment of, the Assessments or any other capital contributions or any other charge(s) for such Unit. Notwithstanding the foregoing, in the event that the Reserve Fund is "adequately funded" per the Reserve Study, then subsequent Capital Contributions may be applied to working capital needs and/or the Reserve Fund and/or deposited to any other account of the Association, in the Board's reasonable business judgment, for such time period(s) as the Reserve Fund remains "adequately funded". Notwithstanding the preceding sentence, in the event that that the Reserve Fund thereafter is ever determined to be less than "adequately funded", then all Capital Contributions from and after the time of such determination shall be used exclusively to help fund the Reserve Fund, and shall not be applied to non-Reserve Fund items.

Section 6.7 Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be: (a) with respect to Units in the Original Property, the date established by the Board as the date on which Assessments on all Units in the Original Property are to commence; and (b) with respect to each Unit within Annexed Property, the first day of the calendar month following the date on which the Annexation Amendment for such Unit is Recorded; provided that Declarant may establish, in its sole and absolute discretion, a later Assessment Commencement Date, uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. From and after the Assessment Commencement Date, Declarant may, but shall not be obligated to, make loan(s) to the Association, to be used by the Association for the sole purpose of paying Common Expenses, to the extent the budget therefor exceeds the aggregate amount of Annual Assessments for a given period, provided that any such loan shall be repaid by Association to Declarant as soon as reasonably possible. The first Annual Assessment for each Unit shall be pro-rated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the Assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be retained by the Association for use in reducing the following year's Annual Assessment or for deposit in the reserve account. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

Section 6.8 Capital Assessments. The Board may levy, in any Fiscal Year, a Capital Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Elements, including fixtures and personal property related thereto; provided that any proposed Capital Assessment shall require the advance consent of a majority of the voting power of the Association.



Section 6.9 Formula for Allocation of Assessments. Annual Assessments, and any Capital Assessments, shall be assessed at an equal and uniform rate against all Owners and their Units. Each Owner's allocated share of such Assessments shall be a fraction, the numerator of which shall be the number of Units owned by such Owner, and the denominator of which shall be the aggregate number of Units in the Original Property (and, upon annexation, of Units in portions of the Annexed Property).

Section 6.10 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

(a) all portions, if any, of the Properties dedicated to and accepted by, the United States, the State of Nevada, the County, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for so long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) the Common Elements owned by the Association in fee.

Section 6.11 Special Assessments. The Association may, subject to the provisions of Article 7, Section 9.3 and Section 11.1(b) hereof, and applicable Nevada law, levy Special Assessments against specific Owners who have caused the Association to incur special expenses due to willful acts or negligence of said Owners, their tenants, families, guests, invitees or agents. Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorneys' fees, amounts expended to enforce Assessment liens against Owners as provided for herein, subject to applicable law, and other charges of similar nature. Special Assessments, if not paid timely when due, shall constitute unpaid or delinquent Assessments, pursuant to Article 7 below.

Section 6.12 Subsidies and/or Advances by Declarant. To the maximum extent not prohibited by applicable Nevada law, Declarant shall have the right, in its sole and absolute discretion, from time to time during the Declarant Control Period, to: (a) subsidize the Association, by direct payment of any and all Excess Common Expenses ("Declarant Subsidies"); and/or (b) advance funds and/or make loan(s) to the Association, to be used by the Association for the sole purpose of paying Excess Common Expenses ("Declarant Advances"). "Excess Common Expenses" for purposes of this Section 6.12 shall mean such amount, if any, of Common Expenses in excess of Assessments and non-Reserve funds reasonably available at such time to pay Common Expenses. The aggregate amount of any and all Declarant Subsidies and/or Declarant Advances, or portions from time to time respectively thereof, together with interest thereon at a rate not to exceed the maximum permitted from time to time by applicable law (but in any event, not more than eighteen percent (18%) per annum), shall be repaid by Association to Declarant as soon as non-Reserve funds are reasonably available therefor (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Assessments and/or contributions to Reserve Funds, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration or under applicable Nevada law). Each Owner, by acceptance of a deed to his or her Lot, shall be deemed to have acknowledged and agreed to all of the foregoing provisions of this Section 6.12, whether or not so stated in such deed.

**ARTICLE 7**  
**EFFECT OF NONPAYMENT OF ASSESSMENTS:**  
**REMEDIES OF THE ASSOCIATION**

Section 7.1 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Assessment, shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the maximum rate permitted from time to time by applicable law (but in any event, not more than eighteen percent (18%) per annum, or such lower rate as may be approved from time to time by the Board in its business judgment), commencing thirty (30) days from the due date until paid. In addition, the Board may require the delinquent Owner to pay a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest on any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Elements or by abandonment of his or her Unit.

Section 7.2 Notice of Delinquent Installment. If any installment of an Assessment is not paid by the due date established by the Board, the Board may mail a notice of delinquent Assessment to the Owner and to each first Mortgagee of the Unit. The notice shall specify: (a) the amount of Assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such Assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his or her right to cure after acceleration. If the delinquent installment of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such Assessments levied against such Owner and his or her Unit to be immediately due and payable without further demand, and may enforce the collection of the full Assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 7.3 Notice of Default and Election to Sell. Subject to applicable law, no action shall be brought to enforce any Assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default and election to sell is Recorded; or (b) the date the Recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default and election to sell must recite a good and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid Assessment as described in Section 7.1 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, the name and address of the Person authorized by the Board to enforce the lien by sale, and the following warning in

fourteen (14) point bold type: **WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** The notice of default and election to sell shall comply with applicable law and shall be signed and acknowledged by an Association Officer, Community Manager (acting under the specific direction of the Board), or other Person designated by the Board for such purpose, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded, subject to applicable law. The lien shall continue until fully paid or otherwise satisfied.

Section 7.4 Foreclosure Sale. Subject to applicable Nevada law, and to the limitation set forth in Section 7.5 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS §116.31164 and Covenants Nos. 6, 7 and 8 of NRS §107.030 and §107.090, as amended, insofar as they are consistent with the provisions of NRS §116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS §116.31163. Notice of time and place of sale shall be provided as required by NRS §116.311635.

Section 7.5 Limitation on Foreclosure. Any other provision in the Governing Documents notwithstanding, the Association shall comply with applicable law and may not contravene applicable law in foreclosing a lien.

Section 7.6 Cure of Default. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Community Manager (acting under the specific direction of the Board), stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 7.7 Cumulative Remedies. The Assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid Assessments, as provided above.

Section 7.8 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or

exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the Assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit. The release or discharge of any lien for unpaid Assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his or her personal obligation for the payment of such unpaid Assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for Assessments and, subject to applicable law, for fines and certain other amounts. The Association has a lien ("Assessment Lien") on a Unit for Assessments (and, subject to applicable law, for fines, and certain other amounts), and such Assessment lien shall be prior to all other liens and encumbrances on a Unit, other than certain specified exceptions, all as set forth in NRS § 116.3116 and any other applicable law. The sale or transfer of any Unit shall not affect an Assessment lien, subject to applicable law.

## **ARTICLE 8**

### **ARCHITECTURAL REVIEW COMMITTEE**

Section 8.1 ARC. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC," shall consist of three (3) committee members; provided, however, that such number may be increased or decreased from time to time by resolution of the Board. Notwithstanding the foregoing, Declarant shall have the sole right and power to appoint and/or remove all of the members to the ARC until such time as Declarant no longer owns any property in, or has any power to annex, the Annexable Area or any portion thereof; provided that Declarant, in its sole discretion, by written instrument, may at any earlier time turn over to the Board the power to appoint the members to the ARC; thereafter, the Board shall appoint all members of the ARC. A member of the ARC may be removed at any time, without cause, by the Person who appointed such member. Unless changed by resolution of the Board, the address of the ARC for all purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board.

Section 8.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 8, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including the inspection of construction in progress to assure conformance with plans and specifications approved by the ARC. The ARC shall have forty-five (45) days from its date of receipt within which to review plans and specifications received; provided that if the ARC has not responded by such forty-fifth day, then the ARC shall be deemed to have disapproved such plans and specifications (and the applicant shall then be required to re-apply).

(a) With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, repair or reconstruction of an Improvement, including Dwelling and landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height,



width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval.

(b) The ARC may condition its review and/or approval of plans and specifications for any Improvement upon such changes therein as the ARC may deem appropriate or necessary.

(c) The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. **Each Owner shall be responsible for obtaining all necessary permits and for complying with all applicable governmental (including, but not necessarily limited to, County) requirements.**

(d) The ARC shall or promulgate from time to time ARC rules, requirements, and procedures ("ARC Rules") governing content, submission, review, and/or approval of plans and specifications submitted for ARC approval, and reasonably related matters, subject to Board approval and compliance with applicable Nevada law.

Section 8.3 Non-Liability for Approval of Plans. The ARC's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the ARC, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in the structure constructed from such proposals or plans or specifications. Neither the ARC, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings.

Section 8.4 Deposit Requirement. The ARC may require a Homeowner to post a cash deposit ("Deposit"), with and as required by the ARC, in an amount from time to time reasonably to be determined by the ARC, prior to commencing any installation of an Improvement or other work pertaining to landscaping or swimming pool or spa on any Lot (if space permits, and subject to all ARC provisions). Said Deposit shall be held by the ARC, and returned to the Homeowner after completion of the Homeowner work, provided that the ARC shall use the Deposit to repair any damage to any curb, street, other Common Element, Perimeter Wall, Party Fence, or other area, and if the Deposit is insufficient to repair all such damage, then the additional cost, and any related cost, shall be assessed against the Homeowner as a Special Assessment levied against such Homeowner and his or her Lot.

Section 8.5 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 8 shall not apply to Improvements built by Declarant (or, with regard to Units owned by Declarant, until such time as Declarant conveys title to each such Unit to a Buyer). This Article 8 shall not be



amended without Declarant's written consent set forth on the amendment, and any purported amendment of or related to this Article 8 in the absence of such written consent of Declarant shall be void.

## **ARTICLE 9 MAINTENANCE AND REPAIR OBLIGATIONS**

Section 9.1 Maintenance Obligations of Owners. It shall be the duty of each Owner, at his or her sole cost and expense, subject to the provisions of this Declaration requiring ARC approval, to reasonably maintain, repair, replace and restore all Improvements located on his or her Unit, the Unit itself, and any "Limited Common Element" (as said term is defined by NRS § 116.059) allocated to his or her Unit, and the Unit itself, in a neat, sanitary and attractive condition, except for any areas expressly required to be maintained by the Association under this Declaration. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, or unsightly, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Unit and/or Limited Common Element to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment, enforceable as set forth in this Declaration.

The foregoing notwithstanding: (a) the Association shall have an easement for the maintenance, repair and replacement of any Improvement constructed by Declarant or the Association on a Common Element abutting or adjacent to one or more Lot(s), and (b) each Owner (other than Declarant), by acceptance of a deed to a Unit, whether or not so expressed in such deed, is deemed to covenant and agree not to place or install any Improvement on a Common Element, and not to hinder, obstruct, modify, change, add to or remove, partition, or seek partition of, any Common Element or any Improvement installed by Declarant or the Association thereon.

Section 9.2 Maintenance and Repair Responsibilities of Association. No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than initially by Declarant, or by the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to this Declaration (including, but not limited to the provisions of Sections 9.3 and 11.1(b) hereof), upon the Assessment Commencement Date, the Association shall provide for the periodic maintenance, repair, and replacement of the Common Elements, and the costs thereof shall be Common Expenses. The Common Elements shall be maintained by the Association in a safe, sanitary and attractive condition, and in good order and repair. The Association shall also provide for any utilities serving the Common Elements, and shall ensure that any landscaping on the Common Elements is regularly and periodically maintained in good order and in a neat and attractive condition. The Association shall not be responsible for the maintenance of any portions of the Common Elements which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its business judgment to be appropriate. Without limiting the foregoing: from and after the end of the Declarant Control Period, the

Board promptly shall cause to be developed and observed a regular, periodic maintenance schedule for all Common Elements, and shall not less than annually submit to Declarant a written report, specifying in reasonable detail all maintenance performed on the Common Elements during the previous year (or during such shorter period since the last such report was submitted to Declarant). Without limiting the foregoing, the Association also shall clean, maintain, irrigate (as applicable), insure (to the extent reasonably feasible) and keep in good repair: (a) all areas set forth in or described in the Plat as areas to be maintained by the "homeowners association" or words of similar import, (b) any other areas required to be maintained by the Association pursuant to the Plat or the Declaration, and (c) any other areas as required by relevant governmental authority.

Section 9.3 Damage by Owners to Common Elements. The cost of any maintenance, repairs or replacements by the Association within the Common Elements arising out of or caused by the negligence or willful act of an Owner, his or her tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 11.1(b) hereof.

Section 9.4 Damage and Destruction Affecting Dwellings and Duty to Rebuild. If all or any portion of any Unit or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore the Unit substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the ARC. The Owner of any damaged Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within six (6) months after the damage occurs, unless prevented by causes beyond his or her reasonable control. A transferee of title to the Unit which is damaged shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner at the time of the damage still held title to the Unit.

