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FIRST CENTENNIAL - RENO (MAIN OFFICE)

KAREN ELLISON, RECORDER

**APNS:**

1320-33-220-000 through 1320-33-220-003;

1320-33-227-000 through 1320-33-227-003

Recording Requested by:

Name: R. Clay Hendrix, Esq.


Address: 5400 Equity Avenue

City/State/Zip: Reno, NV 89502

**FIRST AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR ESPLANADE AT THE RANCH COMMUNITY ASSOCIATION**

I the undersigned hereby affirm that this document submitted for recording do not contain the social security number of any person or persons.

(Per NRS 239b.038)

  
Signature      Print Name      Title      *Mgr*

Kenneth Hendrix, Manager

This page added to provide additional information required by NRS 111.312 Sections 1-2.  
(Additional recording fee applies)

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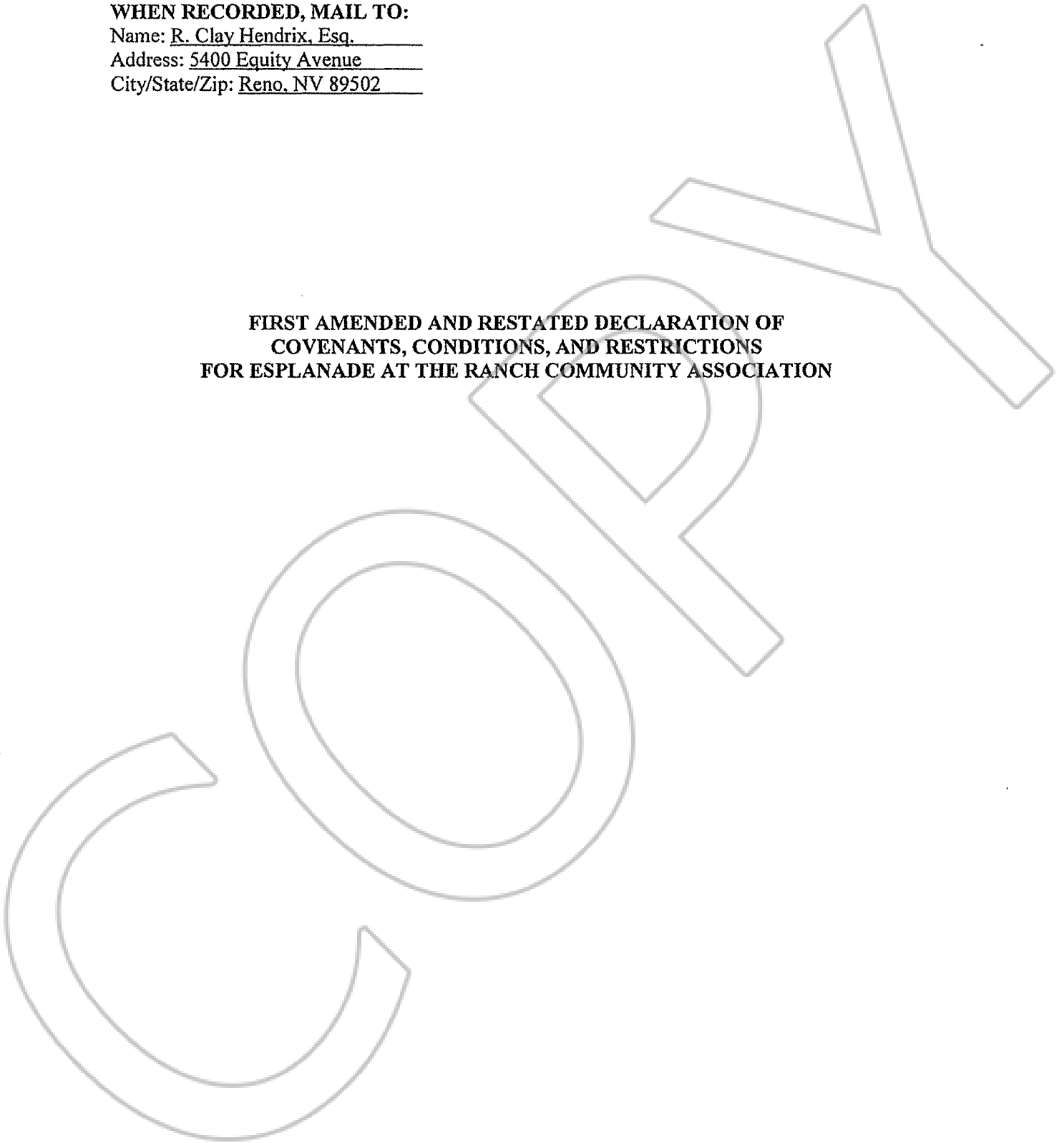
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Name: R. Clay Hendrix, Esq.

Address: 5400 Equity Avenue

City/State/Zip: Reno, NV 89502

**FIRST AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR ESPLANADE AT THE RANCH COMMUNITY ASSOCIATION**



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**FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR ESPLANADE AT THE  
RANCH COMMUNITY ASSOCIATION**

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ESPLANADE AT THE RANCH COMMUNITY ASSOCIATION ("Declaration") is made on this 27th day of February 2018, by **Jenuane Communities the Ranch LLC**, a Nevada limited liability company ("Declarant"). This Declaration together with all Exhibits attached hereto, are deemed controlling in all respects.

**RECITALS:**

- A. On September 8, 2017, Declarant recorded the Declaration of Covenants, Conditions, and Restrictions for Esplanade at the Ranch Community Association in the Office of the Douglas County Recorder, State of Nevada, as Document No. 2017-903815 ("Original Declaration");
- B. Pursuant to Article X, Section 10.2(d) of the Original Declaration, Declarant may unilaterally amend the Declaration at any time prior to the close of the first sale of a Unit;
- C. As of the date set forth above, Declarant has not closed on the first sale of a Unit; therefore, Declarant unilaterally amends the Declaration as set forth below which Declaration shall supersede the Original Declaration;
- D. Declarant is the owner of that certain real property situated in County of Douglas, State of Nevada, and described in **Exhibit "A"** hereto and by this reference incorporated herein (the "Initial Property");
- E. Declarant is the owner of that certain real property located in the County of Douglas, State of Nevada, described in **Exhibit "B"** attached hereto (the "Annexable Property"); and
- F. Declarant intends to create a common-interest community within the Property as defined in Chapter 116 of the Nevada Revised Statutes ("the Act") and to sell and convey Units (below defined) therein subject to the covenants, conditions, restrictions, equitable servitudes, and charges set forth herein which establish a general plan of improvement for the benefit of all the Units. The common-interest community created hereby is a condominium as defined in the Act. The name of the common-interest community is "**Esplanade at the Ranch Community Association**", a Nevada non-profit corporation ("the Association"). Declarant reserves the right to create a maximum of 41 Units within the Community (below defined).

**DECLARATION:**

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, sold, encumbered, leased, rented, used, occupied, improved or otherwise affected in any manner, subject to the declarations, limitations, easements, covenants, conditions and restrictions set forth



in this Declaration, all of which are hereby declared to be in furtherance of a general plan for the development, improvement, and sale of the Property, and are further declared to be for the purpose of enhancing, maintaining and protecting the value and attractiveness thereof. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, or as liens, as the case may be, and shall constitute benefits and burdens to the Declarant and its successors and assigns and to all parties hereafter acquiring or owning any interest in the Property in whatever manner such interest may be obtained.

## ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings set forth in this Article.

1.1 "Allocated Interests" shall mean the undivided interests in the Common Elements and Limited Common Elements, the liability for Common Expenses, and the votes in the Association which are allocated to Units in the Community pursuant to this Declaration.

1.2 "Architectural Control Committee" or "Architectural Committee" means the Board (or other committee established pursuant to Article XI) acting as the architectural control committee under this Declaration.

1.3 "Architectural Committee Guidelines" means the rules, if any, recommended by the Architectural Committee and adopted by the Board of Directors.

1.4 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association.

1.5 "Association" means Esplanade at the Ranch Community Association, a Nevada nonprofit corporation.

1.6 "Association Property" means all real and personal property now or hereafter owned by or leased to the Association or in which the Association has a recognizable legal or equitable present or future interest.

1.7 "Beneficiary" means a beneficiary under a deed of trust or a mortgagee under a mortgage, and/or the assignee of such beneficiary or mortgagee.

1.8 "Board" or "Board of Directors" means the Board of Directors of the Association and is synonymous with "Executive Board" as defined by the Act.

1.9 "Bylaws" means the Bylaws of the Association.

1.10 "Common Elements" means the entire Community excepting all Units. The definition of Common Elements shall include, without limitation, the following components: the

buildings (including, but not by way of limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, stairs, patios, balconies, entrances and exits, and the mechanical installations of a building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts and flues, except for the Units, the boundaries of which are set forth and described in Section 3.1 of this Declaration, and which boundaries shall control.

1.11 "Common Expenses" shall have the meaning set forth in Section 6.4.1 hereof.

1.12 "Community" means the Property, together with all Improvements now or hereafter located thereon, and together with all easements, rights and appurtenances belonging thereto.

1.13 "Community Guidelines" means such rules and regulations and resolutions as the Board from time to time may adopted pursuant to the terms of this Declaration concerning the use of and conduct within the Community or any part thereof.

1.14 "Condominium" means an estate in real property consisting of (a) a fee interest in a Unit, and (b) an undivided fractional interest in the Common Elements, together with all easements, rights and appurtenances belonging thereto.

1.15 "Declarant" means the undersigned which has made and executed this Declaration or its successors, assigns, or representatives in the event Declarant assigns its rights and obligations, or in the event Declarant's interest in the Community is sold pursuant to foreclosure or deed in lieu thereof, a person acquiring title to all the property being foreclosed or sold, who upon that person's request, has succeeded to all or certain Declarant rights, as provided for in the judgment or instrument conveying title.

1.16 "Declaration" or "this Declaration" means this instrument entitled "Declaration of Covenants, Conditions, and Restrictions for Esplanade at the Ranch Community Association," and any and all amendments thereto.

1.17 "Deed of Trust" means a deed of trust or a mortgage encumbering any portion or all of the Property.

1.18 "Eligible Insurer" means an insurer or guarantor of a First Deed of Trust which has requested notification pursuant to the provisions of Sections 9.5 and 12.5 hereof.

1.19 "Eligible Mortgage Holder" means the holder of a First Deed of Trust which has requested notification pursuant to the provisions of Sections 9.5 and 12.5 hereof.

1.20 "Final Map" means the any Final Map of Esplanade at the Ranch approved by the controlling governmental agencies that effects the Property described in Exhibit A, together with any and all amendments thereto.

1.21 "First Deed of Trust" means a Deed of Trust having priority over all other Deeds of Trust encumbering the same portion of the Property.

1.22 "Foreclosure" means a foreclosure under a Deed of Trust by judicial action or exercise of power of sale.

1.23 "Governing Documents" means the Declaration, the Articles, the Bylaws, and any Community Guidelines or Architectural Committee Guidelines that may be adopted or approved by the Board, as they may be amended from time to time, including any exhibits, schedules or certifications attached thereto.