Section 9.5 Party Fences. Each fence which is built as a part of the original construction by Declarant and placed approximately on the property line between Lots shall constitute a "Party Fence". In the event that any Party Fence is not constructed exactly on the property line, the Owners affected shall accept the Party Fence as the property boundary. The cost of reasonable repair and maintenance of Party Fences shall be shared by the Owners who use such Party Fence in proportion to such use (e.g., if the Party Fence is the boundary between two Owners, then each such Owner shall bear half of such cost). If a Party Fence is destroyed or damaged by fire or other casualty, the Party Fence shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the Party Fence. Subject to the foregoing, any Owner whose Unit has or had use of the Party Fence may restore the Party Fence to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the Party Fence shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligence or willful acts or omissions. Notwithstanding any other provision of this Section 9.5, an Owner who by his or her negligence or willful act causes a Party Fence to be damaged or destroyed, shall bear the entire cost of furnishing the necessary repair or replacement. The right of any Owner to contribution from any other Owner under this

Section 9.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. The foregoing, and any other provision in this Declaration notwithstanding, no Owner (other than Declarant) shall alter, add to, or remove any Party Fence constructed by Declarant, or portion of such wall or fence, without the prior written consent of the other Owner(s) who share such Party Fence, which consent shall not be unreasonably withheld, and the prior written approval of the ARC. Notwithstanding the foregoing, or any other provision in this Declaration: with regard to any Party Fence constructed on the approximate boundary line of a Lot (even though such Lot may have already been conveyed to another Owner), Declarant shall have the unfettered right, in its sole and absolute discretion, and an easement, from time to time to enter upon such Lot and to construct, extend, shorten, or otherwise adjust, such Party Fence and/or related Improvement on such Lot and/or on any adjoining Lot. In the event of any dispute arising concerning a Party Fence under the provisions of this Section 9.5, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration. Additionally, each wall or fence which is built as part of the original construction by Declarant and placed approximately on the property line between a Unit and a Common Element shall also comprise a "Party Fence"; provided that the sole owner of such Party Fence shall be the Owner of such Unit (and not the Association); provided further that the Association shall be responsible for maintenance of only the exterior surface only (but not major repair) of only the side of such Party Fence facing and reasonably visible from the Common Element area, and the costs thereof shall be a Common Expense; and the Association shall have an easement to do so.

Section 9.6 Perimeter Walls. Those respective portions of Perimeter Walls (as defined in Section 1.53, above) which in part are located on or abutting certain Units ("PW Units"), are Improvements which are located, or deemed to be located, entirely within the boundaries of such respective PW Units. By acceptance of a deed to his or her PW Unit, each Owner on whose PW Unit a portion of the Perimeter Wall is located, covenants, at the Owner's sole expense, with regard to the entire portion of Perimeter Wall located or deemed located on his or her PW Unit ("PW Unit Wall"): to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the PW Unit Wall at all times in good repair; and, if and when reasonably necessary, to replace the PW Unit Wall to its condition and appearance as originally constructed by Declarant. No changes or alterations (including, without limitation, temporary alterations, such as removal of the PW Unit Wall for construction (if permitted, and subject to all other limitations set forth in this Declaration or in the other Governing Documents) of a swimming pool or other Improvement) shall be made to any Perimeter Wall, or any portion thereof, without the prior written approval of the ARC, and any request therefor shall be subject to the provisions of Article 8 above, including, but not necessarily limited to, any conditions imposed by the ARC pursuant to Section 8.2(b) above. The foregoing and any other provision herein notwithstanding, under no circumstances shall any wall, or portion thereof, originally constructed by Declarant, be changed, altered or removed by any Owner (or agent or contractor thereof) if such wall, or portion thereof, is shown on any improvement plan as a flood control wall, or any other wall, or if such change, alteration or removal in the sole judgment of Declarant or the ARC (as applicable) (without obligation to make such judgment) would adversely affect surface water, drainage, or other related considerations or requirements. If any Owner shall fail to insure, or to maintain, repair or replace his or her PW Unit Wall within sixty (60) days when reasonably necessary, in accordance with this Section 9.6, the Association shall be entitled (but not obligated) to insure,

or to maintain, repair or replace such PW Unit Wall, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration. As set forth in Section 9.10, below, the Association may, at its discretion, remove or paint over any graffiti from or on Perimeter Wall Visible Surfaces (and the costs of such painting over or removal of graffiti shall be a Common Expense). Notwithstanding the foregoing, or any other provision in this Declaration: with regard to all or any portion of the Perimeter Wall, Declarant shall have the unfettered right, in its sole and absolute discretion, and an easement, from time to time to enter upon a Lot and to construct, extend, shorten, or otherwise adjust, such Perimeter Wall and/or related Improvement on such Lot and/or on any adjoining Lot.

Section 9.7 Additional Wall Provisions. Units initially may be developed by Declarant and conveyed to Buyers with or without Party Fences or Perimeter Walls. In the event one or more Lots is or are initially developed and conveyed without such walls or fences (i.e., "open landscaping"), Declarant reserves the right (but not the obligation) thereafter at any time, in its discretion, following notice to the Owners thereof, to enter upon such Lots and to construct thereon Party Fences and/or Perimeter Walls (and Declarant expressly reserves an easement upon all Lots for itself, and its agents, employees, and contractors, for such purpose). Construction by Declarant of a Party Fence or Perimeter Wall on any Lot shall raise absolutely no presumption or obligation to construct a similar or any wall or fence on any other Lot. Walls or fences initially installed by Declarant shall not be added to, removed, modified, changed, or obstructed by any Owner without prior written approval of the ARC, and shall not in any manner or degree relieve any Owner of his or her obligation to maintain the entire Lot, regardless of the location of such wall or fence, as well as such wall or fence.

Section 9.8 Front Yard Landscaping; Certain Landscaping Requirements and Restrictions.

(a) Declarant shall install landscaping, and the related irrigation system and components, and related electrical system and components (including, but not necessarily limited to, timer clocks) (all of the foregoing, collectively, "Front Yard Landscaping") on or for certain Common Element front yard areas (generally, up to the Dwelling and the fencing boundaries, as determined by Declarant) abutting each Lot conveyed by Declarant to a Purchaser.

(b) The front yard areas, and Front Yard Landscaping, are not a part of the Lots, but are portions of the Common Elements of the Association. Accordingly, the Association shall irrigate, maintain, repair and replace (as necessary) Front Yard Landscaping, and the costs thereof or related thereto shall be Common Expenses.

(c) Notwithstanding the foregoing, or any other provision in this Declaration, in the event that all or any portion(s) of Front Yard Landscaping (including, but not limited to, trees or other vegetation and/or related irrigation system or components) is or are damaged because of any Owner's act or omission, then: (1) such Owner shall be solely liable for the costs incurred by the Association of repairing and/or replacing such damaged items, and any and all costs reasonably related thereto; and (2) the Association shall or may, in its discretion, perform or cause to be performed such repair and/or replacement, and the Association shall



assess the costs of and related to such repair and/or replacement against the Owner as a Special Assessment.

(d) To help prevent and/or control water damage to foundations and/or walls, each Owner covenants, by acceptance of a deed to his or her Lot, whether or not so stated in such deed, to not cause or permit spray irrigation water or sprinkler water or drainage on his or her Lot to seep or flow onto, or to strike upon, any foundation, slab, side or other portion of Dwelling, exterior concrete flatwork, wall (including, but not necessarily limited to, Party Fence and/or Perimeter Wall), and/or any other Improvement. Without limiting the generality of the foregoing or any other provision in this Declaration, each Owner shall at all times ensure that there are no unapproved grade changes (including, but not necessarily limited to, mounding) within five (5) feet of any such foundation or wall located on or immediately adjacent to the Owner's Lot.

(e) Positive site drainage should be maintained at all times in accordance with the IBC. Drainage should not flow uncontrolled down any descending slope. Water should be directed away from foundations, and not allowed to pond and/or seep into the ground. Lot drainage should be directed toward the street or other improved area.

(f) Notwithstanding any of the foregoing: (1) if any Owner or Resident should not follow any of the foregoing landscaping and drainage requirements and restrictions, such Owner or Resident does so at his or her own risk; and (2) any and all damage resulting directly or indirectly from an Owner or Resident not following any of the foregoing landscaping and drainage requirements and restrictions (including, but not limited to, any damage to Improvements on such offending Owner's or Resident's Unit, and/or on any neighboring or other properties) shall be the sole responsibility of the offending Owner or Resident, who shall be entirely liable for all costs of repair or remediation of such damage.

(g) In the event that any Owner observes or otherwise becomes aware of any occurrence or condition not conforming to or not permitted under this Section 9.8, then such Owner shall immediately provide a reasonably specific written report to the Board.

(h) Each Owner covenants to pay promptly when due all water bills for his or her Lot, and to not initiate or continue any act or omission which would have the effect of water being misdirected, or limited or shut off to the Owner's Lot.

(i) Absent prior written approval of the ARC, in its sole discretion, no Owner (other than Declarant) may add to, delete, alter, modify, or change, any landscaping, irrigation, or related system or Improvement, on any portion of the Owner's Lot.

(j) In light of current and possible future drought conditions and restrictions, each Owner shall be familiar with and fully adhere to water conditions and restrictions from time to time. Each Owner is required to immediately familiarize himself or herself with all present and from time to time with all anticipated or changed water use, watering restrictions, fines, and planting limitations, as relate or may relate to such Owner's Lot (including, but not necessarily limited to, landscaping and uses thereon). Further information regarding the foregoing may be obtained from time to time from (as applicable) the County, or (if applicable) other water authority with jurisdiction.



**Section 9.9 Modification of Improvements.** Maintenance and repair of Common Elements shall be the responsibility of the Association, and the costs of such maintenance and repair shall be Common Expenses; provided that, in the event that any Improvement located on a Common Element is damaged because of any Owner's act or omission, such Owner shall be solely liable for the costs of repairing such damage and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Each Owner covenants, by acceptance of a deed to his or her Unit, whether or not so stated in such deed, to not: add to, remove, delete, modify, change, obstruct, or landscape, all or any portion of: (a) the Common Elements; (b) Declarant Installed Landscaping (if any); (c) Perimeter Walls or Party Fence(s); and/or (d) any other wall or fence constructed by Declarant on such Owner's Lot; without prior written approval of the ARC in the ARC's discretion.

**Section 9.10 Graffiti Removal.** The Association may, at its discretion, remove or paint over any graffiti from or on Perimeter Wall Visible Surfaces (and the costs of such painting over or removal of graffiti shall be a Common Expense). Additionally, as set forth at the end of Section 9.5 above, the Association shall be responsible for maintenance of only the exterior surface (but not major repair) of only the side of those Party Fences facing and reasonably visible from Common Element areas, and the costs thereof also shall be a Common Expense.

**Section 9.11 Maintenance of Coach Lights.** Each Owner shall at all times maintain in good and operating condition any and all coach lights (if any) as originally installed by Declarant on the exterior of the Owner's Dwelling or garage (all of the foregoing described lights, collectively, "Coach Lights"). Such Owner maintenance shall include, but not be limited to, immediate replacement of burnt-out light bulbs (with new bulbs of like wattage and appearance) and broken coach light fixtures, and prompt periodic replacement of photoelectric cells (if applicable) in or controlling the Coach Lights, when and as needed. Absent prior written approval of the ARC, in its sole discretion, no Owner may delete, modify, or change any Coach Light or part thereof as initially installed by Declarant. Nothing in this Section 9.11 shall be construed as requiring or mandating installation by Declarant of Coach Lights.

**Section 9.12 Compliance by Owners with EPA and Other Requirements.** Notwithstanding any other provision in this Declaration, the following are strictly prohibited with regard to Owners (which term, for purposes of this section, shall include the families, contractors, agents, invitees, and guests of Owners, but shall specifically exclude Declarant) anywhere in the Community (including, but not limited to, any Lot, Common Element, and/or adjacent street: (a) the piling of any dirt or construction materials or debris (all dirt or construction materials or debris must be hauled in and hauled out on impermeable membranes; (ii) the dripping or running off of any dirt or construction materials or debris, from any Lot, Common Element, and/or adjacent street, into any drainage or runoff area; and/or (b) any activity which violates, or which reasonably could result in a violation of, the Federal Clean Water Act, EPA regulation, and/or any other applicable law or regulation; and/or (c) any activity which violates, or which reasonably could result in a violation of, any Ordinance, or rule or regulation of the water authority with jurisdiction (as may be applicable), or other similar applicable rule or regulation. Any Owner who violates any the foregoing, and causes Declarant or the Association to incur a fine or penalty under the Federal Clean Water Act, EPA regulation, and/or any other applicable law or Ordinance or rule or regulation, shall be subject to a Special Assessment hereunder in the amount of such fine or penalty, plus any applicable

attorneys fees and costs. All such amounts shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 6.11 hereof.