1.24 "Improvements" means all structures and works of improvement of every type and kind, including but not limited to, painting, buildings, outbuildings, garages, carports, roads, above and underground utilities, facilities and pipelines, yard drains, storm water retention basin, emergency spillway, picnic area, gazebo, RV parking spaces, water meter boxes and water service lines, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, landscaping, sprinklers, hedges, windbreaks, planting, planted trees, shrubs, poles, signs, free-standing lighting fixtures, exterior air conditioning, and water softener fixtures or equipment, which have been or will be constructed on the Community.

1.25 "Limited Common Elements" means those portions of the Common Element allocated by this Declaration, the Final Map, the Plans or by operation of applicable provisions of the Act for the exclusive use of one or more but fewer than all of the Units.

1.26 "Majority of Owners" or "Majority of Members" shall mean the Owners of more than fifty percent (50%) of the total number of Units contained in the Community.

1.27 "Manager" means the person or entity, if any, designated by the Board to manage the affairs of the Association and to perform various other duties assigned by the Board and by the provisions of this Declaration.

1.28 "Member" or "Association Member" means every person or entity including Declarant who holds a membership in the Association pursuant to the provisions of this Declaration, the Articles and the Bylaws.

1.29 "Owner" means a person or entity, including Declarant, holding a fee simple interest in a Unit, or who is the buyer of a Unit under a recorded contract of sale, in which case the seller under such recorded contract of sale shall cease to be an Owner unless and until such contract is terminated but excluding those persons having such interest as security for performance of an obligation.

1.30 "Plan" or "Plat and Plans" means (i) the Final Map, (ii) those items set forth in NRS 116.2109(5), including drawings of improvements which are filed with agencies which issue permits for the Community, and all number and letter designations set forth thereon identifying Units, and (iii) such other diagrammatic plans and information regarding the Community as may

be required by the Act or other applicable law, or as may be included in the discretion of Declarant, as each may be amended and supplemented from time to time, and all as recorded in the Office of the County Recorder, Douglas County, Nevada, all of which are incorporated herein by this reference.

1.31 “Special Declarant’s Rights” means all rights reserved by Declarant for itself under this Declaration which are personal to Declarant and may be exercised only by Declarant, including, but not limited to, those set forth in **Article X** hereof.

1.32 “Successor Declarant” means any and all successors-in-interest of Declarant who acquire an interest in the Property, or any portion thereof, and to whom Special Declarant’s Rights have been assigned by a written assignment executed by the transferor Declarant and the transferee Successor Declarant which is duly recorded in the office of the County Recorder of Douglas County, Nevada. Declarant and each Successor Declarant shall cease to be the Declarant or a Successor Declarant, respectively, at such time that it ceases to own an interest in any portion of the Property and designates a Successor Declarant in the manner provided in this Section 1.33.

1.33 “Supplemental Declaration” means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may be recorded by Declarant without the consent of any Owner while Declarant owns any portion of the Property or any Annexable Property and thereafter by the Association or any Owner do any or all of the following: (a) annex all or a portion of the Annexable Property and/or designate Units as a phase of development; (b) identify areas referenced in this Declaration to be maintained by the Association and/or make modifications or supplements to any areas designated for maintenance by the Association or any Owner; (c) make such other complementary additions and/or modifications necessary to reflect the different character of the Annexable Property, (d) impose additional covenants and restrictions on the Annexable Property; (e) conform this Declaration or any previously recorded Supplemental Declarations to Law or any conditions of approval imposed by any governmental agency; or (f) make corrections to the provisions of this Declaration or previously recorded Supplemental Declaration(s).

1.34 “Unit” means a physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are described in **Article III** of this Declaration.

1.35 “Yard Element” refers to the areas designated on the Plans as a ground level Limited Common Element which may be included as an appurtenance to certain Units.

**ARTICLE II**  
**DESCRIPTION OF PROPERTY RIGHTS AND OBLIGATIONS, COMMON**  
**INTERESTS, RIGHTS OF ENJOYMENT, AND EASEMENTS**

2.1 Ownership of Condominium. Ownership of each Condominium within the Community shall include a fee interest in a Unit, an undivided fractional interest as a tenant in common in the Common Elements (the numerator of such fraction being one, and the denominator of such fraction being the number of Units in the Community at any given time and from time to time), an exclusive right to use that portion of the Common Elements designated as Limited Common Elements on the Final Map or the Plans and being appurtenant to such Unit, and a membership in the Association.

2.2 Non-Severability of Component Parts of Condominium. No part of a Condominium or of the legal rights comprising ownership of a Condominium may be severed from any other part thereof during the period of condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Elements appurtenant to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration. Further, the Common Elements shall be owned in common by all Owners of Condominiums; and no Owner may bring any action for partition thereof except as herein provided.

2.3 Ownership of Common Elements. Declarant shall transfer and convey to the Owners an undivided fractional interest in all of the Common Elements in the Community at the time of the conveyance to each such Owner of a Unit; and such fractional interest in the Common Elements shall be re-allocated automatically each time additional Units are added to the Community so that at all times the Owners' individual undivided interests in the Common Elements shall be equal.

2.4 Encumbrances Against Common Elements. Title to the Common Elements is or may be subject to the following encumbrances ("Existing Encumbrances"):

- (a) The lien of real property taxes and assessments;
- (b) The obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of Nevada, County of Douglas, or any other political subdivision or public organization having jurisdiction over the Property, or by virtue of any organization or political body created pursuant to any such statute, law, ordinance, or regulation;
- (c) Any and all easements and other rights shown on the Final Map;

- (d) All easements and other rights and obligations created by this Declaration;
- (e) Any and all loans for the construction of Improvements to the Common Elements which loans shall be paid by Declarant as the same become due and payable; and
- (f) Any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type that would at any time or from time to time create a lien upon the Common Elements to secure an obligation to pay money) that would not materially and actually prejudice Owners in their use and enjoyment of their Units and the Common Elements.

2.5 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If, nevertheless, any taxes or special district or other assessments may be, in the opinion of the Association, a lien on the Community or any part thereof, then the Association shall pay the same and assess the same to the Owner or Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against his Unit, or interest therein.

2.6 Owners' Easements of Enjoyment. Except as otherwise expressly provided elsewhere in this Declaration, each Owner shall have, and Declarant hereby grants to each Owner, a nonexclusive easement of use and enjoyment in, to, and throughout the Common Elements and for ingress, egress, and support over and through the Common Elements, and an exclusive easement for the use and enjoyment of the Limited Common Elements appurtenant to such Owner's Unit; provided, however, that such non-exclusive easements shall be subordinate to, and shall not interfere with, the Limited Common Elements appurtenant to each Unit. Each such easement shall be appurtenant to and pass with title to each Unit, subject to the following rights and restrictions:

- (a) The Association shall have the right to adopt, amend, and enforce Community Guidelines; provided, however, that such Community Guidelines shall not be in material conflict with the provisions of this Declaration or any ordinances of Douglas County, Nevada, or of any other governmental entity.
- (b) The Association shall have the right to suspend the right to use any recreational facilities within the Common Elements by an Owner, his tenants and guests for any period during which any Assessment remains past due and unpaid, and, after notice and hearing, for any violation of the Governing Documents for a period of up to sixty (60) days per violation and any period during which the violation remains uncured.
- (c) The Association shall have the right to limit the number of guests of an Owner utilizing the Common Elements.
- (d) The Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility situate upon the Common Elements.

(e) The Association shall have the right to assign, lease, rent, grant licenses, or otherwise designate and control the use of the Common Elements including parking or storage spaces (other than those portions which are part of the Limited Common Elements).

(f) The Association shall have the right to borrow money or to mortgage, pledge, or hypothecate the Common Elements as security for money borrowed, subject to the requirements of NRS 116, as it may from time to time be amended (the "Act"), to improve, repair or maintain the Common Elements.

(g) The Association shall have the right to limit access to portions of the Common Elements for the benefit of or health, safety, and welfare of the Community or any persons; for maintenance or repair; or in order to comply with requirements of law.

(h) The Association shall have the right to convey the Common Elements subject to the requirements of this Declaration and the Act.

2.7 Use of the Common Elements. Any Owner may extend his rights of use and enjoyment in the Common Elements, including any recreational facilities, to such Owner's family members, guests, and invitees, subject, however, to the provisions of this Declaration and the Community Guidelines. If an Owner has rented all of such Owner's Unit to a tenant(s), then the Owner, such Owner's family, members, guests, and invitees shall not be entitled to use and enjoy the recreational facilities of the Common Elements while the Owner's Unit is occupied by such tenant(s). Instead, the tenant(s), while occupying such Unit, shall be entitled to use and enjoy the recreational facilities of the Common Elements and, during the period of such tenants' occupancy, such tenant(s) can extend to other persons the rights of use and enjoyment in the same manner as if such tenant(s) were an Owner. All permitted rights of use and enjoyment of the Common Elements are subject to suspension as set forth in Section 2.6 (b) above. Each Owner shall at all times be responsible for any and all activities of his tenants, guests and invitees using the Common Elements. No Improvements within the Common Elements shall be altered or removed, except at the express direction of the Association.

No part of the Common Elements shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Elements be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Elements or in storage areas designated by the Board), nor in any manner which shall increase the rate at which insurance against loss by fire, or the perils of the extended coverage endorsement to the fire policy form, or bodily injury or property damage liability insurance covering the Common Elements and the improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

2.8 Association's Right to Use of Common Elements. The Association shall have a nonexclusive easement to make such use of the Common Elements as may be necessary or

appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Elements maintenance and storage facilities for use by the Association.

2.9 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereinafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same does and shall exist. If any part of a Unit is located within, encroaches or shall hereinafter encroach upon the Common Elements, or upon an adjoining Unit, an easement for access to such portion of the applicable Unit, and an easement for any such encroachment and for the maintenance of such portion of the applicable Unit and of such encroachment does and shall exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments cause by initial construction, settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Community or any part thereof. Notwithstanding the foregoing, no such easement for encroachment shall exist to the extent it is caused by the willful misconduct of the Owner of the encroaching Unit or the failure of such Unit's Owner to cause the Unit to be repaired or reconstructed after damage or destruction in accordance with approved plans and specifications.

2.10 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Elements, including Limited Common Elements, from time to time during such reasonable hours as may be necessary, for the maintenance, repair, or replacement of any of the Common Elements, including any Limited Common Elements, located therein or accessible there from, or for repairs or maintenance to improvements in or on the Unit which are the responsibility of the Association, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. The Association shall also have such right independent of any agency relations. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all of the Owners; provided, however, if such damage is the result of the gross negligence or willful misconduct of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article VI below.

2.11 Utility Easements. There is reserved for the benefit of each Unit (and for the benefit of each utility provider, as and to the extent reasonably necessary to allow such provider to install, maintain, replace, service and repair such utility provider's utility facilities and services within the Community) easements for utility services over, under, or through such portions of the Community and other Units, including HVAC units located in Common Element attics above Units where such utilities and HVAC units are constructed when construction of the Community is completed. In addition, Declarant reserves, and the Association is granted, the right to establish and convey



subsequent utility easements; and each Owner in accepting a deed to a Condominium, expressly consents to such easements.