## **ARTICLE 10 USE RESTRICTIONS**

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying and controlling the Community and this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 10 may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Furthermore, violation of, or noncompliance with, a provision set forth in this Article 10 (unless it substantially threatens the health and welfare of the Owners and Community), shall not be enforced absent written complaint from one or more of the immediate neighbors of the alleged offending Owner (provided that Declarant, in its sole discretion, shall be deemed an "immediate neighbor" of all Lots for so long as Declarant owns any Lot in the Properties). Any other provision herein notwithstanding, neither Declarant, nor the Association, nor their respective directors, officers, members, committee (including, but not necessarily limited to, the ARC) members, agents or employees shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

Section 10.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering", destructive construction testing, or any other nonresidential purpose; provided that Declarant may exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care (or senior care), provided that the number of non-Family children, when added to the number of Family children being cared for at the Lot, (or the number of seniors), shall not exceed a maximum aggregate of five (5), and provided further that there is no nuisance under Section 10.5 below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable Ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his or her entire Unit (but any ancillary structure or related area, including, but not necessarily limited to, a casita, shall not be rented or leased separately or apart from the entire Unit) by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than one (1) continuous year. Except as otherwise provided in this Declaration, the Association may not require an Owner to secure or obtain any approval from the Association in order to rent or lease such Owner's Unit. Notwithstanding the preceding sentence, the Association shall not be prohibited from enforcing any provisions which govern the renting or leasing of Units and which are contained in NRS Chapter 116 or in any other applicable federal, state or local laws or regulations.

Section 10.2 No Further Subdivision. Except as may be expressly authorized by Declarant, no Unit or Common Element may be further subdivided (including, without limitation, any division into time-share estates or time-share uses) without the prior written approval of the Board; provided, however, that this provision shall not be construed to limit the right of an Owner: (1) to rent or lease his or her entire Unit (provided that any ancillary structure or related area including, but not limited to, a casita, may not be rented separately or apart from rental of the entire Unit) by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his or her Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be made expressly subject to this Declaration, subject further to applicable law. Any failure by the lessee of such Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement. No two or more Units in the Properties may be combined in any manner whether to create a larger Unit or otherwise, and no Owner, without the approval of the ARC, in the ARC's discretion, may remove any wall or other intervening partition between Units.

Section 10.3 Insurance Rates. Without the prior written approval of the ARC and the Board, nothing shall be done or kept in the Properties which would substantially increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any law. Any other provision herein notwithstanding, neither the ARC nor the Board shall have any power whatsoever to waive or modify this restriction.

Section 10.4 Animal Restrictions. All Owners shall comply fully in all respects with all applicable Ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Lot and/or any other portion of the Properties. Without limiting the foregoing, an Owner or Resident shall be permitted to keep on his or her Lot a reasonable number (normally not to exceed an aggregate total of two (2)) of dogs, cats, and/or other animals generally considered to be "indoor" household animals; provided that the keeping of such household animals may be prohibited or restricted by the Board if it reasonably determines that such household animals constitute a nuisance. Without limiting the foregoing, or any other provision herein, excessively barking dog(s) may be prohibited or restricted by the Board, if the Board determines in its business judgment that such dog(s) is or are barking excessively, with regard to times of the day, duration of time periods, and/or level of noise, and that such dog(s) constitute a nuisance or unreasonable annoyance to the neighbor(s) of the owner of the excessively barking dog(s) and/or to the Community. Each person bringing or keeping a pet or animal within the Properties shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet or animal brought upon or kept upon the Properties by such person or by members of his or her family, his or her guests or Invitees and it shall be the duty and responsibility of each such Owner to immediately clean up after such animals which have deposited droppings or otherwise used any portion of the Properties or Private Street abutting or visible from the Properties. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal.

**Section 10.5 Nuisances.** No rubbish, debris, or animal waste of any kind shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other similar or unusually loud sound devices (other than security devices used exclusively for safety, security, or fire protection purposes), noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers, edgers, and other equipment normally utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or Residents, or any equipment or item which unreasonably interferes with regular television or radio reception within any Unit, or the Common Elements, shall be located, used or placed on any portion of the Properties without the prior written approval of the ARC. No unusually loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Common Elements without the prior written approval of the ARC, in its sole discretion. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce frequently occurring false alarms in a manner annoying to neighbors. There shall be no posting of signs, memos, or flyers on mail boxes, light poles, or other similar Improvements; and violators shall be responsible for any and all damage to such Improvements, including, but not limited to, the surface and/or paint thereof. The Board shall have the right to determine if any noise, odor, or activity or circumstance reasonably constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his or her Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

**Section 10.6 Exterior Maintenance and Repair; Owner's Obligations.** No Improvement anywhere within the Properties shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. If any Owner or Resident shall permit any Improvement, the maintenance of which is the responsibility of such Owner or Resident, to fall into disrepair so as to create a dangerous, unsafe, or unsightly condition, the Board, after consulting with the ARC, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.11 above, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment for all purposes of Articles 6 and 7 above. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or action may be taken against the Owner in the manner set forth in this Declaration. The Association, and its directors, officers, employees,



and agents, shall have no liability whatsoever for any damage done to an Owner's Unit in connection with or as a result of such entry and repair, provided that the Association acted in good faith and without gross negligence.

Section 10.7 Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself or herself and his or her assigns that he or she will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements, unless adequate alternative provision is made for properly engineered drainage and approved in advance and in writing by the ARC, and any request therefor shall be subject to Article 8 above, including, but not necessarily limited to, any condition imposed by the ARC pursuant to Section 8.2(b) above, and further shall be subject to the Owner obtaining all necessary governmental approvals pursuant to Section 8.2(c) above. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to a Buyer from Declarant, or later grading changes which are shown on plans and specifications approved by the ARC.

Section 10.8 Water Supply and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, or exterior water softener system, shall be permitted on any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water or sewer district serving the Properties, and any applicable governmental health authorities having jurisdiction, and has been approved in advance and in writing by the ARC.

Section 10.9 No Hazardous Activities. No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, or Common Elements.

Section 10.10 No Unsightly Articles; Trash Containers. No unsightly articles shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, or Common Elements (but the Association cannot require that trash containers be stored within any building or garage, although the Association may limit the location of trash containers to the side or rear of a Dwelling, and may require trash containers to be screened from view from the street, a sidewalk, or any adjacent property, by a screening structure approved by the ARC. Subject to the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time (not to exceed a cumulative total of twelve (12) hours during the period(s) before and/or after scheduled trash collection hours), subject to applicable law. There shall be no exterior fires whatsoever, except barbecue fires, and except as specifically authorized in writing by the ARC (and subject to applicable ordinances and fire regulations).

Section 10.11 No Temporary Structures; Storage Sheds. Unless required by Declarant during the construction of Dwellings and other Improvements, or unless approved in writing by the ARC in connection with the construction of authorized Improvements, no outbuilding, shed, storage shed, tent, shack, or other temporary or portable structure or Improvement of any kind shall be placed upon any Lot or other portion of the Properties; provided that, a storage shed, not exceeding nine (9) feet in height and one hundred twenty (120) square feet in area, may



be permitted on a Lot, subject to prior review and approval by the ARC in its discretion, and such conditions and/or requirements as may be imposed by the ARC, provided further that any such storage shed approved by the ARC: (a) must not be used for habitation, whether permanent or temporary; (b) must comply with all applicable law; and (c) must not constitute a nuisance; and provided further that the ARC shall have the right to further restrict or completely prohibit storage sheds in its sole discretion.

Section 10.12 No Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon, in, or below any Unit or the Common Elements, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon or below the surface of any portion of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat, natural gas, or other mineral or depleting asset shall be erected.

Section 10.13 Alterations. There shall be no excavation, construction, alteration or erection of any projection which in any way alters the exterior appearance of any Improvement from any street, or from any other portion of the Properties (other than minor repairs or rebuilding pursuant to Section 10.6 above) without the prior approval of the ARC pursuant to Article 8 hereof. There shall be no violation of the setback, side yard or other requirements of local governmental authorities, notwithstanding any approval of the ARC. This Section 10.13 shall not be deemed to prohibit minor repairs or rebuilding which may be necessary for the purpose of maintaining or restoring a Unit to its original condition.

Section 10.14 Signs, Flags. Subject to Declarant's reserved rights set forth in Article 14 below, to the maximum extent not prohibited by law: no flag (other than the flag of the United States, in accordance with and subject to the Federal Flag Code and other applicable law, and properly and respectfully displayed and maintained); or balloon, beacon, banner, sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view from any Lot or any other portion of the Properties, without the prior written approval of the ARC, other than: (a) one (1) sign for each Unit, not larger than eighteen (18) inches by thirty (30) inches, advertising the Unit for sale or rent; and/or (b) political sign(s) not larger than twenty-four (24) inches by thirty-six (36) inches on a Lot, in accordance with and subject to applicable law, and/or (c) traffic and other signs installed from time to time by Declarant. Signs and the regulation thereof shall conform with applicable law; provided that signs may be regulated and restricted to the maximum extent from time to time permitted by applicable law.

Section 10.15 Improvements.

(a) Unless otherwise designated or authorized in this Declaration (including but not necessarily limited to the following sentence) no Lot shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its occasional guests, plus garage, fencing and/or wall, and such other Improvements as are necessary or customarily incident to a single-Family Dwelling. Notwithstanding the preceding sentence, an ancillary structure, guest house or "casita," and/or secondary garage shall be permitted if: (i) constructed on a Lot by Declarant, in its sole and absolute discretion, without obligation to do so; or (ii) constructed by an Owner on his or her Lot, subject to prior ARC review and written

approval and compliance with any and all ARC requirements; subject to the provisos that any such structure or "casita" or secondary garage shall be subject to all applicable Ordinances, shall be ancillary and appurtenant to a Unit, and shall not separately comprise another Unit. No part of the construction on any Lot shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). Unless installed by Declarant, no projection of any type shall be placed or permitted to remain above the roof of any Dwelling or other roofed structure within the Properties. Without the ARC's prior written approval, no basketball backboard, jungle gym, play equipment, or other sports apparatus, whether temporary or permanent, shall be constructed, located, or maintained anywhere on the Properties other than in the back yard of an Owner's Lot; provided that basketball backboards, or certain other sports apparatus, may be permitted outside of back yards but only for temporary periods of actual use and in any case not overnight, and subject to any rules established from time to time by the ARC. Apart from any installation by Declarant as part of its original construction, no patio cover, antennae, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant during the original construction of the Dwelling), unless the prior written approval of the ARC has been obtained, subject to applicable law.

(b) Subject to the foregoing, stucco block walls may be permitted on the interior side of rear yards only, subject to prior written consent of the ARC. Subject to the preceding sentence, no stucco block walls shall be permitted anywhere else in the Properties, without the prior written consent of Declarant, in its sole and absolute discretion. Notwithstanding the foregoing or any other provision herein, Declarant shall have no responsibility or liability whatsoever for or related to any stucco (over block wall) in the event that such stucco is ever damaged or should need repair or replacement for any reason whatsoever.

(c) Satellite dishes may be installed without ARC approval if all of the following conditions are met: 1) the satellite dish shall be no larger than 39" in diameter; 2) the satellite dish cable/cord color shall match the body color of the home; 3) the cable wiring, casing must be installed in a professional manner and cord, cables, wires and dish must be properly and tightly mounted and secured without gap; and 4) the satellite dish must be located in an inconspicuous location at the rear of the Dwelling near the roof eaves. If all of these conditions cannot be met, then ARC review and approval will be required, subject to applicable law.

Section 10.16 Landscaping. Each Owner shall maintain the landscaping on his or her Lot in a neat and attractive condition. Notwithstanding the foregoing, the Association shall maintain any landscaping on portions of Lots which comprise Common Element easement areas. The Board may adopt Rules and Regulations proposed by the ARC to regulate landscaping permitted and required in the Properties, but shall not prohibit an Owner from installing or maintain drought tolerant landscaping on the Owner's Lot, to the maximum extent practicable to be compatible with the style of the Community and submitted to the ARC for approval (for the purposes of this Section 10.16, "drought tolerant landscaping" shall mean landscaping which conserves water, protects the environment, and is adaptable to local conditions).

Section 10.17 Intentionally Reserved.

Section 10.18 Parking and Vehicular Restrictions.

(a) No Person shall park, store or keep on any Private Street or other Common Element within the Properties, any vehicle of any kind, unless specifically permitted by applicable law, or otherwise specifically permitted by the Governing Documents and/or by the Board and/or ARC.

(b) Notwithstanding the foregoing, or any other provision herein, recreational vehicles ("RVs") must be parked wholly within enclosed garages as originally constructed by Declarant (or wholly within enclosed garages as may be specifically approved from time to time by the ARC), and subject to Rules established from time to time by the ARC or Board. No RV shall be permitted to be parked in a driveway (except reasonably for temporary and short loading or unloading periods); provided that, if the RV is too large or too long to be wholly parked within a driveway, then the RV shall not be allowed to be parked partially or within the driveway at all. No RV will be permitted on a driveway if the RV extends beyond the driveway.

(c) Subject to subsections (a) and (b) above, the Board is empowered to establish, supplement, and/or revise from time to time certain Rules regulating vehicles and parking, which may include, but need not be limited to, further defining RVs, establishing "parking" and "no parking" areas within the Properties, and/or establishing other parking rules or regulations, as well as enforcement by the Association of such parking limitations on the Common Elements by all means lawful for such enforcement by public authorities on Public Streets. No disabled, unregistered, or unlicensed vehicle shall be permitted to be parked on any Common Element or elsewhere within the Properties. Notwithstanding any of the foregoing, one camper truck, van, or similar vehicle, up to and including one (1) ton, when used for everyday-type transportation, may be kept or parked wholly enclosed within an Owner's or Resident's garage (or space reasonably permitting, wholly within the Owner's or Resident's driveway). Without limiting the foregoing, no Owner or Resident shall park, store, or keep, anywhere within the Properties, any vehicle or vehicular equipment, mobile or otherwise, deemed by the Board or the ARC to be a nuisance. No Person shall perform repair or restoration of any motor vehicle, trailer, watercraft, aircraft, or other vehicle, upon any portion of the Properties or on any Common Element; provided that repair and/or restoration of one motor vehicle shall be permitted, but only if performed wholly within an Owner's or Resident's garage with the garage door closed; provided further that such activity may be prohibited entirely by the Board or ARC if either determines, in its respective reasonable discretion, that such activity constitutes a nuisance. Each Owner and/or Resident shall maintain his or her garage in a manner which ensures that the garage is capable of regularly and normally accommodating as many vehicles as it was originally designed to accommodate. Garages shall be kept closed at all times, except as reasonably required for ingress thereto and egress therefrom. The Board may establish Rules further governing or restricting parking (including, but not limited to, any guest parking in specifically designated areas, if any).

(d) Notwithstanding the foregoing or any other provision in the Governing Documents, parking and vehicular restrictions in the Governing Documents shall not be

interpreted in such a manner as to permit any activity which is prohibited by applicable law (or to prohibit any activity which must not be prohibited per applicable law).

Section 10.19 Intentionally Reserved.

Section 10.20 No Security/Monitoring. NO SECURITY OR MONITORING IS PROVIDED FOR THE COMMUNITY AND/OR PERSONS OR ACTIVITIES WITHIN OR RELATED TO THE COMMUNITY (INCLUDING, BUT NOT LIMITED TO, THE UNITS AND COMMON ELEMENTS). All persons entering upon the Community shall do so AT THEIR OWN RISK and shall be deemed to have fully and unconditionally assumed the risk of property damage and/or bodily injury from conditions, activities, and/or occurrences on, or the use by others of, such areas, and shall indemnify and hold Declarant, the Association, and their respective directors, officers, employees, committee members, and agents, harmless from and against any and all liability arising from or in any way related to the absence of security or monitoring for the Community (including, but not limited to, the Common Elements). Without in any way limiting the foregoing: (a) parents shall at all times personally supervise any minor child or children on or about the Community (including, but not limited to, the Common Elements); (b) such animals as may be allowed from time to time in the Common Elements must at all times be kept on a leash held by a person capable of controlling the animal, and such person must immediately clean up and reasonably remove as quickly and completely as possible any and all droppings or waste deposited by such animal; and (c) the Board shall have the right, in its sole discretion (but not the obligation), to establish additional Rules and Regulations pertaining to the Community and/or use of the Common Elements, and to prohibit any activity thereon deemed to be a nuisance.

Section 10.21 Post Tension Slabs. The concrete slab for certain Residential Units in the Properties are or may be reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the relevant Unit and/or personal injury. By accepting a deed to a Unit in the Properties, each Owner specifically covenants and agrees that: (a) such Owner shall not cut into or otherwise tamper with any Post Tension Slab; (b) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Residence; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Unit; and (d) such Owner shall indemnify and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including attorneys' fees) arising from any breach of this Section.

Section 10.22 Conduct in Community. There shall be a fundamental overall "good neighbor" policy of courtesy and reasonability underlying and controlling this Declaration and the other Governing Documents and this Community, in which the Owners seek to enjoy a quality lifestyle. Subject to protected Constitutional and First Amendment rights and other applicable law, the following "Bullying" provisions are set forth. "Bullying" shall not be allowed during or related to any Association Membership or Board or ARC meeting or function or activity, or on any Common Element. "Bullying" shall mean conduct (which may include oral harassment and/or intimidation, and/or physical act or gesture, by one or more Person(s)



("Perpetrator(s)"), directed at one or more other Person(s) ("Victim(s)"), that causes harm or serious emotional distress to the Victim, or places the Victim in reasonable apprehension of fear of harm or serious emotional distress to himself, or creates an unreasonably hostile environment for a Victim. This provision applies to Owners, Residents, and/or their respective Families; guests; Association Directors, Officers, ARC members, other committee members; Community Manager and/or its employees and agents. Note: NRS 116.31184 (entitled "Threats, harassment and other conduct prohibited; penalty), effective as of October 1, 2013, provides that violation of such statute will or may also comprise a misdemeanor under Nevada law. In the event of any irreconcilable conflict between this section and applicable statute, the statute shall prevail.

Section 10.23 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Community Manager of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Community Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

Section 10.24 Declarant Exemption. Each Unit owned by Declarant, shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Unit to a Buyer, and activities of Declarant related to Declarant's development, construction, repair, advertising, marketing and/or sales efforts, shall be exempt from the provisions of this Article 10, for a period of twelve (12) years after conveyance of the last Unit in the Properties to a Buyer. Until the end of such time period, this Article 10, including but not limited to this Section 10.24, may not be amended without Declarant's prior written consent, in its sole discretion, and any purported amendment without Declarant's written consent shall be void.

## **ARTICLE 11**

### **DAMAGE TO OR CONDEMNATION OF COMMON ELEMENTS**

Section 11.1 Damage or Destruction. Damage to, or destruction or condemnation of, all or any portion of the Common Elements shall be handled in the following manner:

(a) Repair of Damage. Any portion of this Community, for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Common- Interest Community is terminated, in which case the provisions of NRS §§ 116.2118, 116.21183 and 116.21185 shall apply; (ii) repair or replacement would be illegal under any state or local statute or Ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community; (A) the proceeds attributable to



Units that are not rebuilt must be distributed to the Owners of those Units; and (B) the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the liabilities of all the Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations.

(b) Damage by Owner. To the full extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Elements not fully reimbursed to the Association by insurance proceeds, provided the damage is sustained as a result of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any Improvement by said Owner or the Persons deriving their right and easement of use and enjoyment of the Common Elements from said Owner, or by his or her respective Family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to: (1) determine whether any claim shall be made upon the insurance maintained by the Association; and (2) levy against such Owner a Special Assessment equal to any deductible paid and the increase, if any, in the insurance premiums directly attributable to the damage caused by such Owner or the Person for whom such Owner may be responsible as described above. In the case of joint ownership of a Unit, the liability of the co-owners thereof shall be joint and several, except to any extent that the Association has previously contracted in writing with such co-owners to the contrary. After Notice and Hearing, the Association may levy a Special Assessment in the amount of the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, against any Unit owned by such Owner, and such Special Assessment may be enforced as provided herein.

Section 11.2 Condemnation. If at any time, all or any portion of the Common Elements, or any interest therein, is taken for any governmental or public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. Any such award payable to the Association shall be deposited in the operating fund. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members. Immediately upon having knowledge of any taking by eminent domain of Common Elements, or any portion thereof, or any threat thereof, the Board shall promptly notify all Owners and all Eligible Holders.

Section 11.3 Condemnation Involving a Unit. For purposes of NRS § 116.1107.2(a), if part of a Unit is acquired by eminent domain, the award shall compensate the Unit's Owner for the reduction in value of the Unit's interest in the Common Elements. The basis for such reduction shall be the extent to which the occupants of the Unit are impaired from enjoying the Common Elements. In cases where the Unit may still be used as a Dwelling, it shall be presumed that such reduction is zero (0).

## **ARTICLE 12** **INSURANCE**

Section 12.1 **Casualty Insurance**. The Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with applicable law. Subject to the preceding sentence, the Board shall cause to be obtained and maintained a master policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements of the Association on the Common Elements, for the full insurable value replacement cost thereof without deduction for depreciation or coinsurance, and, in the Board's business judgment, shall obtain insurance against such other hazards and casualties, as the Board deems reasonable and prudent. The Board, in its reasonable judgment, may also insure any other property, whether real or personal, owned by the Association or located within the Properties, against loss or damage by fire and such other hazards as the Board may deem reasonable and prudent, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Elements shall be maintained for the benefit of the Association, the Owners, and the Eligible Holders, as their interests may appear as named insured, subject however to the loss payment requirements as set forth herein. Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments levied by the Association.

The Association, acting through the Board, shall be the named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any policies shall be paid to the Board as trustee. The Board shall have full power to receive and receipt for the proceeds and to deal therewith as deemed necessary and appropriate. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of insurance maintained by the Association and of all the renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Eligible Holders who have expressly requested the same in writing.

Section 12.2 **Liability and Other Insurance**. The Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with applicable law. Subject to the preceding sentence, the Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem prudent (but in no event less than \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Community Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests and invitees, against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available and reasonably necessary, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Worker's

Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Community Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

**Section 12.3 Fidelity Insurance.** The Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with applicable law. Subject to the preceding sentence, the Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance or crime insurance coverage (in an amount at least equal to the lesser of: (a) three (3) months of aggregate Assessments on all Units plus Reserve Funds; or (b) \$5,000,000). The Board shall further cause to be obtained and maintained such other insurance as it deems prudent, insuring the Board, the Directors, and Officers, and any Community Manager against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof, if reasonably feasible, in the amount of not less than \$1,000,000.00. Said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period, if reasonably available. The Association shall require that the Community Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From and after the end of the Declarant Control Period, blanket fidelity insurance coverage which names the Association as an obligee shall be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Community Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Units, plus Reserve Funds) (or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable).

**Section 12.4 Other Insurance Provisions.** The Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with applicable law. Subject to the preceding sentence, the Board shall also obtain such other insurances customarily required with respect to projects similar in construction, location, and use, or as the Board may deem reasonable and prudent from time to time, including, but not necessarily limited to, Worker's Compensation insurance (which shall be required if the Association has any employees). All premiums for insurances obtained and maintained by the Association are a Common Expense included in the Annual Assessment levied upon the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its sound business judgment. In addition, the Association shall continuously maintain in effect such casualty, flood (if applicable), and liability insurance and fidelity insurance coverage necessary to meet the requirements for similar developments, as set forth or modified from time to time by any governmental body with jurisdiction, except to the extent such coverage is not reasonably available or has been waived by the applicable agency.

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his or her Unit, at his or her sole expense to have obtained, and to have furnished his or her Mortgagee and the Board (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his or her Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and upon the Board's request (without obligation of the Board to so request), shall promptly provide the Board with duplicate copies of such insurance policy at Close of Escrow, and periodically thereafter prior to expiration from time to time of such policy. In the event any Owner has not furnished such copies of insurance policies to the Board at any time within fifteen (15) days when due from time to time, then the Board shall have the right, but not the obligation, to purchase such insurance coverage for the Unit, and to assess the Unit Owner, as a Special Assessment (enforceable pursuant to Article 7 above), the cost of such insurance, plus an administrative fee of One Hundred Dollars (\$100.00) for each month, or portion thereof, during which such Owner has not provided the Board with copies of such policies upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he or she deems desirable to cover his or her individual liability, damage to person or property occurring inside his or her Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him or her to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein (a) each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance; (b) this Section 12.5 is intended only to set forth certain insurance related duties and obligations of Owners; and (c) nothing in this Section 12.5 shall impose any duty or obligation or liability whatsoever on the Association or on the Board.

Section 12.6 Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on coinsurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (3) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (4) any rights of the insurer to repair, rebuild or replace, and, in the event any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; or (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Unit. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, and Community Manager, and the agents and employees of



each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss; provided, however, that such waiver shall not be effective as to any loss covered by a policy of insurance which would be voided or impaired thereby.

**Section 12.7 Notice of Expiration Requirements.** In compliance with applicable law, each of the policies of insurance maintained by the Association shall contain a provision, if reasonably available, that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and each Eligible Holder who has filed a written request with the carrier for such notice, and every other Person in interest who requests in writing such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 12, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his or her interest in the Common Elements or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his or her Family; (c) no act or omission by any Owner or member of his or her Family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

### **ARTICLE 13** **MORTGAGEE PROTECTION**

**Section 13.1 Mortgagee Protection Provisions.** In order to induce FHA, VA, FHLMC, GNMA and FNMA and any other governmental agency or other Mortgagees to participate in the financing of the sale of Units within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each Eligible Holder, upon its specific written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Unit, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

(c) In all instances subject to and in accordance with applicable law (including, but not necessarily limited to, NRS §116.3116, as may be applicable): each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title to such Unit free and clear of any claims of



unpaid Assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee.

(d) Unless at least sixty-seven percent (67%) of Eligible Holders (based upon one (1) vote for each first Mortgage owned) or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, neither the Association nor the Owners shall:

(1) subject to Nevada non-profit corporation law to the contrary, by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Elements and the Improvements thereon which are owned by the Association; provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association as provided in this Declaration shall not be deemed a transfer within the meaning of this clause;

(2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(3) by act or omission change, totally waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other Improvements on the Units, the Perimeter Wall Visible Surfaces, or the upkeep of lawns and plantings in the Properties;

(4) fail to maintain Fire and Extended Coverage on any insurable Improvements on Common Elements on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost);

(5) except as provided by any applicable provision of NRS Chapter 116, use hazard insurance proceeds for losses to any Common Elements for other than the repair, replacement or reconstruction of such property; or

(6) amend those provisions of this Declaration or the Articles of Incorporation or Bylaws which expressly provide for rights or remedies of first Mortgagees.

(e) Eligible Holders, upon express written request in each instance therefor, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

(f) Eligible Holders, who have filed a written request for such notice with the Board shall be given thirty (30) days' written notice prior to: (1) any abandonment or termination of the Association; and/or (2) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self- management of the Properties. Such first Mortgagees shall be given immediate notice: (i) following any damage to the Common Elements whenever the cost of

reconstruction exceeds Ten Thousand Dollars (\$10,000.00); and (ii) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

(g) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Elements, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(h) The Reserve Fund described in Article 6 above must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large extraordinary Assessments.