2.12 Easements Deemed Created. All conveyances of Condominiums hereafter made shall be construed to grant and reserve such reciprocal easements as shall give effect to the provisions of this Article II even though no specific reference to such easements or to the sections pursuant to which they are created appear in any such conveyance.

2.13 Maintenance and Repairs. Each Owner shall maintain his Unit in a clean and attractive condition and good state of repair. All such maintenance by Owner described in this Section is to be at the sole cost and expense of the Owner. Each Owner shall notify the Association's manager or a member of the Board upon discovery of any damage to or malfunction, including, but not limited to, any damage or malfunction to or of any pipe, wire, or other utility installation which is in his Unit, the Limited Common Elements or the Common Elements; provided, however, that such notice requirement shall not be construed to alter Owner's obligation to maintain and repair any such installations which are a part of his Unit.

2.14 Structural and Exterior Alterations. No Owner shall make, or cause to be made, any structural alterations to the interior or exterior of the Owner's Unit or to any Limited Common Elements or Common Elements; nor shall any Owner paint, decorate, change, or add any item to any exterior of the Owner's Unit or any building or other structure in the Community without first obtaining written consent of the Architectural Committee as provided in **Article XI** of this Declaration. No structural alteration may commence until any and all necessary approvals for such alterations have been obtained from the appropriate governmental body exercising jurisdiction over such matters.

2.15 Mechanic's Lien Rights. No labor performed or services or materials furnished with the consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishings of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Unit in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Community, if authorized by vote of the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Unit.

2.16 Declarant's Common Elements Easement Rights; Dedication of Common Elements.

2.16.1 Reservation of Common Elements Easements In Favor of Declarant. Declarant hereby reserves unto itself such easements over, through and under the Common Elements (excluding Limited Common Elements) as may be reasonably necessary to discharge Declarant's obligations or exercise any Special Declarant's Rights, whether

arising under NRS Chapter 116 or reserved in this Declaration. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

2.16.2 Reservation of Right to Grant Additional Common Elements Easements and to Dedicate Common Elements. Declarant hereby reserves unto itself the right to grant easements and rights of way on, over, through and under the Common Elements for the purposes described below and for the benefit of the Owners and the Association, and the right to offer for dedication any portion of the Common Elements to any political subdivision, or any public or quasi-public entity or utility. Such grants of easement or dedications may be for any or all of the following described purposes: constructing, erecting, operating, or maintaining on the Common Elements, at any time: (i) roads, streets, trails, walks, driveways, vehicle parking areas, parkways, and park areas; (ii) poles, wires, or conduits for transmission of electricity, telephonic communication or cable or master antenna television for the Community and the necessary apparatus incident thereto; and (iii) public and private sewers, sewage disposal systems, storm drains, land drains and pipes, water systems, sprinkling and irrigation systems, water, heating and gas lines or pipes, and any and all equipment and other apparatus relating thereto. The rights reserved by Declarant in this subsection 2.16.2 may be exercised at any time that Declarant owns any portion of the Property.

2.17. Rights of Association to Grant Easements Over Common Elements and to Dedicate Portions of Common Elements. At such time as the rights reserved by Declarant under subsection 2.16.2 have expired, the Association shall be entitled to exercise the rights reserved to Declarant under subsection 2.16.2, subject to any limitations in the Act.

2.18 Right of Association to Encumber Common Elements. The Association may encumber the Common Elements in connection with authorized obligations, but only upon the affirmative vote of not less than sixty-seven percent (67%) of the voting power of the Association (exclusive of Units owned by Declarant).

2.19 Access to Units. Each Owner shall have an unrestricted right of ingress and egress to his Unit. Such right of access shall be appurtenant to each such Unit; and any transfer of such Unit, of whatever kind, which does not include such right of access shall be void.

2.20 Declarant Ownership of Units. As to each Unit owned by Declarant, Declarant shall enjoy the same rights and assume the same duties as they relate to each individual unsold Unit.

2.21 Use and Improvement of Common Elements. The Common Elements shall be improved and used only for the following purposes:

- (i) Affording vehicular passage and pedestrian movement within the Community, including access to the Units;

(ii) Recreational use by the Owners and occupants of Units in the Community and their guests, subject to applicable Community Guidelines established by the Board;

(iii) Beautification of the Common Elements and providing privacy through landscaping and such other means as the Board shall deem appropriate;

(iv) Parking of automotive passenger vehicles and Recreational Vehicles in areas provided therefore upon such terms and conditions as may from time to time be determined by the Board by the adoption of applicable Community Guidelines;

(v) The following uses are hereby expressly prohibited:

1. No garbage or refuse may be placed or left in the Common Elements except in areas and receptacles provided for that use, and then only for the time and in the manner allowed pursuant to Section 3.13 below.

2. No planting may be done in the Common Elements by any Owner, except with the written permission of the Board.

(vi) No part of the Common Elements shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Elements be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Elements or in storage areas designated by the Board), nor in any manner which shall increase the rate at which insurance against loss by fire, or the perils of the extended coverage endorsement to the fire policy form, or bodily injury or property damage liability insurance covering the Common Elements and the improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

2.22 Yard Element Easement. Each Unit which has a Yard Element as part of the Unit shall have an easement for drainage through the established drainage pipes and facilities and an easement for runoff of water on, over, through and across the other Units in accordance with the drainage pattern installed and established by Declarant. Such easements shall be subject to the restrictions set forth in Section 3.30, entitled "Surface Drainage and Storm Water Restrictions and Requirements."

**ARTICLE III**  
**UNIT BOUNDARIES, USE RESTRICTIONS, MAINTENANCE**  
**OBLIGATIONS AND PRIVATE EASEMENTS**

3.1 Unit Boundaries.

3.1.1 General Description of Boundaries. The boundaries of each Unit created by the Declaration are shown on the Final Map and Plans as numbered Units, along with their identifying number or other designation, and are described as follows:

(a) Upper Boundary: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing beams and rafters and of enclosed fireplace dampers, extended to an intersection with the vertical perimeter boundaries. As a matter of amplification, all ceiling sheet rock shall be deemed located within the upper boundary of each Unit.

(b) Lower Boundary: The horizontal plane or planes of the undecorated or unfinished upper surfaces of the concrete floor, extended to an intersection with the vertical perimeter boundaries and open horizontal unfinished surfaces of trim, sills and structural components.

(c) Vertical Perimeter Boundaries: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of poured concrete walls; the outermost surfaces of fireplaces (i.e., the fireplace boxes themselves); the unfinished outer surfaces of closed windows and closed perimeter doors, whether glass or otherwise; and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions and partition walls between separate Units. As a matter of amplification, all ceiling sheetrock shall be deemed located within the vertical boundary of each Unit.

(d) Inclusions: Each Unit will include the spaces and improvements lying within the boundaries described in (a), (b) and (c) above, and will also include the spaces and the Improvements within those spaces containing any space heating, water heating and air conditioning apparatus, all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, electrical receptacles and light fixtures and boxes serving that Unit exclusively. The surface of the foregoing items will be the boundaries of that Unit, whether or not those items are contiguous to the Unit.

(e) Exclusions: Except when specifically included by other provisions of this Section, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in (a), (b) and (c) above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities

running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

(f) Noncontiguous Portions: Certain Units may include special portions, pieces or equipment such as furnaces, air conditioning compressors, meter boxes, utility connection structures and storage portions situated in buildings or structures that are located in Common Element areas within the building in which the Unit is located, as well as similar portions, pieces or equipment which are detached or semidetached from the buildings containing the Units. This special equipment and storage portions are a part of the Unit, even though they are not contiguous with the residential portions. Without limiting the foregoing, each Owner is expressly advised that the HV AC unit located in the Common Element attic space and serving such Owner's Unit shall be the sole responsibility of such owner to maintain, repair and replace.

(g) Inconsistency with Plans: If this definition is inconsistent with the Plans, then this definition will control.

3.1.2 Declarant's Relocation of Unit Boundaries. Declarant may adjust/relocate the boundaries between adjoining Units in its sole discretion prior to the initial sale of the affected Units from Declarant to the first third party Owner of such Units. In the event that Declarant elects to relocate Unit boundaries as above provided, then Declarant shall prepare an amendment to this Declaration that identifies the Units involved, and states the reallocations of Allocated Interests and indicates the Association's consent (the consent of non-affected Owners shall not be required). The amendment must be executed by those Unit Owners affected and contain words of conveyance between them. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

3.1.3 Relocation by Owners. Except as provided otherwise in Section 3.1.2, the boundaries between adjoining Units may not be relocated without the approval of the Board and the Architectural Committee. In addition to the plans and specifications required for approval under Article XI, a request for a boundary adjustment must be accompanied by the written consent of all Owners of the Units affected by the relocation. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocation. In the event that the Board and the Architectural Committee approves the request for boundary adjustment, the Association shall prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners affected and contain words of conveyance between them. The approval of all holders of Deeds of Trust in the affected Units shall be endorsed on the conveyance. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

3.1.4 Recording Amendments. The Association shall prepare and record an amendment to the Plat and Plans as necessary to show the altered boundaries between adjoining Units, along with the Units' dimensions and identifying numbers. The applicants will pay for the costs of preparation of the amendment and its recording, as well as any reasonable consultant fees incurred by the Association.

3.2 Residential Use. No Unit shall be improved or used for any purpose other than single family residential use. The term "single family residential use" shall mean use by one or more persons residing and cooking together as a single housekeeping unit, provided any group of persons either:

(a) is composed exclusively of family members who are related by blood, marriage or legal adoption to each other within a second degree of consanguinity or as otherwise defined by Douglas County, Nevada Code, or

(b) contains a maximum number not exceeding two multiplied by the number of bedrooms in the Unit. The number of bedrooms in any Unit is the number shown on the plans approved by the applicable jurisdiction at the time of original construction of the Unit, not the number of rooms actually used as bedrooms, and not including any bedrooms added by subsequent remodeling or additions.

3.3 Improvements and Alterations; Architectural Control. No improvement, construction, repair, excavation, fill, removal of rocks, shrubs or natural vegetation, or other work that alters the land or the exterior appearance of any Improvement or any Unit (including Yard Elements) in any manner shall be made, done, or permitted to be done unless approval therefore is first obtained from the Architectural Committee in accordance with this Declaration and the procedures established by the Architectural Committee Guidelines, and from the appropriate governmental authority, if required. Declarant will install initial landscaping of and power and irrigation hookups for, Yard Elements. Any addition to or alteration or modification of such Declarant installations shall be subject fully to the foregoing terms and provisions of this Section 3.3 and all other applicable terms and provisions of this Declaration; provided, however, that the foregoing shall not apply to an Owner's placement or installation of such landscaping materials, elements, plants and shrubs as do not and will not (or which will be trimmed and maintained so as to not) intrude or reach above the walls establishing the boundaries of such Yard Element, provided further that such landscaping materials, elements, plants and shrubs are otherwise compliant with the terms and provisions of this Declaration. In the event the Owner of an Unit desires to replace any portion of the flooring or floor coverings in such Unit to anything other than carpet and pad, then prior to the installation of any such different flooring or flooring material, such Owner shall obtain a written report from a qualified consultant such as an acoustical engineer certifying that such different flooring and materials will not transmit sound in excess of such sound levels as are then currently allowed pursuant to the International Building Code and other applicable laws, ordinances, rules and regulations (collectively, the "Sound Transmission Limits"); and such report shall be filed in the records of the Association. If any Owner installs any such different flooring which transmits sound in excess of the Sound Transmission Limits, then regardless of such Owner's good reliance on such Owner's consultant's report concerning the compliance with Sound

Transmission Limits, such installation shall constitute a Violation (as hereinafter defined), and the Association and any affected Owner shall be entitled to all remedies available pursuant to this Declaration and at law or in equity to abate such Violation and recover such damages as are occasioned thereby.