(i) The Board shall require that any Community Manager, and any employee or agent thereof, maintain at all times fidelity bond coverage which names the Association as an obligee; and, at all times from and after the end of the Declarant Control Period, the Board shall secure and cause to be maintained in force at all times fidelity bond coverage which names the Association as an obligee for any Person handling funds of the Association.

(j) When professional management has been previously required by a Beneficiary, insurer or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and of the Board respectively, and at least fifty-one percent (51 %) of the Eligible Holders.

(k) So long as VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, then, pursuant to applicable VA requirement, for so long as Declarant shall control the Association Board, Declarant shall obtain prior written approval of the VA for any material proposed: action which may affect the basic organization, subject to Nevada nonprofit corporation law, of the Association (i.e., merger, consolidation, or dissolution of the Association); dedication, conveyance, or mortgage of the Common Elements; or amendment of the provisions of this Declaration, the Articles of Incorporation, Bylaws, or other document which may have been previously approved by the VA; provided that no such approval shall be required in the event that the VA no longer regularly requires or issues such approvals at such time.

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to reasonably satisfy the applicable express requirements of Mortgagees, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the Membership, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Unit.

Section 13.2 FHA/VA Approval. So long as Declarant has effective control of the Board, the following actions will require the prior confirmation of the FHA and/or VA, as applicable: (a) annexation or deannexation of additional property in the Project (other than the Annexable Area); (b) dedication, conveyance or Mortgage of Association Property; (c) except as provided in Section 17.5 below, amendment of this Declaration; and (d) mergers, consolidations or dissolutions of the Association; provided, however, that such prior confirmation shall not be a condition precedent if FHA or VA has ceased to regularly require or issue such written confirmations.

#### **ARTICLE 14** **DECLARANT'S RESERVED RIGHTS**

Section 14.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, pursuant to NRS § 116.2105.1(h), Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

(a) Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of the Recordation of this Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements on the Properties and an easement over the Properties for such purpose; provided, however, that if Declarant still owns any property in the Properties on such fifteenth (15th) anniversary date, then such rights and reservations shall continue, for one additional successive period of ten (10) years thereafter.

(b) Exercise of Developmental Rights. Pursuant to NRS Chapter 116, Declarant reserves the right to annex all or portions of the Annexable Area to the Community, pursuant to the provisions of Article 15 hereof, for so long as Declarant owns any portion of the Annexable Area. No assurances are made by Declarant with regard to the boundaries of those portions of the Properties which may be annexed or the order in which such portions may be annexed. Declarant also reserves the right to withdraw real property from the Community.

(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, construction trailers, and/or models in any Unit owned or leased by Declarant in the Properties, and signs, flags, and/or banners anywhere on the Common Elements, for the period set forth in Section 14.1(a) above, and Declarant further expressly reserves the right during such period to use said signs, flags, and/or banners, offices and models, in connection with marketing and sales of other projects of Declarant in the County. Without limiting the foregoing, for the period set forth in Section 14.1(a) above, Declarant reserves the right and an easement to place and maintain signs, flags and banners throughout the Properties for Declarant's marketing and advertising purposes, and to periodically enter upon the Properties to maintain said signs, flags, and banners and to keep them in good repair.

(d) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.7 hereof, during the Declarant Control Period.

(e) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 17.5 below, and any other provision of this Declaration, during the time periods set forth therein.

(f) Appointment and Removal of ARC. Declarant reserves the right to appoint and remove the ARC, for the time period set forth in Section 8.1 above.

(g) Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration.

(h) Certain Other Rights. Notwithstanding any other provision of this Declaration, Declarant additionally reserves the right (but not the obligation), in its sole and absolute discretion, at any time and from time to time, to unilaterally: (1) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (2) modify, expand, or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community (i.e., the Units That May Be Created).

(i) Control of Private Streets and Entry Gates; Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties and Annexable Area, to unilaterally control all Private Streets and private entry gate(s) to the Properties, and to unilaterally control all entry gates to the Properties, and to keep the entry gates open during such hours from time to time established or designated by Declarant in its sole discretion. Declarant further reserves the right to control, restrict, and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's discretion, subject to applicable law, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to at least one dedicated street adjacent to the Properties. Neither the Association nor any one or more of the Owners may at any time or in any way (without the prior written approval of Declarant, in its sole discretion) impede, hinder, obstruct, or interfere with Declarant's marketing, sales, and/or construction activities.

(j) Marketing Names and Certain Other Rights. Declarant shall have the right (but not the obligation), at any time and from time to time, in its sole and absolute discretion, to: (a) design, build, market, and/or sell new homes in the Community from time to time as or under separate or different neighborhoods or areas and/or marketing names, which may, but need not necessarily, include "COTTAGES AT CARSON VALLEY" and/or any other name(s), in Declarant's sole discretion; (b) design, build, market, and/or sell different or varying product types, plans, or designs for new homes and/or other Improvements in the Community and/or portions thereof (including, but not limited to, new homes in the Community from time to time significantly different in size, number of bedrooms or other rooms, number of floors or height, architectural styling or features, embellishments, price, value, and/or any other feature or aspect of any future product); (c) establish and/or adjust sales prices or price levels up or down for homes and/or Lots; (d) have the Association budget initially and from time to time computed on numbers of Lots significantly less than the maximum number of Units That May Be Created; (e) supplement and/or modify of Record all or any parts of the descriptions set forth in Exhibit "A" and/or "B" hereto; and/or (f) unilaterally modify and/or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community,

and the Annexable Area which may, but need not necessarily, from time to time be annexed hereto.

(k) Control of Parking Spaces. Declarant reserves the right to control parking spaces (if any) during Declarant's regular business or marketing hours, and to tow unauthorized vehicles at the owner's expense, for so long as Declarant is conducting construction, marketing, or sales activities in or from the Community or any portion thereof.

(l) Certain Property Line Adjustments. Declarant reserves the right to adjust the boundary lines between Units, and/or between Units and Common Elements shown on the Plat prior to conveyance of an affected Unit by Declarant to a Buyer.

(m) Additional Reserved Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, including, but not limited to, those set forth in Article 15, 16, and/or 17 below, and, to the maximum extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all Developmental Rights and all Special Declarant Rights as set forth or referenced therein).

(n) Amendment of Plat. To the maximum extent not prohibited by applicable Nevada law, Declarant reserves the right from time to time to unilaterally execute, process through appropriate governmental authority, and Record an amended plat map for the Community; provided that any such amended plat map shall not amend any property already conveyed to a Buyer without the written approval of such Buyer, which approval shall not be unreasonably delayed or withheld. Upon request by Declarant, the Association and each Owner shall promptly sign, acknowledge (as may be appropriate or required) and deliver to Declarant all documents reasonably required and to promptly do all other things reasonably required by Declarant in connection with or related to amendment of the plat map.

Section 14.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties, for so long as any Unit owned by Declarant remains unsold.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units; provided, however, that if FHA or VA approval is sought by Declarant, then the FHA and/or the VA shall have the right to approve any such grants as provided herein.



(c) Prospective Buyers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant and for placement of Declarant's signs.

(d) Without limiting Section 14.1(c) above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, and/or related private temporary parking areas (which are not Common Elements, and are not Association areas) for this Community or for any other project of Declarant and/or its affiliates, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(f) The prior written approval of Declarant, as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 14) can be effective.

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the latest date set forth in Section 14.1(a) above. Developmental rights may be exercised with regard to different parcels of real estate at different times, and no assurances are made in regards to the boundaries of those portions or regulating the order in which those portions may be subjected to the exercise of any developmental right. If any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right need not be exercised in all or in any other portion of the remainder of that real estate.

Section 14.3 Limitations on Amendments. In recognition of the fact that the provisions of this Article 14 operate in part to benefit the Declarant, no amendment to this Article 14, and no amendment in derogation of any other provision of this Declaration benefitting the Declarant, may be made without the written approval of the Declarant, and any purported amendment of Article 14, or any portion thereof, or the effect respectively thereof, without such express prior written approval, shall be void; provided that the foregoing shall not apply to amendments made by Declarant.

## **ARTICLE 15** **ANNEXATION**

Section 15.1 Annexation. Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portions of the Annexable Area then owned by Declarant, by Recording an annexation amendment ("Annexation Amendment") with respect to the real property to be annexed ("Annexed Property"). Upon the recording of an Annexation Amendment covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if the Annexed Property were originally covered in this Declaration and originally

constituted a portion of the Original Property; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Property shall be the same as with respect to the Original Property and the rights, obligations, privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter (and appoints Declarant as attorney in fact of such grantee and his or her successors and assigns) to unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15. Each Annexation Amendment reasonably shall conform to the requirements of NRS § 116.211.

Section 15.2 FHAVA Approval. In the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) on any portion of the Annexable Area with respect to the initial sale by Declarant to a Buyer of any Unit, then a condition precedent to any annexation of any property other than the Annexable Area shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA, provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

Section 15.3 Disclaimers Regarding Annexation. Portions of the Annexable Area may or may not be annexed, and, if annexed, may be annexed at any time by Declarant, and no assurances are made with respect to the boundaries or sequence of annexation of such portions. Annexation of a portion of the Annexable Area shall not necessitate annexation of any other portion of the remainder of the Annexable Area. Declarant has no obligation to annex the Annexable Area or any portion thereof.

Section 15.4 Expansion of Annexable Area. In addition to the provisions for annexation specified in Section 15.2 above, the Annexable Area may, from time to time, be expanded to include additional real property, not as yet identified. Such property may be annexed to the Annexable Area upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners of such property and containing thereon the approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written approvals.

Section 15.5 Contraction of Annexable Area: Withdrawal of Real Property. As long as real property ("Withdrawn Property") is not set forth on a particular subdivision map where one or more Lots on that particular subdivision map have already been conveyed to one or more Buyers, then such Withdrawn Property may be withdrawn or deleted by Declarant from the Annexable Area. Such withdrawal or deletion of the Withdrawn Property from the Annexable Area shall be effective upon the Recordation of a written instrument describing the Withdrawn Property, executed by Declarant (and all other owners, if any, of the Withdrawn Property), and declaring that the Withdrawn Property is withdrawn or deleted from the Annexable Area. Such

real property may be withdrawn or deleted from the Annexable Area unilaterally by Declarant without a vote or consent of the Association or the approval or consent of any other Person (except other owner(s), if any, of the Withdrawn Property, as set forth above).

**ARTICLE 16**  
**ADDITIONAL DISCLOSURES, DISCLAIMERS, AND RELEASES**

Section 16.1 Additional Disclosures, Disclaimers, and Releases of Certain Matters. DECLARANT FURTHER DISCLOSES THAT NO ASSURANCES ARE MADE WITH RESPECT TO ANY OF THE FOLLOWING MATTERS, WHICH SHOULD BE CAREFULLY REVIEWED BY A PROSPECTIVE BUYER OF A UNIT. Note: The terms "Properties" or "Community", as used throughout these disclosure and disclaimer provisions, shall include this Unit, other dwellings and other improvements, and the Common Elements in the Community. All disclosures and disclaimers set forth in this Declaration shall be cumulative with, and shall not limit, any and all disclosures and disclaimers set forth in the Declaration, the Purchase Agreement, and/or in the various documents described in, and/or listed or set forth as attachments to the Public Offering Statement, all of which disclosures and disclaimers are incorporated herein by this reference. Inclusion or description of certain items or matters herein shall not raise any inference whatsoever regarding the importance or lack of importance of any other item or matter not included or described herein. Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit, or by possession of a Unit, each Owner (for purposes of this Article 16, and all of the Sections thereof, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), (and by residing within the Properties, each Resident) (for purposes of this Article 16, the term "Resident" shall include each Resident, and Family and guests) shall be deemed to understand, and to have acknowledged and agreed that each such person's decision to purchase or reside in a Unit is based solely upon such person's own independent investigation, and not upon any information orally provided by a sales agent, and further to have acknowledged and agreed to, all of the following disclosures, disclaimers, and releases, all of which are cumulative and supplemental with each other and any other disclosures, disclaimers and releases, and none of which shall be deemed in any way or to any extent to replace or limit any other disclosure, disclaimer, and/or release:

(a) The Units and other portions of the Properties are or may be located adjacent to or nearby certain major roads, all or any of which may, but need not necessarily, be constructed, reconstructed, and/or expanded (as applicable) in the future (all collectively, "roadways"), and subject to high and increasing levels of traffic, noise, construction, maintenance, repair, dust, and other nuisance from such roadways; and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to roadways and/or noise, dust, lights, and other related nuisance.

(b) There are presently, and may in the future be other, major electrical power system components (including, but not limited to, major high voltage electrical power transmission or distribution lines, transformers, etc.) from time to time located within or nearby the Properties, which generate certain electric and magnetic fields ("EMF") around them. Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF.

(c) The Units and other portions of the Properties from time to time are or may be located nearby certain major military installations and/or commercial and/or private airports and underneath, within, and/or nearby frequent and substantial airplane takeoff and/or landing patterns or other airplane flight patterns, and/or subject to frequent and substantial levels of airplane traffic, and loud noise and vibration. Existing and future noise levels at this location, associated with existing and future airport operations, may have an effect upon the livability, value and suitability of the property for residential use. These airports have been at their present locations for many years, and future demand and airport operations may increase significantly. Without limiting the foregoing, there is a perpetual avigation easement of Record with respect to the Units and other portions of the Properties.