3.4 Business or Commercial Activity. No Unit shall ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including without limitation any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license; except Declarant, its successors and assigns may use any portion of the Property for a model home site and display and sales offices in accordance with **Article X** hereof. The provisions of this Section 3.4 shall not preclude any of the above-described activities which are conducted without external evidence thereof provided that all of the following conditions are fulfilled: (a) such activities are conducted in conformance with all applicable governmental ordinances; (b) the patrons or clientele of such activities do not routinely or in significant numbers visit the Unit or park automobiles or other vehicles within the Community; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Unit; (d) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (e) such activities are consistent with the residential character of the Community and otherwise conform with the provisions of this Declaration and the Community Guidelines.

3.5 Appearance of Unit. Each Owner shall keep his Unit and the Improvements thereon (including Yard Elements, if applicable) in a continually clean, attractive, well maintained and repaired (except to the extent such maintenance or repair is the responsibility of the Association) condition, free of trash, debris and unsightly items or materials. Any patio or balcony areas shall not be used for storage of items not to be used in such balcony or patio areas, including but not limited to firewood, boxes, bicycles, and any other unsightly items. Laundry may not be placed outside of any Unit to dry. Each Owner shall have complete discretion as to the choice of furniture, furnishings, and interior decorating; however, all draperies, curtains, shutters, or other window coverings shall be of good quality and of such color, design, and construction so as to be in accord with the attractive appearance of the Community and presented to the public view in a first-class manner. In addition, all draperies which can be seen from the outside of a Unit shall have a white or off-white backing. No plastic, aluminum foil, bedroom sheet or other unsuitable coverings may be placed in or on the windows.

3.6 Garages; Parking Restrictions.

3.6.1 Parking. Each Owner shall park only in parking areas or spaces as designated by the Community Guidelines from time to time, and in accordance with such Community Guidelines. Without limiting the effect of the foregoing sentence, the Board shall have the right and power, in its discretion, to designate and assign (and re-designate and re-assign) surface parking spaces in the Community from time to time in such manner as it deems necessary or desirable. At no time shall parking be allowed along or on the

private alleys (except for designated parking spaces in such alleys) and access ways within the Community. Parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Community Guidelines. Parking spaces shall be used for parking fully operational automobiles only, and shall not be converted for other storage or recreational activities. No Owner shall park, store or keep within the Property any inoperable or commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck) unless said inoperable or commercial vehicle can be stored in a garage; and then only if such garage parking does not preclude the parking in such garage of any other vehicle parked in the Community by such Owner. No Owner shall park, store or keep any camper unit, house/car or motor home; bus, all terrain vehicle, golf cart, personal watercraft, trailer, trailer coach, camp trailer, camper truck, boat, aircraft or mobile home; or any other similar vehicle (collectively "Recreational Vehicle"), unless (i) the Recreational Vehicle is stored in a garage in compliance with this Section 3.6 and (ii) such garage parking does not preclude the parking of any other vehicle parked in the Community by such Owner or such Recreational Vehicle is parked in the Common Element Recreational Vehicle storage lot subject to Community Guidelines established by the Board. The above excludes camper trucks and similar vehicles up to and including one (1) ton when used for everyday-type transportation and subject to approval by the Board. In addition, no Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. Any parking spaces which are designated as visitor parking by the Board are for the sole use of visitors and guests only, and may not be used by Owners or residents. Such parking spaces may be used only for vehicles, but specifically excluding oversized trucks, commercial vehicles, and Recreational Vehicles. Furthermore, no Recreational Vehicles may be parked in any parking space within the Community, regardless of whether the parking space is designated for use by visitors or residents, except as allowed by the Board, if at all, pursuant to Section 3.7 below. The Board shall have the power to enforce all parking and vehicle use restrictions applicable to the Property, including the power to remove violating vehicles from any of the Property to the extent permitted by applicable law. Garages may be used only for the parking of vehicles, and may not be used generally for storage purposes or for storing flammable or hazardous materials of any kind or nature whatsoever. All garage doors must remain closed except for entering and exiting the garage, after which the door shall be closed.

3.6.2 Garages. Garages shall be used exclusively for the parking of vehicles, and then only to the extent allowed pursuant to Section 3.6.1. Notwithstanding the foregoing, ordinary household goods may be stored in addition to vehicles, provided that: (a) no flammable, dangerous, hazardous or toxic materials shall be kept, stored, or used in any garage, (b) doors to garages shall be kept fully closed at all times except for reasonable periods during the removal or entry of vehicles or other items therefrom or thereto, and (c) no vehicle shall be parked outside of the garage because or as the result of any such storage. Owners understand and acknowledge that their respective garages are or may be located directly below one or more Unit(s), and, by acquisition of title to a Unit, shall be deemed to covenant not to violate any "quiet hour" restrictions or rules, or any other noise, nuisance or vibration provisions of this Declaration or the Community Guidelines. No garage may



be used for a permanent or temporary dwelling, and no animal shall be housed or kept in any garage. The foregoing notwithstanding, Declarant may convert a garage owned by Declarant into a sales office or related purposes. Garages are to be used for parking of operable vehicles only, with the exception that one space in a two car garage may be utilized to store an inoperable or unregistered vehicle. Any Owner reasonably requiring "emergency" access to or over another Owner's garage and who cannot reasonably contact such other Owner, shall contact the Board and/or manager of the Community.

3.7 Recreational, Commercial and Motor Vehicles. The Board may enact reasonable Community Guidelines governing the storage and operation of Recreational Vehicles, commercial vehicles and motor vehicles within the Community, including the exclusion of same from the Community. Except within spaces specifically provided for such purpose within the Common Element Recreational Vehicle storage area, there shall be no storage of Recreational Vehicles within the Community. The Association shall have the right to direct the removal of vehicles improperly parked on the Common Elements pursuant to NRS 487.038 (or applicable successor statute). No motor vehicle, commercial vehicle, Recreational Vehicle, or tent shall be used as a living area while located on the Community.

3.8 Leasing of Units.

3.8.1 General. No Unit shall be subdivided in any manner. Except as provided in Section 3.8.2 below, nothing contained in this Declaration shall prevent an Owner from leasing or renting his Unit; provided, however, that any lease or rental agreement shall be on the condition:

(a) The Owner and all tenants ("Tenant") enter into a written lease which provides that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Community Guidelines, and that any failure by the Tenant to comply with the terms of such documents shall be a default under the lease;

(b) The initial term of each such lease shall not be less than six (6) months. Whether or not the written lease or rental agreement so provides, all tenants of Units are subject to and are required to abide by the provisions of this Declaration, the Articles, the Bylaws and the Community Guidelines.;

(c) No Owner shall rent or lease his Unit for transient or hotel purposes, nor shall any Unit be time shared;

(d) The Tenant is furnished with a copy of this Declaration and the Community Guidelines; and

Each Owner shall be responsible and liable for all activities of the Tenant which are in violation of this Declaration or the Community Guidelines.

### 3.8.2 Rental Unit Limitations.

(a) Limitation on Number of Rental Units. Except in the case of hardship, determined as provided below, no more than forty-nine percent (49%) of the total number of Units may be non-Owner occupied (as rounded upward to the next whole Unit, the "Non-Owner Occupied Cap"). An "Owner-occupied Unit" shall mean any Unit occupied by its Owner or an Owner's spouse, child(ren) or parent(s) as a primary or secondary residence where no rent (whether in money, property or service) is charged.

(b) Economic Hardship. If the Non-Owner Occupied Cap has already been reached, an Owner may apply to the Board for an economic hardship-based exception to the prohibition against additional leases. The following situations may be considered for economic hardship based exceptions: (i) if the Owner or the Owner's spouse relocates for work or educational purposes; (ii) if the Owner dies, is hospitalized for a protracted illness, or is placed in a nursing home or a convalescent home or other facility or with family members due to illness; and (iii) such other extraordinary circumstances as the Board, in its sole discretion, may determine constitute an economic hardship. The Board, in its sole and unfettered discretion, shall determine whether an Owner's situation constitutes an economic hardship, and thus qualifies for a hardship-based exception.

(c) Procedure. Before entering into any lease agreement, an Owner shall notify the Board in writing of the Owner's intent to lease or rent such Owner's Unit. Within fifteen (15) days after such notification, the Board shall advise the Owner whether such proposed lease would exceed the Non-Owner Occupied Cap; and if it would exceed such cap, then the Board shall place the Owner on a waiting list, and shall notify such Owner when such Owner's Unit may be rented. An Owner on the waiting list may apply for a hardship exemption, and the Board shall notify the Owner of its decision within forty (40) days after such application. The Board shall establish Community Guidelines concerning the order in which hardship and non-hardship requests granted by the Board are permitted to lease Units from the waiting list. Once an Owner is notified that the Unit may be rented, such Owner shall enter into a lease with a tenant, if at all, and provide a copy of such lease to the Association within two (2) months after the date of such notice. If a notified Owner has not provided the Association with a fully signed lease within such period, then the Board shall place such Owner at the end of the waiting list, if any, and shall notify the next priority Owner on the waiting list that he may rent his/her Unit. Once an Owner has received permission from the Board to rent the Owner's Unit, the Owner may continue to rent such Unit (and such Unit will be considered leased), even to different tenants, following the expiration or termination of the initial tenancy, until either: (i) the Owner notifies the Board that the Owner no longer wishes to lease such Unit or (ii) the Unit is occupied by the Owner for any period exceeding thirty (30) consecutive days.

(d) Compliance with Documents. Each tenant shall be provided copies of the Governing Documents by the Owner of the Unit being leased at the beginning of the lease term, and thereafter with any amendments to such documents. In addition to other remedies available to the Association and as provided in the Act, an Owner may be subject to a Maintenance Violation Notice for any expenses incurred by the Association resulting from damage to the Common

Elements caused by such Owner's tenants or their guests. After notice and an opportunity to be heard, an Owner may be fined for his/her tenants' noncompliance with any provision of the Governing Documents, and such fines shall be collectible as Violation Assessments. The Owner shall provide a fully executed copy of each lease to the Board.

(e) Enforcement. Any occupancy of a Unit in violation of this Section 3.8.2 is void. If an Owner fails to follow the procedures set forth in this Section 3.8.2 with respect to the leasing of his Unit, at any time after learning of such leasing, the Board may pursue any and all remedies available as a result of such Owner's violation of the provisions of the Governing Documents.