(d) The Units and other portions of the Properties are or may be located adjacent to or nearby major "water containment" or "flood control" and/or drainage facilities, channel(s) and/or washes (all, collectively, "Facilities"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not necessarily within Declarant's control, and over which Declarant does not necessarily have jurisdiction or authority, and, in connection therewith: (1) the Facilities may be an attractive nuisance to children; (2) maintenance and use of the Facilities may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by Facilities maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours; (3) the Facilities may be a source of unpleasant or even noxious odors; (4) the possibility of damage to Improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Facilities, as the result of nonfunction, malfunction, or overtaxing of the Facilities or any other reason; and (5) any or all of the foregoing may cause inconvenience and disturbance, and/or nuisance to Owners and other persons in or near the Units and/or Common Elements, and possible injury to person and/or damage to property. Without limiting the foregoing, or any other provision herein, Declarant further discloses that there are certain water detention basins located on or immediately adjacent to the Properties.

(e) Construction or installation of Improvements (including, but not limited to structures, trees, or other vegetation) by Declarant, Association, other Owners, or third parties, or installation or growth of trees or other plants, may obstruct, impair or eliminate the view, if any, of or from any Unit and/or Common Elements.

(f) Notwithstanding the foregoing, or any other provision herein, Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to views or preservation of views, and each Owner, by acquiring title to a Unit, whether or not so expressed in the deed thereto, shall be deemed to have waived and released Declarant and Association, and their respective directors, officers, members, managers, employees and agents, with regard to and/or from and against any and all claims arising from or related to view obstruction, impairment, or elimination.

(g) Residential subdivision and home construction is an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement;



squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects.

(h) The finished construction of the Units and the Common Elements, while within the standards of the industry in Douglas County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to variations and imperfections and expected minor flaws. Issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed evidence that the relevant Improvement has been built within such industry standards.

(i) Indoor air quality of the Units may be affected, in a manner and to a degree found in new construction within industry standards, including, without limitation, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on.

(j) No private security or monitoring is provided for any part of the Community (including, but not limited to, Units, or the Private Streets or other Common Elements), and/or persons or activities within or nearby or related respectively thereto. All persons entering upon the Community (including, but not limited to, the Private Streets or other Common Elements), shall do so AT THEIR OWN RISK and shall conclusively be deemed to have fully and unconditionally assumed the risk of property damage and/or bodily injury from conditions, activities, and/or occurrences on or the use by others of such areas, and shall indemnify and hold Declarant, the Association, and their respective directors, officers, employees, committee members, and agents, harmless from and against any and all liability arising from or in any way related to the absence of security or monitoring in or related to the Community (including, but not limited to, the Private Streets or other Common Elements).

(k) Without in any way limiting the foregoing: (a) parents shall at all times personally supervise any minor child or children on or about the Community; (b) such animals as may be allowed from time to time in the Community must at all times be kept on a leash held by a person capable of controlling the animal, and such person must immediately clean up and remove, as fully and completely as reasonably possible, any and all droppings or waste deposited by such animal; and (c) the Board shall have the right, in its sole discretion (but not the obligation), to establish additional Rules and Regulations pertaining to the Community and/or use of the Common Elements, and to prohibit any activity thereon deemed to be a nuisance.

(l) Installation, operation and/or maintenance of a gated community and/or any security or traffic access device, operation, or method, shall not create any presumption, or duty whatsoever of Declarant and/or Association (and/or any of their respective officers, directors, managers, employees, agents, and/or contractors), with regard to security or protection of person or property within or adjacent to the Properties; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Properties had been located within public areas and not gated.



(m) Gated entrances may restrict or delay entry into the Properties by law enforcement, fire protection, and/or emergency medical care personnel and vehicles; and each Owner, by acceptance of a deed to a Lot, whether or not so stated in the deed, shall be deemed to have voluntarily assumed the risk of such restricted or delayed entry.

(n) Douglas County contains a number of earthquake faults, and the Units and other portions of the Properties are or may be located on or nearby an identified or yet to be identified seismic fault line. Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to earthquakes or seismic activities. Each Owner must make its own independent determination regarding such matters and any related insurance coverage (which must be obtained independently by the Owner, if desired) and releases and holds harmless Declarant, and the Association, from any and all claims arising from or relating to earthquakes or seismic activities.

(o) Douglas County currently is undergoing drought conditions, and relevant water districts and authorities have announced certain water conservation measures. It is possible that these drought conditions may continue or worsen, and/or that the relevant water districts and authorities may announce further water conservation measures and restrictions, which may affect Unit and/or Common Element landscaping and features (if any), and the appearance and/or use of same, and further restricting what plants the Owner can plant or install on the Owner's Lot (for example, among others, the Owner may be prohibited from installing sod on the Owner's Lot or portions thereof); and further prohibiting or restricting the washing of cars or vehicles. Each Owner is required to immediately familiarize himself or herself with all present and from time to time with all anticipated or changed water use, watering restrictions, fines, and planting limitations, as relate or may relate to such Owner's Lot (including, but not necessarily limited to, landscaping and uses thereon). Each Owner releases Declarant, and Association, from any and all claims arising from or relating to drought or water conservation measures or restrictions, and/or the effects respectively thereof.

(p) The Units and other portions of the Properties from time to time may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, pigeons, lizards, snakes, rabbits, bats, mice, rats, mountain lions, coyotes, and/or other insect or pest problems (collectively, "pests"); and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own independent determination regarding the existence or non-existence of any pest(s) which may be associated with the Units or other portions of the Properties.

(q) The Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of non-domesticated creatures (including, but not limited to, coyotes, foxes, and/or mountain lions), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard.

(r) Certain easements are located on or over portions of all or certain Lots, as set forth on the Plat, which will limit or preclude Owners (and/or Residents) from use or development of such easement areas. Easements and relevant areas and developmental conditions (requirements) will or may limit or otherwise affect use and/or enjoyment of all or certain portions of all or certain Units. Such easement areas, to the extent located on or

pertaining to a Unit, may not be improved by an Owner without the specific written approval of the ARC and the Board, or in any manner or in any way inconsistent with the easement. Such developmental conditions (requirements), to the extent pertaining to or affecting a Unit, may not be violated by an Owner in any manner or in any way inconsistent with County conditions and requirements. Each Owner, by acquisition of a Lot (and each Resident, by residing in a Dwelling), shall be deemed to have reviewed and accepted, and unconditionally agreed to be subject to, and abide by, the Plat, the Declaration, and all other instruments or matters of Record affecting or related to said Lot, and any and all local governmental requirements or restrictions.

(s) The Properties, or portions thereof, are or may be zoned, or are or may be located adjacent to or within the vicinity of certain other property which is or are or may be zoned, to permit the owners of such property to keep and maintain thereon livestock, including horses or other "farm" animals, or potentially dangerous exotic animals, which may give rise to matters such as resultant noise, odors, insects, and other "nuisance".

(t) There is a high degree of alkalinity in soils and/or water in Douglas County; such alkalinity tends to produce, by natural chemical reaction, discoloration, leaching and corrosion or deterioration of concrete walls and other Improvements and may be corrosive to metals ("alkaline effect"); the Units and other portions of the Properties may be subject to such alkaline effect, which may cause inconvenience, nuisance, and/or damage to property; and the Governing Documents require Owners other than Declarant to not change the established grading and/or drainage, and to not permit any sprinkler or irrigation water to strike upon any wall or similar Improvement.

(u) There are and/or will be various molds present within the Units and other portions of the Properties. Molds occur naturally in the environment, and can be found virtually everywhere life can be supported. Dwellings are not and cannot be designed or constructed to exclude mold spores. Not all molds are necessarily harmful, but certain strains of mold may result in adverse health effects in susceptible persons.

(v) The Properties, or portions thereof, are or may be located adjacent to or nearby or within the vicinity of vacant land and/or certain other property zoned to permit commercial, office, and/or industrial uses and/or multi-family/apartment/condominium uses, and/or which are or may be developed for multi-family/apartment/condominium, commercial, office, and/or industrial uses, with attendant traffic, noise, light, vibrations, odor, dust, smoke, and/or other activities or "nuisances". Declarant makes no other representation or warranty, express or implied, with regard or pertaining to the future development or present or future use of property adjacent to or within the vicinity of the Properties.

(w) Subject to applicable law, the Board has the power and authority to establish "parking" and/or "no parking" restrictions within the Private Streets, and to establish Rules and Regulations governing such matters, as well as to reasonably enforce such parking rules and limitations on the Private Streets by all means which would be lawful for such enforcement by public authority on Public Streets, including the removal of any violating vehicle, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Private Streets or other Common Elements, such

parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

(x) Declarant reserves the right to control private parking spaces (if any) during Declarant's regular business or marketing hours, and to tow unauthorized vehicles at the owner's expense, for as long as Declarant is conducting construction, marketing, or sales activities in or from the Community or any portion thereof.

(y) The geotechnical/soils report applicable to the Community ("Soils Report") should be reviewed carefully in its entirety by each person intending to purchase a Unit in the Community. Without limiting the foregoing, Buyers and/or Owners shall be required and obligated to comply, at their own cost, with any planting and/or irrigation recommendations and restrictions set forth in the Soils Report. Each person acknowledges and agrees that its decision to purchase a Unit is based solely upon such person's own investigation, and not upon any information provided by a sales agent.

(z) Certain portions of land ("Neighboring Developments") outside, abutting, and/or near the Perimeter Wall have not yet been developed, and in the future may or will be developed by third parties over whom Declarant has no control and over whom the Association has no jurisdiction, and accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments; and such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Community or Owners, and may result in portions of exterior boundary Perimeter Walls being utilized by third persons who are not subject to the Declaration or the Governing Documents; and Declarant and Association, specifically disclaim any and all responsibility and/or liability therefor.

(aa) Each Buyer acknowledges having received from Declarant: information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to any gaming uses or issues. Each Buyer is hereby advised that the Douglas County Master Plan and zoning ordinances, and gaming enterprise districts (if any) are subject to change from time to time. If a Buyer desires additional or more current information concerning these zoning designations, or gaming enterprise districts (if any), the Buyer should contact the Douglas County Planning Department. Each Buyer acknowledges and agrees that its decision to purchase a Unit is based solely upon Buyer's own investigation, and not upon any information provided by any sales agent.

(bb) Homeowners shall be required to comply with any and all rules and requirements of the Architectural Review Committee ("ARC"), and shall be required to obtain prior written approval of the ARC before installing, adding, altering, modifying, expanding, or eliminating any Improvements.

(cc) Additionally, each Homeowner may be required to post a cash deposit ("Deposit") with and as required by the ARC, in amount(s) reasonably to be determined from time to time by the ARC, prior to commencing any installation of an Improvement or other work

pertaining to landscaping or swimming pool or spa on any Lot (if space and/or lot configuration permit, and subject to all ARC provisions). Said Deposit shall be held by the ARC, and returned to the Homeowner after completion of the Homeowner work, provided that the ARC shall use the Deposit to repair any damage to any curb, street, other Common Element, Perimeter Wall, Party Fence, or other area, and if the Deposit is insufficient to repair all such damage, then the additional cost, and any related cost, shall be assessed against the Homeowner as a Special Assessment levied against such Homeowner and his or her Lot.

(dd) (1) Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Units; (2) proposed or contemplated residential and other developments may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or Buyer may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or others, Declarant is under no obligation to construct such future or planned developments or units, and such developments or units may not be built in the event that Declarant, for any reason whatsoever, decides not to build same; (3) Buyer is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; (4) Declarant makes no representation and no guarantee whatsoever regarding compatibility or similarity from time to time of future products (if any) with regard to size, number of bedrooms or other rooms, number of floors or height, architectural styling or features, embellishments, price, value, or any other feature or aspect of any future product; and (5) no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the provisions set forth in the Declaration or in any of the other Governing Documents, in the Public Offering Statement, or in any provision of the relevant Purchase Agreement.

(ee) Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Units in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded flooring, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to Buyer unless an authorized officer of Declarant has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement.

(ff) Model homes may be kept open and accessed and used by Declarant and members of the home buying public until Close of Escrow to a Buyer of the final lot in the Community. Full enjoyment of the Community will not be realized until after Declarant is complete with all activities.

(gg) Declarant shall have the right in its sole discretion at any time and from time to time to install, open and/or maintain one or more different sales and/or management offices, construction trailers, and/or related private parking areas, and/or signs, flags, banners, and/or different model sites, within the Properties, to market and/or sell homes in one or more different projects of Declarant. Declarant shall have the right to tow unauthorized vehicles at



the owner's expense from private parking areas and parking spaces, if any, owned or controlled by Declarant (which are not Common Elements and are not Association areas). Other reserved rights of Declarant are set forth in Article 14 of the Declaration, and should be reviewed carefully by each Buyer.

(hh) Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other development and/or construction-related "nuisances". Each Owner acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of development and/or construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out, and thereafter, in connection with repairs or any new construction. Without limiting the foregoing, Declarant shall have the right to place and maintain signs, flags and banners throughout the subdivision for marketing and advertising purposes of Declarant; such signs, flags and banners may be located in close proximity to Buyer's Lot and/or other portions of the subdivision; and such signs, flags and banners may or will produce substantial "flapping" noise or "nuisance", particularly when the wind is strong.

(ii) Declarant shall have the right (but not the obligation), at any time and from time to time, in its sole and absolute discretion, to: (a) design, build, market, and/or sell new homes in the Community from time to time as or under separate or different neighborhoods or areas and/or marketing names, which may, but need not necessarily, include "COTTAGES AT CARSON VALLEY" and/or any other name(s), in Declarant's sole discretion; (b) design, build, market, and/or sell different or varying product types, plans, or designs for new homes and/or other Improvements in the Community and/or portions thereof; (c) establish and/or adjust sales prices or price levels for homes and/or Lots; (d) have the Association budget initially and/or from time to time computed on number(s) of Lots less or substantially less than the maximum number of Units That May Be Created; (e) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (e) unilaterally modify and/or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community, and the Annexable Area which may, but need not necessarily, from time to time be annexed to the Declaration.

(jj) Notwithstanding the foregoing, or any other provision herein, certain RV parking restrictions are set forth in this Declaration, and certain additional RV parking restrictions may be set forth from time to time in Rules promulgated by the Board.

(kk) Declarant and/or the Association, acting through the Board, additionally shall have the right, at any time and from time to time, in their respective discretion, to prepare Association budget(s) based upon fewer than the maximum number of Units That May Be Created (but in any event not less than the number(s) of Units from time to time subject of Record to the Declaration), and to allocate and levy assessments upon such lower number(s) of Units.

(ll) Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to retain sole control over all Private Streets and entry gate(s) to the Properties, and to unilaterally enter upon, and/or to control, restrict and/or re-route all pedestrian and



vehicular traffic within the Properties, in Declarant's discretion subject to applicable law, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties. Also, Declarant has the right to control the entry gate(s), and to keep entry gate(s) open during such hours established by Declarant, to accommodate its construction activities, and sales and marketing activities.

(mm) Without limiting any other provision herein: certain additional easements and relevant areas are set forth, described, and/or referenced on the Plat and/or in the Declaration or other Recorded instrument; and certain developmental conditions (or restrictions) are or may be set forth in the County's approval of this development. Easements and relevant areas and developmental conditions (restrictions) will or may limit or otherwise affect use and/or enjoyment of all or certain portions of all or certain Lots. Without limiting the foregoing, or any other provision herein, the Plat and/or the Declaration respectively set forth certain specific easements encumbering certain specific Lots (including, but not necessarily limited to, those described in Declaration Section 2.16).

(nn) As set forth in further detail in the Declaration, each Owner shall have, following the Close of Escrow on his or her Lot, a period of not more than one (1) year within which to apply for and obtain ARC approval of plans for initial landscaping (other than Front Yard Landscaping) and to commence and complete installation of such landscaping on his or her Lot ("Homeowner Installed Landscaping") in accordance with ARC approval. Each Owner shall be responsible, at his or her sole expense, for maintenance, watering, repair, and replacement of all landscaping on his or her Lot, in a neat and attractive condition.

(oo) Unless more restrictive requirements or guidelines are set forth in the Soils Report or from time to time by the ARC (in which case, the most restrictive requirements or guidelines must be followed), each Owner shall at all times also ensure that all trees, shrubs, grass, sod, and other plant materials must be planted at least five (5) feet away from any foundation, slab, side or other portion of Dwelling, or wall (including, but not necessarily limited to, Party Fence and/or Perimeter Wall) and/or any other Improvement.

(pp) Positive site drainage should be maintained at all times in accordance with the IBC. Drainage should not flow uncontrolled down any descending slope. Water should be directed away from foundations, and not allowed to pond and/or seep into the ground. Pad drainage should be directed toward the street or other improved area.

(qq) Notwithstanding any of the foregoing: (1) if any Owner or Resident should not follow any of the foregoing landscaping and drainage requirements and restrictions, such Owner or Resident does so at his or her own risk; and (2) any and all damage resulting directly or indirectly from an Owner or Resident not following any of the foregoing landscaping and drainage requirements and restrictions (including, but not limited to, any damage to Improvements on such offending Owner's or Resident's Unit, and/or on any neighboring or other properties) shall be the sole responsibility of the offending Owner or Resident, who shall be entirely liable for all costs of repair or remediation of such damage.

(rr) Certain (but not necessarily all) Dwellings will or may have an installed fire sprinkler system. If a fire sprinkler system has been or is installed or located in the

Dwelling, then said fire sprinkler system (and all components and batteries) shall be maintained, periodically tested, and always kept in good operating condition and repair by the Owner of such Dwelling, at the Owner's sole cost and expense.

(ss) There is a rock quarry located generally across the street and nearby the Properties, with substantial levels of sound, noise, blasting, vibration, dust, grit, light, heavy truck and other traffic, congestion, and other nuisances, from or related to the quarry, and activities thereon or related thereto. Declarant has no jurisdiction or control over the quarry.

(tt) There is an Elk's Lodge and related parking lot area located generally across the street and nearby the Properties, with substantial levels of traffic, congestion, sound, noise, lights, dust, and/or other nuisances, from or related to the Elks Lodge, and activities thereon or related thereto. Declarant has no jurisdiction or control over the Elks Lodge, and there is no assurance that the property will always be operated as an Elks Lodge. It is possible in the future that the property may be developed or renovated or modified or used for other purposes, with attendant levels of sound, noise, construction, vibration, dust, grit, lights, traffic, congestion, and other nuisances, from or related thereto.

(uu) Declarant reserves the right to correct or repair any Improvement, as set forth in the Declaration, including, but not necessarily limited to, Section 17.15 thereof.

(vv) Subject to applicable law, certain arbitration provisions are set forth in the Declaration, including, but not necessarily limited to, Section 17.16 of the Declaration.

(ww) Declarant has reserved certain easements, and related rights and powers, as set forth or referenced in the Declaration.

(xx) Each Buyer and/or Owner understands, acknowledges, and agrees that Declarant has reserved certain rights, powers, authority and easements, as set forth in the Declaration, all or any of which may limit certain rights of Buyer, the Association, and Owners other than Declarant.

(yy) Declarant reserves all other rights, powers, and authority of Declarant set forth in the Declaration, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.089).

(zz) The Units and Common Elements also are subject of Record to certain instruments. Declarant makes no independent representation with regard thereto. Each Owner shall be fully responsible for reviewing fully all title matters and all instruments of Record pertaining to such Owner's purchase of a Unit.

(aaa) Declarant has been informed of the following: Douglas County has declared it a policy to protect and encourage agricultural operations. If any property is located near an agricultural operation, the owner of said property may be subject to inconvenience or discomfort arising from or related to nearby agricultural operations. If conducted in a manner consistent with accepted standards, such inconveniences do not create a nuisance for purposes of the Douglas County Code.

Section 16.2 Releases. By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall be deemed to have understood, acknowledged and agreed to all of the disclosures and disclaimers set forth herein, and to release Declarant and the Association, and all of their respective officers, managers, agents, employees, committee members, suppliers, and contractors, from any and all claims, causes of action, loss, damage or liability (including, but not limited to, any claim for nuisance or health hazard, property damage, bodily injury, and/or death) arising from or related to all and/or any one or more of the conditions, activities, occurrences, reserved rights, or other matters described in the foregoing Section 16.1.

## **ARTICLE 17**

### **ADDITIONAL PROVISIONS**

Section 17.1 Enforcement. Subject to Sections 5.2 and/or 5.3 above, and Section 17.16 below, the Governing Documents may be enforced by the Association, as follows:

(a) Enforcement shall be subject to the overall "good neighbor" policy underlying and controlling this Declaration and this Community (in which the Owners seek to enjoy a quality lifestyle), and the fundamental governing policy of courtesy and reasonability.

(b) Breach of any of the provisions contained in this Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal or equitable proceedings instituted, in compliance with applicable Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit, by the Association, or by the successors-in interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each Owner shall have a right of action against the Association for any material, unreasonable and continuing failure by the Association to comply with material and substantial provisions of this Declaration, or of the Bylaws or Articles.

(c) The Association further shall have the right to enforce the obligations of any Owner under any material provision of this Declaration, by assessing a reasonable fine as a Special Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use or enjoyment of the Common Elements (other than ingress and egress reasonably over Private Streets, by the most reasonably direct route, to the Unit), subject to the following, and in all instances subject to applicable law:

(1) the person alleged to have violated the material provision of the Declaration must have had written notice (either actual or constructive, by inclusion in a Recorded document) of the provision for at least thirty (30) days before the alleged violation; and

(2) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after actual notice of such violation has been given to

such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;

(3) notwithstanding the foregoing, each Owner shall have an unrestricted right of ingress and egress to his or her Unit by the most reasonably direct route over and across the relevant Private Street(s), and over and across those portions of Common Element Front Yard Areas comprising designated walkway and/or driveway areas generally located between the Owner's Unit and the Private Street;

(4) any fine imposed under this Section shall not contravene applicable law and shall not exceed the maximum amount(s) permitted from time to time by applicable provision of Nevada law for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Sections 5.2 and/or 5.3 above);

(5) subject to this Section 17.1(c), if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid or reasonably disputed in writing delivered to the Board by such Owner or Resident (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then such Special Assessment shall be enforceable pursuant to Articles 6 and 7 above, subject to applicable law; and

(6) subject to Section 5.3 above and Section 17.16 below, and to applicable law (which may first require mediation or arbitration), the Association may also take judicial action against any Owner or Resident to enforce compliance with provisions of the Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(d) Responsibility for Violations. Should any Resident violate any material provision of this Declaration, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident. Reasonable efforts first shall be made to resolve any alleged material violation, or any dispute, by friendly discussion in a "good neighbor" manner, followed (if the dispute continues) by informal mediation by the ARC or Board (and/or mutually agreeable or statutorily authorized third party mediator). Fines or suspension of voting privileges shall be utilized only as a "last resort", after all reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed, and in all instances shall be subject to applicable law.

(e) The result of every act or omission whereby any of the provisions contained in this Declaration or the Bylaws are materially violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(f) The remedies herein provided for breach of the provisions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(g) The failure of the Association to enforce any of the provisions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(h) If any Owner, his or her Family, guest, licensee, lessee or invitee violates any such provisions, the Board may impose a reasonable Special Assessment upon such Owner for each violation and, if any such Special Assessment is not paid or reasonably disputed in writing to the Board (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then the Board may suspend the voting privileges of such Owner. Such Special Assessment shall be collectible in the manner provided hereunder, but the Board shall give such Owner appropriate Notice and Hearing before invoking any such Special Assessment or suspension.

Section 17.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 17.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, until terminated in accordance with NRS § 116.2118.

Section 17.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 17.5 Amendment. Except as otherwise provided in this Declaration, and except in cases of amendments that may be executed by Declarant or by the Association or by certain Owners (as enumerated in NRS §116.2117), this Declaration, including the Plat, may only be amended by both: (a) the affirmative vote and/or written consent of Owners constituting at least two-thirds (2/3) of the total voting power of the Association, and (b) the written consent of at least a majority of the total voting power of the Board. Notwithstanding the preceding sentence, if an amendment fails to receive the number of votes and/or consent



required in the preceding sentence, but, receives a majority of the total voting power of the Membership, then the Association, or any Owner, may file a petition with the District Court, Douglas County, Nevada, seeking a Court order to amend the Declaration and to confirm the amendment as validly approved, subject to applicable law. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by at least sixty-seven percent (67%) of the Eligible Holders at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned (or pursuant to Court order as described above):

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles 7, 12, 13, and 14 hereof.

(b) Any amendment which would necessitate a Mortgagee, after it has acquired a Unit through foreclosure, to pay more than its proportionate share of any unpaid Assessment or Assessments accruing after such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Unit not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions as set out in Article 12 hereof, or to the application of insurance proceeds as set out in Article 12 hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in termination or abandonment of the Properties or subdivision of a Unit, in any manner inconsistent with the provisions of this Declaration.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Unit is proposed to be sold, transferred or otherwise conveyed.

(g) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; (vii) Declarant's right and power to annex or de-annex property to or from the Properties; and (viii) Assessments, Assessment liens, or the subordination of such liens.

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed termination, amendment or amendments. Notwithstanding anything contained in this Declaration to the contrary, nothing contained herein shall operate to allow any Mortgagee to (a) deny or delegate control of the general administrative affairs of the Association by the Members or the Board; (b) prevent the Association or the Board from commencing, intervening in or settling any litigation or proceeding; or (c) prevent any trustee or the Association from

receiving and distributing any proceeds of insurance, except pursuant to NRS §116.31133 and §116.31135.

A copy of each amendment (other than an amendment which may be accomplished unilaterally by Declarant) shall be certified by at least two (2) Officers, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) Officers, that the requisite number of Owners have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, shall be evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years or such other period as may be required from time to time by applicable law. The certificate reflecting any termination or amendment which requires the written consent of any of the Eligible Holders of first Mortgages shall include a certification that the requisite approval of such Eligible Holders has been obtained. Until the first Close of Escrow for the sale of a Unit, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification.