3.9 Sports Equipment. No basketball standard, whether fixed or portable, or other fixed or portable sports apparatus shall be erected or attached to any structure in the Community, unless approved by the Architectural Committee.

3.10 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Unit except such machinery or equipment as is usual and customary in connection with and during the use, maintenance, or construction of a residence or other structure. No equipment for air conditioning, heating, fuel storage or other uses shall be installed or maintained outside of or protruding through the walls, windows, or roof of any building in the Community except for such equipment as is initially constructed by Declarant or thereafter as approved by the Architectural Committee.

3.11 Barbecues and Exterior Fireplaces. There shall be no exterior fires except barbecue fires contained within receptacles designed for such purpose or outside fireplaces approved by the Architectural Committee and then only in accordance with applicable laws and ordinances.

3.12 Animals. No animals, fowls, reptiles, poultry, fish or insects of any kind ("animals") shall be raised, bred or kept within the Property, except that a reasonable number of dogs, cats or other household pets may be kept within a residence, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities, nor in violation of any applicable local ordinance or any other provision of this Declaration and such limitations as may be set forth in the Community Guidelines. As used in this Declaration "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners in the Community. No animal shall be permitted outside of the Unit of the Owner of such animal unless such animal is under the control of a responsible person by means of a leash or other reasonable restraint device directly controlled and managed by such person; and such person shall immediately clean up and remove any feces or other matter left by such animal. Upon request of an Owner, the Board, in its sole discretion, shall determine for the purpose of this Section whether a particular animal or fowl shall be considered as a house or yard pet, whether it is a nuisance, and whether the number of animals or fowl on or in any Unit is reasonable. The Community Guidelines may include other rules and regulations pertaining to animals and fowl as may be adopted from time to time, including without limitation, the size and number of dogs to be allowed in connection with any Unit; provided,

however, that the type, number and size of all pets shall at all times be in compliance with applicable ordinances, codes, rules and regulations of governmental authorities having jurisdiction. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, residents, their families and guests, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by an Owner or resident or by members of their family or guests; and it shall be the absolute duty and responsibility of each such Owner to clean up immediately after such animals which have used any portion of the Common Elements.

3.13 Garbage and Refuse Disposal. There shall be no exterior burning of trash, garbage or other refuse upon any portion of the Community, nor shall any Owner accumulate on or about such Owner's Unit any litter, refuse or garbage, except in receptacles provided for such purposes in locations designated by the Board; provided, however, that on regularly scheduled days for pickup containers may be placed in customary locations for pickup for a period not to exceed twelve (12) hours. Other than as expressly allowed by the foregoing sentence, there shall be no storage of trash or garbage outside of any Unit whatsoever, except in refuse collection benches provided by the Association.

3.14 Diseases and Insects. No Owner shall permit any thing or condition to exist upon his Unit that shall induce, breed, or harbor infectious plant or tree diseases or noxious insects.

3.15 Exterior Sound Devices. No exterior speakers or other sound devices except security devices used exclusively for security purposes shall be located, used, or placed on a Unit or Improvement without the prior written approval of the Architectural Committee.

3.16 Fences, Etc. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Community except those that are installed in accordance with the original construction of the Community, and their replacements, or as are authorized and approved by the Architectural Committee. Each Owner of a Unit benefited by a Yard Element shall have the duty, at such Owner's cost, to promptly maintain and repair the interior surface of the walls defining such Yard Element, subject to the Association's obligation to repaint all walls forming Yard Elements as a part of the Association's ongoing duties set forth in Section 5.2.7 with respect to Common Elements.

3.17 Outside Installations. Except as provided otherwise in Section 3.20, no clothes lines, television antennas, satellite dishes, wiring, installation of air conditioning or solar heating equipment, or other equipment or items of any kind, including, without limitation, sports equipment, shall be installed on the exterior of the building or be allowed to protrude through the walls, the windows, the roof of any building or the balconies, without the prior written approval of the Architectural Committee.

3.18 Outside Drying and Laundering. There shall be no exterior drying or laundering of clothes or other items on balconies, patios, porches, or other areas, except as may be permitted by the Community Guidelines.

3.19 Signs. No sign, poster, billboard, advertising device or other display of any kind shall be displayed without the approval of the Architectural Committee, except the Owner or resident may place one (1) customary 18" x 24" for sale sign from the inside of the Unit. Consistent with the Act, an Owner or resident may exhibit one or more political signs from within the Unit and such physical portion of the Community as the Owner or resident has a right to occupy and use exclusively. Any other signage shall require Board approval, which approval may be withheld in the Board's absolute discretion. For lease or rent signs are expressly prohibited. Nothing herein contained shall restrict the right of Declarant or its successors to place and the Association to maintain street signs, Community monument signs and other Community sale signs in the Common Elements. The terms and provisions of this Section 3.19 shall in no way limit the exercise of Declarant's rights pursuant to **Article X** below.

3.20 Flags Antennae, Satellite Dishes and Solar Panels. No pole, flagpole, mast, solar panel, satellite dish, receiver, or other outdoor antenna or related device shall be allowed on any Unit or Common Element (provided that satellite dishes and other apparatus regulated and protected by Federal law shall be allowed within an Owner's Limited Common Element, but only to the minimum extent required to be allowed by Federal law) without the prior written consent of the Board and otherwise provided and allowed pursuant to and in accordance with the terms and provisions of this Section 3.20.

Any Owner is entitled to display the flag of the United States and the flag of the State of Nevada that is made of cloth, fabric or paper, in a manner that is consistent with the Federal Flag Code, from or on:

- (i) A flagpole or staff which is located on exterior property within the boundaries of his or her Unit or which is attached to an exterior Limited Common Element that forms a portion of the Owner's Unit.
- (ii) A window, ledge, sill, railing, patio, terrace or balcony of his or her Unit or an exterior Limited Common Element that forms a part of the boundaries of his or her Unit, whether or not the flag is displayed from a flagpole or staff.

As used in this Section 3.5: "Federal Flag Code" means the rules and customs pertaining to the display and use of the flag of the United States which are codified in 4 U.S.C. §§ 5 to 10, inclusive, as altered, modified or repealed by the President of the United States pursuant to 4 U.S.C. § 10, and any additional rules pertaining to the display and use of the flag of the United States which are prescribed by the President pursuant to 4 U.S.C. § 10.

A display of the flag of the United States or of the flag of the State of Nevada does not include a depiction or emblem of the flag that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component or material.

The Association may adopt rules that: (i) prohibit the display of the flag of the United States in a manner that is inconsistent with the Federal Flag Code; (ii) prohibit the display of the flag of the United States if the flag exceeds four feet (4') in its vertical dimension or six feet (6') in its horizontal dimension (the horizontal dimension of the flag is the dimension that is parallel with the horizontal stripes of the flag, regardless of the position in which the flag is displayed); (iii) establish a maximum number of flags of the United States that may be displayed from, on or around the exterior of a unit (the maximum number is one); (iv) prohibit the display of the flag of the United States from a flagpole or staff that exceeds twenty-five feet (25') in height; and (v) prohibit the display of the flag of the United States in a manner that poses a real and substantial danger to health or safety.

In addition, outside television antennas, aerials, satellite dishes or similar devices for the transmission or reception of television, radio, satellite, or other signals or any kind are allowed only as follows:

(i) The Declarant and the Association shall have the right, without obligation, to erect, place or install and maintain any such apparatus for the benefit of all or a portion of the Community.

(ii) Antennas or satellite dishes with a diameter or diagonal measurement not greater than the minimum size protected by applicable law which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Permitted Devices") may be erected, placed or installed on an Owner's Limited Common Element, provided that:

(A) Any such Permitted Device is placed in the least conspicuous location on the Limited Common Element at which an acceptable quality signal can be received, and to that end, reasonable restrictions which do not significantly increase the cost of installation of a Permitted Device or significantly decrease its efficiency or performance, including, without limitation, screening material, location or complimentary-color painting of the Permitted Device, may be imposed by the Architectural Committee.

(B) No Permitted Device may be attached to or supported by the use, modification or penetration of or through any portion of the Common Element, excluding the applicable Limited Common Element; and any attachment to or placement of a Permitted Device on an Owner's Limited Common Element (i) shall be accomplished in a neat, good and workmanlike manner in compliance with all applicable laws, rules and regulations, (ii) shall not be located in any manner whatsoever so as to pose any unreasonable risk to others by becoming unattached and falling or otherwise posing any such unreasonable risk of harm to person or property, (iii) shall be installed (and all work in connection therewith) free and clear of all liens and claims of liens whatsoever and (iv) shall not damage (unless promptly and properly repaired) nor threaten to damage any portion, surface or element of the affected Limited Common Element (except to the extent of the

proper and secured installation/attachment of the Permitted Device) or any other portion of the Common Element. Each Owner installing/attaching a Permitted Device shall indemnify, defend and hold the Association harmless from any damage, loss, cost, asserted claim or liability (including court costs and reasonable attorney's fees) arising out of or in connection with such Owner's or its agents' or independent contractors' failure to comply with the terms and provisions of items (i) through (iv) above.

To the extent the foregoing restrictions concerning Permitted Devices are more restrictive than allowed pursuant to applicable Federal Law, then such restrictions shall be deemed revised automatically to the minimum extent required by such laws.

Any limitation imposed by this Section or by the Board with respect to satellite dishes or other devices regulated and allowed pursuant to Federal law shall be imposed to the maximum degree allowed pursuant to such laws.

3.21 Time Sharing. A Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods. The term "time sharing" as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Condominium, Condominiums or any portion thereof in the Community rotates among various persons, either corporate partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time sixty (60) consecutive calendar days or less.

3.22 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate in the Community; and no odors shall be permitted to arise from the Community so as to render any portion of the Community unsanitary, unsightly, offensive, or detrimental to any other portion of the Community in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist operate upon any portion of the Community so as to be offensive or detrimental to any other portion of the Community in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than security systems, used exclusively for security purposes) shall be located, used, or placed on the Community without the prior written approval of the Board. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Community. Nothing shall be done on or within the Community that may be or may become an annoyance or nuisance to the residents of the Community, or that in any way interferes with the quiet enjoyment of occupants of Units. Unless otherwise permitted by the Community Guidelines, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities, except within such Owner's Unit, the Limited Common Elements appurtenant to such Unit or Common Elements intended for such use.

3.23 Compliance with Laws and Community Guidelines: Prohibition of Certain Activities. No Owner shall permit anything to be done or kept in his Unit that violates any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. No Owner shall

violate the Community Guidelines as adopted from time to time by the Association. No Owner shall allow furniture, furnishings, or other personal property belonging to such Owner to remain within any portion of the Common Elements except as permitted by the Board. Without prior written consent from the Board, nothing shall be done or kept in any Unit or in the Common Elements, or any part thereof, which would result in the cancellation of the insurance on the Community or any part thereof or increase the rate of insurance on the Community or any part thereof over what the Association would pay but for such activity. No Owner shall permit any thing or condition to exist upon his Unit that shall induce, breed, or harbor infectious plant or tree diseases or noxious insects.

3.24 Post Tension Slabs. The concrete slabs for the buildings in the Community 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 Unit or other Units within the building and/or personal injury. By accepting a deed to a Unit in the Community, each Owner specifically covenants and agrees that: (a) such Owner shall not cut into or otherwise tamper with the 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 Unit; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Unit; (d) such Owner shall cooperate with other Owners of Units within the applicable building to repair any damage to the Post Tension Slab; and such Owner shall indemnify, protect, defend 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, without limitation, attorneys' fees) arising from any breach of this Section 3.24.

3.25 Indemnification. Each Owner shall be liable to the other Owners for any damage to the Common Elements or any other Unit that may be sustained by reason of the negligence of such Owner, members of his family, his contract purchasers, tenants, guests, or invitees, but only to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of his deed, agrees for himself and for the members of his family, his contract purchasers, tenants, guests, or invitees, to indemnify each and every other Owner, and to hold him harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Unit or Limited Common Elements of that particular Owner, unless the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Unit or Limited Common Elements and is fully covered by insurance.

3.26 Right of Entry. For the purposes reasonably related to the performance by the Board and the Association of their responsibilities under this Declaration, including purposes of performing construction, maintenance or repair for the benefit of the Common Elements or the Owners in common, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to enter upon any Unit or upon any portion of the Common Elements (including any Limited Common Elements) at reasonable hours. Such entry shall be made with as little inconvenience to any Owner as possible and any damage caused thereby shall be repaired by the Association at its own expense.



3.27 Compliance With Equipment Specifications. Owners shall strictly adhere to all manufacturers' recommendations for the installation, use, maintenance and repair of any components Owner may install in Owner's Unit. Dryers shall be "high-efficiency" in rating and comply with the minimum performance specification of the venting system originally constructed by Declarant. Washer connection hoses shall be of steel mesh or equivalent metal and not rubber construction unless otherwise specified by the manufacturer. Electrical appliances shall not be used where manufacturer recommendations restrict circuit loads, wattage or other specific rating restrictions.

3.28 Exterior Lighting: Irrigation.

3.28.1 Lighting. Any exterior electrical, gas or other artificial lighting installed or placed on any Limited Common Element or Yard Element shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Unit(s). Further Community Guidelines regarding exterior lighting may be promulgated by the Board. Some of the exterior lighting on the Common Element building exteriors of some Units provides light to certain exterior portions of the Community and contains a photocell which will automatically control their operation. Such exterior lighting shall not be manually turned off and the photocell shall not be altered in any way by the Owners. The Association shall maintain, repair and replace these fixtures and light bulbs, but the electricity supplied to them shall be metered and paid for by individual Owners.

A basic lighting plan applicable to the foregoing is retained in the Association's records; and all Owners are responsible for reviewing such plan and being responsible as above provided for providing power to those exterior lights applicable to his/her Unit. A copy of such basic lighting plan is attached hereto as **Exhibit C** and incorporated herein by this reference.

3.28.2 Irrigation. Similarly to exterior lighting as provided for in Section 3.28.1, certain irrigation facilities serving the Common Element landscaping may derive their water and power supplies from certain Units with the intent to meter separate from the Unit. However, each Owner whose Unit is to supply such water and/or power shall be responsible for maintaining in good standing on a continual basis, power and/or water service to such Owner's Unit in order to provide such power and/or water as is necessary to meet the power and water demands of those Common Element irrigation facilities which are dependent upon such Unit. Irrigation plans showing each Unit's responsibility for water and power provision as provided in this Section 3.28.2 are permanently on file in the Association's records; and all Owners are responsible for reviewing such plans for the purpose of knowing how they apply to his/her Unit pursuant to this Section 3.28.2.

3.28.3 Indemnification. Each Owner whose Unit is required to provide exterior lighting power pursuant to Section 3.28.1 and/or irrigation facility power and/or water pursuant to Section 3.28.2 (in each instance, "Common Element Utility Service") shall

indemnify and hold the Association harmless from and against any and all damage and cost incurred by the Association arising out of the knowing failure of such Owner (or such Owner's knowing failure to cure its tenant's failure to comply continually) to promptly cure any such known failure to comply with the terms and provisions of Sections 3.28.1 and 3.28.3 as applicable to such owner's Unit, including, without limitation, the cost of the Association (i) to reestablish any such failed Common Element Utility Service (which the Association has the express right and authority to do on behalf of and at the cost of such Unit's Owner) and (ii) to remedy or rectify any consequential damage caused as a result of such non-compliance.

3.29 View Impairment. By accepting a deed to a Unit, each Owner acknowledges that: (a) there are no protected views, and no Unit is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Unit, (b) any view from the Unit is not intended as part of the value of the Unit and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant or other Owners in the Community or of properties surrounding the Community may impair the view from any Unit. There are no express or implied easements appurtenant to any Unit for view purposes or for the passage of light and air over another Unit, or any other property whatsoever.

### 3.30 Surface Drainage and Storm Water Restrictions and Requirements.

3.30.1 Compliance with Requirements Regarding Community Storm Water Pollution. Each Owner acknowledges that unlike the water in the sewer system in the Owner's Unit, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the City of Gardnerville and Douglas County prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Unit or Yard Element into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all requirements of any other governmental agencies having jurisdiction over the Property. All Owners within the Community and the Association are required to comply with such restrictions. Owners are encouraged to consult with the City of Gardnerville and Douglas County, and other governmental authorities, concerning the proper disposal of any toxic or hazardous materials.

**3.30.2 Storm Water Pollution Prevention Best Management Practices.** To comply with the requirements of the City of Gardnerville and Douglas County in connection with the storm water pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements located within a Unit, or in the case of the Association, within the Common Elements, in a clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be maintained by an Owner in a manner that will prevent soil erosion and minimize sediment transport. To the extent that the Declarant has installed any erosion protection devices (e.g., sandbags) an Owner shall not remove such devices unless and until all landscaping has been installed, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles within Owner's Unit shall be closed at all times except when disposing of trash. The Association and the Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Community. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

**3.30.3 Liability to Declarant.** So long as Declarant owns any Unit, if an Owner or the Association is not in compliance with the provisions of this Section and, as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the Unit or Yard Element to correct such violation. Any Owner who violates the requirements of this Section and the Association shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

**3.31 Maintenance Violations.**

**3.31.1 Maintenance Violation Notice.** If any Owner allows, permits, or causes any condition to exist on or within such Owner's Unit or any of the Common Elements, as the case may be, or the Improvements thereon, which violates the provisions of **Article III** of this Declaration or, in the sole reasonable discretion of the Board, is unsightly, unsanitary, or hazardous (including, but not limited to, a condition which causes dust to carry to another Unit) (herein collectively "Maintenance Violation"), then, except as otherwise provided in Section 3.31.4, hereof, (in the case of an emergency), the Association shall give the Owner written notice ("Maintenance Violation Notice") and an opportunity for hearing consistent with the requirements of the Act. In the event that the Board fails to give a Maintenance Violation Notice to a Owner who has defaulted in its maintenance obligation hereunder, then upon the filing with the Board of a meritorious written complaint (herein "Owner Complaint") executed by the Owners of any two (2) Units within the Community, the Board shall have the obligation to give such Maintenance Violation

Notice. As part of the hearing notice, the Association shall notify the Owner of the Association's right to correct the Maintenance Violation and levy the cost of the same as a Violation Assessment, as set forth in Sections 3.31.2- 3.31.3 below.

3.31.2 Association's Right to Correct Maintenance Violation. If the Board or a committee appointed by the Board to conduct hearings on alleged violations and impose fines determines that a Maintenance Violation exists and the Owner fails to correct a Maintenance Violation within the period specified in such decision ("cure period"), then the Association, acting through the Board, shall have the right, but not the obligation, to correct the Maintenance Violation in accordance with the procedures set forth below.

3.31.3 Procedure for Association's Correction of Maintenance Violation.

(a) Bids. In the event the Association elects to correct a Maintenance Violation, then prior to commencement of work to correct the Maintenance Violation and promptly after the expiration of the cure period afforded a defaulting Owner, the Board shall obtain three (3) written bids to perform the required work and shall mail the bids to the Owner. The Owner shall have the right to select the bid by notifying the Board in writing within fourteen (14) days after the bids are mailed by the Board to the Owner. In the event the Owner fails to select a bid within such time period, the Board shall select the bid.

(b) Violation Assessment. When the bid has been selected as set forth in subsection (a), above, the Board shall levy a Violation Assessment pursuant to Section 6.6 hereof against the Owner in the amount of the cost of correcting the Maintenance Violation and the costs and expenses, including attorneys' fees, incurred by the Association incident thereto.

(c) Performance of Corrective Work By Association. The Board may, at its sole option and discretion, elect to cause the corrective work to be commenced promptly after the Violation Assessment has been levied against the Owner, or elect to postpone the corrective work until after the amount of the Violation Assessment has been collected partially or in full. Neither the Association, the Board, nor any of the Association's agents, or employees shall be liable for any damage which may result from any work performed by the Association to cure a Maintenance Violation.

3.31.4 Emergencies. In the event any officer of the Association believes, in his or her sole reasonable discretion, that an emergency situation exists within a Unit (including within any Improvement thereon) or within any Common Elements and that immediate action or repairs are necessary to prevent or mitigate damages, then such officer or the Association's authorized agent shall have the right to exercise the Association's right of entry without notice. If after gaining entry, any officer or agent of the Association still believes in his or her sole reasonable discretion, that immediate action or repairs are necessary to prevent or mitigate damages, then the Association shall have the right to take such action or make such repairs without notice to the Owner and without a hearing, and without obtaining competitive bids as provided above. The Association shall levy a

Violation Assessment against the Owner in the amount of the cost of the necessary action or the corrective work and all costs and expenses, including attorneys' fees, incurred by the Association incident thereto. Neither the Association, the Board, nor any of the Association's agents or employees, nor any person hired by the Association to perform the necessary action or corrective work, shall be liable for any damage which may result from any work so performed on behalf of the Association.

3.31.5 Entry by Court Order. In the event a Owner prevents an officer of the Association or authorized agent of the Association from gaining access to such Owner's Unit (including within any Improvement thereon) or Common Elements for the purpose of correcting a Maintenance Violation or for the purpose of attending to an emergency situation, then the Owner(s) shall be jointly and severally liable to the Association for attorneys' fees, court costs and incidental expenses incurred by the Association for the purpose of gaining such entry and all other costs and expenses incident thereto (collectively "Entry Costs"), and such Entry Costs shall be assessed to the Owner as a Violation Assessment pursuant to Section 6.6 hereof.

#### ARTICLE IV THE ASSOCIATION

4.1 Formation. The Association is a nonprofit corporation formed or to be formed under the laws of the State of Nevada. Prior to the conveyance of the first Unit to an Owner other than Declarant, Declarant shall cause the Articles of Incorporation to be filed with the Secretary of State of the State of Nevada. The Association shall be charged with the duties and invested with the powers set forth in the Articles, Bylaws, and this Declaration. The Association is not authorized to have and shall not issue any capital stock.