Notwithstanding all of the foregoing, for so long as Declarant owns a Unit or Lot, Declarant shall have the right and power, but not the obligation, from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibits hereto, to make, and to process through appropriate governmental authority, minor revisions to the Plat deemed appropriate by Declarant in its discretion, and otherwise to ensure that the Declaration conforms with the requirements of applicable law, as may be amended from time to time. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B") hereto), in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact of such grantee and his or her successors and assigns, to unilaterally execute and Record an Annexation Amendment, adding said real property to the Community, in the manner provided for in NRS § 116.211 and in Article 15 above, and to make, and to process through appropriate governmental authority, any and all minor revisions to the Plat deemed appropriate by Declarant in its reasonable discretion, to the maximum extent from time to time not contrary to applicable law, and each and every Owner, by acceptance of a deed to his or her Unit, covenants to sign such further documents and to take such further actions as to reasonably implement and consummate the foregoing.

Section 17.6 Notice of Change to Governing Documents. If any change is made to the Governing Documents, the Secretary (or other designated Officer) shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the change made.

Section 17.7 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 17.8 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 17.9 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 17.10 Priorities and Inconsistencies. Subject to Section 5.8 above, and Section 17.14 below: (a) the Governing Documents shall be construed to be consistent with one another to the extent reasonably possible; (b) if there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term or provision of this Declaration fails to comply with provision of NRS Chapter 116 applicable hereto; (c) in the event of any irreconcilable inconsistency between the Articles and Bylaws, the Articles shall prevail; and (d) in the event of any irreconcilable inconsistency between any Rules and Regulations and any other Governing Document, the other Governing Document shall prevail. NOTE: Certain provisions in this Declaration and/or other Governing Documents from time to time may be superseded by contrary provisions of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the internet address: <http://www.leg.state.nv.us/nrs/>.

Section 17.11 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, neither Declarant nor the Association, nor the ARC, and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former Association committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.12 Indemnity. Each Owner shall, to the maximum extent permitted by law, indemnify and hold free and harmless each and every one of: Declarant, Association, any director, or any officer, agent, employee, or committee representative, respectively of Declarant, or Association, and/or their respective partners, members, divisions, subsidiaries and affiliated companies (if any), and their and their respective employees, officers, directors, members, shareholders, agents, professional consultants and representatives, and all of their respective successors and assigns (collectively, "Indemnitees") from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any fault, act, or omission of the Owner, any contractor or

subcontractor employed by the Owner, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with: (a) any work by or of the Owner within the Properties and/or the performance of the Owner's obligations with respect to any and all Improvements designed, installed, constructed, added, altered or remodeled by the Owner pursuant and subject to the Governing Documents, including, without limitation, any such loss, damage, injury or claim arising from or caused by or alleged to have arisen from or have been caused by (i) any use of the Lot, or any part thereof, (ii) any defect in the design, construction of, or material in, any structure or other Improvement upon the Lot, (iii) any defect in soils or in the preparation of soils or in the design and accomplishment of grading, including a spill of any contaminants or hazardous materials in or on the soil, (iv) any accident or casualty on the Lot or in the Properties, (v) any representations by Owner or any of its agents or employees, (vi) a violation or alleged violation by the Owner, its employees or agents, of any applicable law, (vii) any slope failure or subsurface geologic or groundwater condition, (viii) any work of design, construction, engineering or other work with respect to the Lot or Properties provided or performed by or for the Owner at any time whatsoever, or (ix) any other cause whatsoever in connection with Owner's use of the Lot or the Properties, or Owner's performance under this Declaration, or any other Governing Document; or (b) the negligence or willful misconduct of Owner or its agents, employees, licensees, invitees or contractors in the development, construction, grading or other work performed off the Properties by Owner pursuant to the Governing Documents, or any defect in any such work. Notwithstanding anything to the contrary contained in any of the documents referenced in the preceding sentence, Owner agrees and acknowledges that Indemnitees shall not be liable to Owner for any Liabilities caused by (i) any act or omission of Indemnitees with respect to the review of the Owner's Improvements and/or the drawings or specifications related to the Owner's Improvements, or (ii) any inspection or failure to inspect the construction activities of Owner by any of the Indemnitees, or (iii) any direction or suggestion given by any of the Indemnitees with respect to construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Owner's Improvements, or the failure to give any such direction or suggestion, or for any Liabilities which are covered by insurance or would be covered by insurance required to be maintained by the Owner, and Owner expressly waives any such Liabilities and releases Indemnitees therefrom. The covenants in this Section 17.12 and the obligations of each Owner, and shall be binding on the Owner until such date as any claim or action for which indemnification or exculpation may be claimed under this Section 17.12 is fully and finally barred (or, if applicable, fully and finally resolved, and any payment required thereby has been made in full).

Section 17.13 Business of Declarant. Except to the extent expressly provided herein or as required by applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's improvement and/or development of the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 17.14 Compliance with NRS Chapter 116. It is the intent of Declarant that this Declaration and the Community shall be in all respects consistent with, and not in violation of, applicable provisions of NRS Chapter 116, as may be amended from time to time. In the event any provision of this Declaration is found to irreconcilably conflict with or violate such applicable provision of NRS Chapter 116, such offending Declaration provision shall be



automatically deemed modified or severed herefrom, to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of NRS Chapter 116. Notwithstanding the foregoing or any other provision set forth herein, if any provision of NRS Chapter 116 should, in the future, be removed or made less burdensome (in Declarant's sole judgment), then the future change in such provision shall be deemed to have been automatically made and reflected in this Declaration as of the effective date of such statutory change. Certain provisions in this Declaration and the other Governing Documents from time to time may be superseded by contrary provisions of NRS Chapter 116. The Nevada Revised Statutes are available at the internet address <http://www.leg.state.nv.us/nrs/>.

Section 17.15 Declarant's Right to Repair. Whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall be deemed to have agreed: (a) [notice] to promptly provide Declarant with specific written notice from time to time of any Improvement requiring correction or repair(s) for which the Owner/Association asserts Declarant is or may be responsible. (The notice must: (1) include a statement that the notice is being given to satisfy NRS 40.645, (2) specify with detail any defects or damages, and (3) describe the cause of the defect if known); (b) [inspection] following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant Improvement to determine the nature and extent of the defect and repairs that may be necessary; (c) [repair] if the Declarant elects to repair the Improvement, the Owner/Association shall reasonably permit entry by Declarant (and Declarant's contractors and agents) upon the Unit or Common Element (as applicable) from time to time in connection therewith, to take steps to perform corrective or repair work. If the Owner/Association fails to provide Declarant with notice or fails to permit Declarant to inspect or repair at Declarant's election, then Declarant shall not be held responsible for any such corrective or repair work. The foregoing portion of this Section 17.15 shall not be deemed to modify or toll any applicable statute of limitation or repose, or any contractual or other limitation pertaining to such work.

Section 17.16 Arbitration. To the maximum extent, if any, not prohibited by applicable law (which may include, if and to the extent mandatorily applicable, the provisions of AB 370 (2013), effective October 1, 2013, amending NRS Chapter 38 as may apply to disputes concerning common-interest communities, and providing that parties may choose either mediation or to participate in a separate program administered by the Nevada Real Estate Division), the following arbitration provisions shall apply. Any dispute that may arise between: (a) the Association, subject to the procedural requirements set forth in Section 5.3, above, and/or Owner of a Unit, and (b) Declarant or any person or entity who was involved in the construction of any Common Element or any Unit, shall be resolved by submitting such dispute to arbitration before a mutually acceptable arbitrator who will render a decision binding on the parties which can be entered as a judgment in court pursuant to NRS 38.015, et. seq. The arbitration shall be conducted according to the provisions of the Construction Industry Arbitration Rules of the American Arbitration Association. If the parties to the dispute fail to agree upon an arbitrator within forty-five (45) days after an arbitrator is first proposed by the party initiating arbitration, either party may petition the American Arbitration Association for the appointment of an arbitrator. Declarant has the right to assert claims against any contractor, subcontractor, person or entity, who may be responsible for any matter raised in the arbitration and to name said contractor, subcontractor, person, or entity as an additional party to the arbitration. Upon selection or appointment of the arbitrator, the parties shall confer with the



arbitrator who shall establish a discovery schedule which shall not extend beyond ninety (90) days from the date the arbitrator is selected or appointed unless for good cause shown such period is extended by the arbitrator or such period is extended by the consent of the parties. If Declarant asserts a claim against a contractor, subcontractor, person, or entity, the discovery period may be extended, at the discretion of the arbitrator, for a period not to exceed one hundred twenty (120) days. The arbitration of a dispute between the Declarant, the Association, or any Owner of a Unit shall not be consolidated with any other proceeding unless Declarant chooses to consolidate the same with another similar proceeding brought by the Association or any Owner of a Unit. The arbitrator shall convene the arbitration hearing within one hundred twenty days (120) from the time the arbitrator is selected or appointed. Upon completion of the arbitration hearing, the arbitrator shall render a decision within ten (10) days. The date for convening the hearing may be adjusted by the arbitrator to accommodate extensions of discovery and the addition of parties or by consent of the parties. However, unless extraordinary circumstances exist, the hearing shall be convened no later than one hundred eighty (180) days from the date the arbitrator is appointed. To the extent practicable, any hearing convened pursuant to this provision shall continue, until completed, on a daily basis. The prevailing party shall be entitled to recover its attorney's fees and costs. The costs of the arbitration shall be borne equally by the parties thereto.

Section 17.17 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article 17 and its subsections may not be amended except with the written consent of the Declarant; and any purported amendment of this Article 17 and/or any portion thereof, without written consent of Declarant, shall be void.

/ / /

/ / /

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amended & Restated Declaration (for Cottages at Carson Valley) as of the day and year first written above.

**DECLARANT:**

LANDSMITH APPRECIATION FUND, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_  
Its Authorized Signatory  
*JAMES BREITENSTEIN, PRES*

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF DOUGLAS    )

This Second Amended & Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for COTTAGES AT CARSON VALLEY was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as Authorized Signatory of LANDSMITH APPRECIATION FUND, LLC, a Nevada limited liability company.

*See attached*

\_\_\_\_\_  
NOTARY PUBLIC  
(Seal)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of San Mateo )

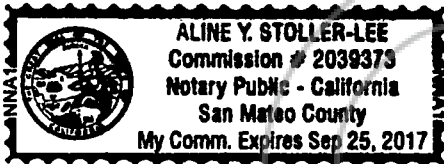
On 11/11, 2016 before me, Aline Y. Stoller-Lee, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared James Breitenstein  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Aline Y. Stoller-Lee  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document 2nd Amendment + Restated Decl. of CCR  
Title or Type of Document: \_\_\_\_\_ Document Date: 11-1-16  
Number of Pages: p. 85 Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)  
Signer's Name: James Breitenstein  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: Authorized Signatory  
LandSmith Appreciation Fund LLC

Signer Is Representing: \_\_\_\_\_

**IN FURTHER WITNESS WHEREOF**, the undersigned Association (pursuant to the affirmative vote or written consent, or any combination thereof, of the Unit Owners to which at least sixty-seven percent (67%) of the votes in each class of the Association are allocated) has executed this Second Amended & Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for COTTAGES AT CARSON VALLEY as of the day and year first written above.

**ASSOCIATION:**

**KIT CARSON VILLAGE HOMEOWNERS  
ASSOCIATION, INC.,**

henceforth to be known as

**COTTAGES AT CARSON VALLEY HOME OWNERS  
ASSOCIATION,**  
a Nevada nonprofit corporation

By: \_\_\_\_\_  
James Breitenstein, President

STATE OF NEVADA        )  
  )  
COUNTY OF DOUGLAS    )

This Second Amended & Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for COTTAGES AT CARSON VALLEY was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2016, by James Breitenstein as President of KIT CARSON VILLAGE HOMEOWNERS ASSOCIATION, INC., henceforth to be known as COTTAGES AT CARSON VALLEY HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation.

*all attached*

\_\_\_\_\_  
NOTARY PUBLIC  
(Seal)

**[SIGNATURE PAGES CONTINUED]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of San Mateo )

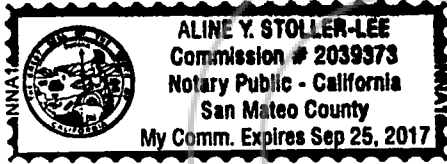
On 11/11, 2016 before me, Aline Y. Stoller-Lee, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared James Breitenstein  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Aline Y. Stoller-Lee  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document 2nd Amended Restated Decl of CCR  
Title or Type of Document: p-86 Document Date: 11/1/16  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)  
Signer's Name: James Breitenstein  
 Corporate Officer — Title(s): President  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: Kit Carson Village Homeowners Association Inc.

Signer Is Representing: \_\_\_\_\_





**CONSENT & JOINDER OF OWNER**

The undersigned owner of a portion of the Property and/or Annexable Area hereby consents to and joins in the foregoing Second Amended & Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for COTTAGES AT CARSON VALLEY and its recordation.

**DOOSTON GARDNERVILLE, LLC**  
a Nevada limited liability company

By: *D. Leamon*  
Its Authorized Signatory  
*DARRELL J LEAMON*

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF DOUGLAS    )

This Second Amended & Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for COTTAGES AT CARSON VALLEY was acknowledged before me on this 17<sup>th</sup> day of November, 2016, by DARRELL J LEAMON, as authorized signatory of DOOSTON GARDNERVILLE, LLC, a Nevada limited liability company.

*Jodi O. Stovall*  
NOTARY PUBLIC  
(Seal)