4.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of members as set forth in the Governing Documents, or Chapter 82 and 116 of the Nevada Revised Statutes, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with this Declaration or the Bylaws, or their amendments. Except for the members of the Board appointed by Declarant and the members of the first Board named in the Articles, the Board shall be composed of Members only. All members of the Board must be at least eighteen (18) years of age. The members of the first Board of the Association named in the Articles shall serve until the first meeting of the Members of the Association which is called for the purpose of electing their successors. The annual meeting of the Members of the Association shall be held at least once each year at the time and place stated in or fixed in accordance with the Bylaws. Except as otherwise provided in the Governing Documents or Chapters 82 or 116 of the Nevada Revised Statutes, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting power assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

4.3 Membership.

4.3.1 Membership Qualifications. The Members of the Association shall be the Owners of the Units which are subject to Assessments pursuant to **Article VI** of this Declaration. The Owner(s) of each Unit shall have one (1) membership in the Association. The number of memberships in the Association shall be equal to the number of Units within the Community at any given time.

4.3.2 Members' Rights and Duties. As used in this Declaration, the term "Member" shall refer to the Owner of a Unit if there is one Owner, or collectively to all of the Owners of a Unit if there is more than one Owner. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents, as the same may from time to time be amended. Except as otherwise provided in subsections (b) and (c) of Section 4.3.3 below, the respective interests of each of the Members shall be equal.

4.3.3 Voting.

(a) General. Each Member shall be entitled to one vote for each Unit owned by such Member; provided, however, that the Association may not cast any vote otherwise allocated to it for any Unit it may own. Cumulative voting is not permitted.

4.4 Transfer of Membership. The Association membership of the Owner(s) of a Unit shall be appurtenant to such Unit, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of title to such Unit, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title or interest to a Unit shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner(s). Prior to any transfer of title to a Unit (including the sale of a Unit under a recorded contract of sale), either the transferring owner or the acquiring owner shall give notice to the Board of such transfer, including the name and address of the acquiring owner and the anticipated date of transfer. The Association shall have the right to charge a reasonable transfer fee payable to the Association on the date of transfer of title to the Unit, which transfer fee shall be assessed against the Unit as a Violation Assessment if not paid when due.

**ARTICLE V**  
**POWERS AND DUTIES OF THE ASSOCIATION**

5.1 Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Nevada and the powers conferred upon it pursuant to Chapters 82 and 116 of the Nevada Revised Statutes, subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents and the Act. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, the following:

5.1.1 Assessments. The Association shall have the power to establish, fix, and levy assessments as set forth in **Article VI** hereof (herein collectively "Assessments") and to enforce payment of such Assessments in accordance with the provisions of this Declaration.

5.1.2 Community Guidelines. The Board shall have the power to adopt, amend, and repeal the rules and regulations regulating the use of the Common Elements and for such other purposes as are expressly allowed by this Declaration or allowed pursuant to the Act (the "Community Guidelines"). In addition, the Board is hereby authorized and empowered to adopt, enact and enforce further Community Guidelines relative to the prohibitive and mandatory use restrictions set forth in **Article III** above in order to protect and enhance value of the Property and the orderly functioning of the Community, and to adapt and respond to changing circumstances and times. The power of the Board to enact and adopt such Community Guidelines shall in no way be limited by the treatment or the specificity of treatment of a subject matter in **Article III** above. A copy of the Community Guidelines as adopted, amended, or repealed, shall be mailed or otherwise delivered to each Member. In case of any conflict between any provision of the Community Guidelines and any provisions of this Declaration, the Articles, or Bylaws, the conflicting provision of the Community Guidelines shall be superseded by the provisions of this Declaration, the Articles, or the Bylaws.

5.1.3 Right of Enforcement.

(a) General. Subject to the terms and provisions of Section 5.3, **Article XIII** and **XIV**, Section 3.31 and any other limiting provision or condition set forth herein or in the Act, the Association in its own name and on its own behalf, or on behalf of the Owners of two (2) or more Units who consent, any Member on its own behalf, and Declarant on its own behalf, shall have the power and authority to commence and maintain actions for damages, or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents, or any resolutions of the Board, to enforce by mandatory injunction, or otherwise, all of these provisions, to intervene in litigation or administrative proceedings on matters affecting the Community. The Court in any such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.

(b) Suspension of Voting Rights; Fines. The Association shall have the power and authority to suspend the voting rights, suspend the right to use any recreational amenities comprising the Common Elements, and assess monetary penalties, fines and late charges, all as allowed pursuant to, and in the manner provided for, in the Act, against any Owner of a Unit or other person entitled to exercise such Owner's rights or privileges for any violation of the Governing Documents. The Association does not have the power or authority to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of such Owner's Unit if the Owner does

not comply with provisions of the Governing Documents except when the loss or forfeiture is the result of a court judgment, arbitration decision, or a foreclosure or sale under a power of sale based on failure of the Owner to pay assessments levied by the Association.

If the Association adopts a policy imposing a fine on Owners for violations of the Governing Documents, the secretary or other officer specified in the Bylaws shall 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 Unit Owner, or to an electronic mailing address as permitted by the Act, a schedule of the fines that may be imposed for those violations, in the manner and time required by the applicable provisions of the Act.

If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the Owners or residents of the Community, the amount of the fine must be commensurate with the severity of the violation, but the amount of the fine shall not exceed \$100 for each violation or a total amount of \$1,000, whichever is less or any greater amount provided by the Act. If, in the judgment of the Board or its hearing committee, the violation does pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents, there is no limit on the amount of the fine that may be imposed other than that the fine must be commensurate with the severity of the violation. Any limitations on the amount of the fine do not apply to any charges or costs that may be collected by the Association if the fine becomes past due.

The right of the Association to impose fines pursuant to this Section 5.1.3(b) is in addition to, and shall not limit, the Association's right to levy a Violation Assessment resulting from a Maintenance Violation. Notwithstanding any provision of this Declaration to the contrary, the Association shall be entitled to benefit from and enforce such rights, be they lesser or greater than set forth in this Section 5.1.3(b), as are afforded from time to time by Nevada State law for the levy and enforcement of fines and such other enforcement remedies as are afforded for the enforcement of Owners' obligations under and pursuant to this Declaration.

**5.1.4 Delegation of Powers; Professional Management; Other Services.** The Association, acting by and through the Board, can delegate its powers, duties, and responsibilities to committees of Members, employees, agents and independent contractors, including a professional managing agent. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the Community and the enforcement of this Declaration.

**5.1.5 Personal Property.** The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise.



5.1.6 Other Services and Properties. The Association shall have the power to obtain or pay for, as the case may be, any other property, services, taxes, or assessments which the Association or the Board is required to secure or pay for pursuant to the terms of this Declaration, the Articles, or Bylaws, including security services for the Community generally, or which, in its opinion, shall be necessary or proper for the operation of the Association, and to incur liabilities and make contracts respecting the same.

5.1.7 Assignment of Future Income. The Association shall have the power to assign its future income, including its right to receive Common Expense Assessments with the approval of a Majority of Members.

5.2 Duties of the Association. In addition to the duties delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association, acting by and through the Board, or persons or entities described in Section 5.1.3, has the obligation to conduct all business affairs of common interest to all Members and to perform each of the following duties:

5.2.1 Professional Management. The Association shall engage the services of a professional manager to manage the Community.

5.2.2 Taxes and Assessments. The Association shall pay all taxes and assessments levied against all Association Property or against the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

5.2.3 Insurance. The Association shall obtain and maintain, from reputable insurance companies, the insurance described in Article VII.

5.2.4 Enforcement of Restrictions and Rules. The Association shall perform such other acts, whether or not expressly authorized by this Declaration, which may be reasonably necessary to enforce any of the provisions of the Governing Documents, or Board resolutions. There is hereby reserved to the Association such easements as are necessary to perform its duties and obligations or to exercise its rights as set forth in the Governing Documents.

5.2.5 Association Property. The Association shall accept and exercise jurisdiction (i) over all property, real and personal, conveyed to the Association by Declarant or others or for which the Association has duties and obligations imposed upon it pursuant to this Declaration, and (ii) over all Common Elements, and easements for operation and maintenance purposes over any of the Community, and easements for the benefit of Association members within the Common Elements.

5.2.6 Title to Property Upon Dissolution. Upon dissolution of the Association, the Association shall convey the assets of the Association in any manner permitted under applicable State of Nevada and Federal law.

5.2.7 Operation and Maintenance of Common Elements. The Association shall operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of the Common Elements and all its facilities, Improvements and landscaping, including, without limitation, any private driveways and private streets, fencing, yard drains, the storm water retention basin and emergency spillway, picnic area, gazebo, CMU screen wall at the Recreational Vehicle lot and the Recreational Vehicle lot, if so provided, and any other property acquired by the Association, including personal property. Such operations and management shall be conducted in a first-class manner; and the Association property shall be maintained in a good state of repair. In this connection, the Association may enter into contracts for services or materials for the benefit of the Association or the Common Elements, including contracts with Declarant. Such service contract shall be terminable by either party, with or without cause, and without payment of a termination fee, upon thirty (30) days' written notice.

Certain systems and components of and comprising the Improvements require systematic maintenance and monitoring in order to insure their continued good working condition and to avoid damage occurring to other Improvements. At such time as the Association assumes responsibility for the upkeep, maintenance and repair of the Common Elements, or is required to accept such responsibility, Declarant will provide to the Association a maintenance manual ("Association Maintenance Manual") which will contain a complete list (the "Maintenance Schedule") of those Improvements for which systematic maintenance and monitoring is required. Upon receipt of the Maintenance Schedule from Declarant, Association shall have no claim against Declarant for, and shall hold Declarant harmless from and against, any and all loss, claim, damage and liability arising out of or in connection with, or resulting from, the Association's failure to adequately maintain and monitor the Improvements in accordance with and as outlined in the Maintenance Schedule. Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on, or a part of driveways, yards, patios, decks, exterior surfaces, trim, siding, doors and windows will be assessed against the Unit or Units to which the Limited Common Elements is assigned. No additional component or element may be attached without consent of the Architectural Committee. In the event any additional component or element becomes deteriorated or unsightly, or is inconsistent with conditions of installation, it may be removed or repaired at the Unit Owner's expense as a Common Expense assessment after notice and an opportunity to be heard in the manner provided for in Section 2.6.2.

If any such Limited Common Elements is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Elements will be assessed equally among the Units to which it is assigned.

Any Common Expense associated with the maintenance, repair or replacement of the chimney serving a Unit shall be assessed against such Unit. Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with their Allocated Interests in the Common Expenses.

Each Unit Owner shall be responsible for removing snow, leaves and debris and other similar matter from all driveways, patios and balconies which are Limited Common Elements appurtenant to such Owner's Unit. If any such Limited Common Elements is appurtenant to two or more Units, the owners of those Units will be jointly responsible for such removal.

5.2.8 Exterior Maintenance. The Association's maintenance of the Common Elements shall include exterior maintenance upon each Unit including the exterior of any garage or carport which is subject to assessment hereunder, as follows: paint, repair, replacement and care of any roofs, gutters, downspouts, exterior building surfaces installed by Declarant or the Association, and other exterior improvements; provided, however, that such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance or repair of a Unit is caused through the willful misconduct or grossly negligent acts of its Owner, or through the willful misconduct or grossly negligent acts of the family, guests, or invitees of the Owner of the Unit needing such maintenance or repair, then the cost of such exterior maintenance shall be added to and become part of the assessment to which such Unit is subject.

5.2.9 Utilities. The Association shall acquire, provide, and pay for water, sewer, garbage disposal, refuse and other necessary utility services for the Common Elements, and for Units when the Units are not separately billed.

5.2.10 Audited Financial Statement. The Association shall cause the financial statement of the Association to be reviewed or audited as required by the Act. Within one hundred twenty (120) days of the end of each fiscal year of the Association, the Association shall cause to be prepared and made available to any Eligible Insurer or Eligible Mortgage Holder who requests it, an audited financial statement for such fiscal year; but only if the Community is qualified with the United States Department of Housing and Urban Development ("HUD") or such other agency or entity which requires such audit to be prepared.

5.2.11 Subsidy Agreements. The Association, through the Board, is specifically authorized and empowered to enter into a subsidy agreement or other similar agreement ("Subsidy Agreement") with the Declarant, whereby the payment by the Declarant of certain shortfalls in the Association's operating expenses or the provision of maintenance of the Common Elements and/or the performance of certain other services which are Common Expenses of the Association is accepted in lieu of Assessments otherwise payable by the Declarant on Units owned by the Declarant. If a Subsidy Agreement is in effect, the

Subsidy Agreement shall terminate and Assessments on Units annexed into the Association and owned by the Declarant shall commence upon the sale of seventy-five percent (75%) of the Units within the Community to an Owner who is not the Declarant.

5.2.12 Re-vegetation. During the course of construction of the Community by Declarant, the surface area of various portions of the Common Areas may be disturbed, and Declarant may be required to vegetate such areas to a natural state. In order to comply with such vegetation requirement, Declarant may install temporary irrigation and watering facilities and systems for the purpose of helping establish the vegetation to a self-sustaining level. At such time or times as any of such Common Areas are turned over to the Association, the Association shall maintain, repair and keep operational any and all irrigation and watering facilities, even though intended to be temporary in nature, for a period of two (2) years or such longer time as is necessary to establish such vegetation to a self-sustaining level.

5.2.13 Inspection of the Community. The Association shall regularly inspect, maintain and repair the Common Element and the Improvements thereto. The Association shall comply with the requirements of the Association Maintenance Manual provided by Declarant. The Association shall also inspect for any misaligned sprinklers or blocked drainage systems which could cause water damage to the Community. The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing its duties hereunder and follow any recommendations contained in the Association Maintenance Manual. The inspections required to be conducted by the Board under this Section shall take place at least annually. The inspectors shall provide written reports of their inspections to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Community. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

5.2.14 Other. The Association shall carry out the other duties of the Association set forth in the Declaration, Articles and Bylaws.

5.3 Limitations on Authority of Board. Except with the vote or written consent of Majority of Members, and a majority of the voting rights allocated to Units not owned by Declarant, the Board shall not take any of the following actions:

5.3.1 Sell during any fiscal year Association Property having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

5.3.2 Commence a civil suit or arbitration on behalf of the Association, except as otherwise permitted under the Act and this Declaration. Prior to seeking any assent of a Majority under this Section, the Board shall first comply with the provisions of **Article XIII**.

5.4 Personal Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or any Manager, or Declarant, or any agent of Declarant, shall be personally liable to any Member, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

5.5 Meetings of Members.

5.5.1 General. Meetings of Members shall be noticed and held as provided by the Act and the Governing Documents.

5.5.2 Declarant's Rights to Attend. Until the earlier of such time as (i) Declarant, by law, in equity or by contract, retains no further liability whatsoever with respect to "constructional defects" or "Claims" (both as defined in Section 14.1 below) or (ii) Declarant expressly waives in writing its rights under this Section 5.5.2, Declarant shall be entitled to notice of, and shall be entitled to attend through representative(s) of its choosing, all meetings of the Board and the Association in the same manner as any Owner; provided, however, that Declarant shall not be entitled to vote on any matter for which an Owner otherwise is entitled to do so at any time Declarant is not the Owner of a Unit. In keeping with the foregoing, the Association shall provide notices of all such meetings to Declarant (at such address for notices as Declarant provides to the Association from time to time) in the same manner and within the same timeframe as notices are sent to the Owners, together with all agendas and other materials accompanying such notices to Owners and copies of all minutes and other materials sent to Owners at large during the time period Declarant's rights pursuant to this Section 5.5.2 are in effect. The Association may charge Declarant for the actual expenses associated with copying and mailing the documents referenced in this Section.

5.6 Association Books and Records and Association Property.

5.6.1 Right of Inspection. All membership registers, accounting records, and minutes of meetings of the Members, the Board, and committees of the Board, and all other books, documents and records of the Association, and the physical properties of the Association, shall be made available for inspection by any Member of the Association, or his, her or its duly appointed representative, or any mortgagee, during the regular working hours of the Association, at the office of the Association or at such other place as the Board prescribes. The right of inspection shall include the right to make copies of documents. The Board shall establish by resolution reasonable rules with respect to (a) notice to be given to the custodian of the records of the Association by the Member, representative, or mortgagee desiring to make an inspection, and (b) payment of the actual costs as permitted by the Act for reproducing copies of documents requested by a Member, representative or mortgagee.

The provisions of this Section 5.6.1 do not apply to: (a) the personnel records of employees of the Association, except those records relating to the number of hours worked and the salaries and benefits of those employees, (b) the records of the Association relating to another Owner or (c) any document that is in the process of being developed for final consideration by the Board and has not been placed on an agenda for final approval. In addition to the foregoing, the Board shall maintain and make available for review at the business office of the Association or other suitable location:

- (a) The financial statement of the Association;
- (b) The budgets of the Association;
- (c) The study of the reserves of the Association required to be conducted pursuant to Section 6.4.2 below.
- (d) All contracts to which the Association is a party; and
- (e) All records filed with a court relating to a civil or criminal action to which the association is a party.

The Board shall cause a copy of any of the records required to be maintained and provided to an Owner to be made available within twenty-one (21) days after receiving a written request therefore.

5.6.2 Declarant's Obligation to Deliver Association Property and Records to Board. Within thirty (30) days after the Declarant's Control Termination Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, including:

- (a) The original or a certified copy of the recorded Declaration as amended, the Articles, the Bylaws, minute books and other books and records of the Association and any Community Guidelines which may have been adopted;
- (b) An accounting for money of the Association and audited financial statements for each fiscal year and any ancillary period from the date of inception of the Association to the Declarant's Control Termination Date. The financial statements shall fairly and accurately report the Association's financial position;
- (c) The Association's money or control thereof;
- (d) All of the tangible personal property that has been represented by the Declarant to be Association Property or, all tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of those properties; unless Declarant has disclosed in a public offering statement that such personal property will remain the property of Declarant;
- (e) A copy of any plans and specifications used in the construction of any Improvements which were completed within two (2) years before the Declaration was recorded;
- (f) All insurance policies then in force, in which the Owners, the Association, or its directors or officers are named as insured persons;
- (g) Copies of any certificates of occupancy that may have been issued with respect to any Improvements comprising the Community;
- (h) Any renewable permits and approvals issued by governmental bodies applicable to the Community which are in force or which were issued within one (1) year before the Declarant's Control Termination Date and any other permits and approvals issued and applicable which are required by law to be kept on the premises of the Community;
- (i) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;
- (j) A roster of Owners and mortgagees of Units, if known, and their addresses and telephone numbers, if known, as shown on Declarant's records;
- (k) Contracts of employment in which the Association is a contracting party;
- (l) Any contract for service in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services;

- (m) A complete study of the reserves of the Association, conducted by a person who holds a permit to conduct such a study pursuant to the Act;
- (n) A reserve account that contains the Declarant's share of the amounts then due, and control of the account; and
- (o) A disclosure, in writing, of the amount by which Declarant has subsidized the Annual Assessments on a per Unit basis.

## ARTICLE VI ASSESSMENTS

6.1 Agreement to Pay. Declarant and each Owner for each Unit owned by such Owner, hereby covenants and agrees to pay to the Association such Assessments as are made pursuant to this Article VI; provided, however, that the foregoing shall not prohibit or impair the Declarant and the Association, to the extent not prohibited pursuant to the Act or other applicable law, from entering into a Subsidy Agreement as provided in Section 5.2.11.

6.2 Personal Obligations. Each Assessment or installment thereof, together with any late charges, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the person or entity who is the Owner of the Unit at the time such Assessment (or installment) became due and payable. If more than one person or entity is the Owner of the Unit, the personal obligation to pay such Assessment (or installment) respecting such Unit shall be both joint and several. Subject to the provisions of Section 9.3 hereof, a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid Assessments against the Unit, up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by non-use or abandonment of his Unit. Notwithstanding the foregoing to the contrary, Declarant may enter into a Subsidy Agreement with the Association pursuant to which certain payments and/or services by Declarant shall be rendered in lieu of paying Assessments levied against Declarant's Units, in which case Declarant's liability for Assessments shall be as set forth in said Subsidy Agreement.

6.3 Purpose and Amount of Assessments. The Assessments levied by the Association shall be the amount estimated to be required, and shall be used exclusively, to maintain, protect and enhance the welfare of the Members of the Association, for the performance of the duties of the Association as set forth in the Governing Documents, and for the repair, maintenance and upkeep of the Common Elements and any other Association Property.



6.4 Budget and Reserve Requirements: Annual Assessments.

6.4.1 Definitions. As used herein, "Annual Assessment" shall mean the amount of the Association budget ("Budget") for each fiscal year to pay the Common Expenses (defined below) as established pursuant to the provisions of this Article. The Budget must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the reserve account of the Association. As used herein, "Common Expenses" means the expenditures made by the Association in the performance of its obligations hereunder, and the financial liabilities of the Association during the applicable fiscal year, including the costs and expenses of the daily operation of the Association and an allocation for reserves. Common Expenses include, but are not limited to, expenditures for the following purposes: (i) to operate, manage, maintain and repair the Common Elements and other Association Property, and to administer the operation of the Association; (ii) to provide for reasonable reserves consistent with sound business practice for the repair and replacement and restoration of Improvements to the Common Elements and any Association Property, and for such other purposes as are consistent with good business practice, and otherwise as required by the Act and Section 6.4.2 of this Declaration; (iii) to provide for the possibility that some Assessments may not be paid on a current basis; and (iv) to provide for the payment of the fee of a professional manager. Without limiting the generality of the foregoing, Common Expenses shall include: all charges, costs, and expenses whatsoever incurred by the Association for or in connection with the Association administration, including, but not limited to, the maintenance of the Common Elements; the payment of the fee of a professional manager; the payment of electricity for the streetlights serving the Community which streetlights shall be maintained by the Town of Gardnerville; any taxes and assessments assessed against Association Property, any taxes assessed against the Association itself, insurance premiums, including fire and other casualty insurance, liability insurance, workman's compensation insurance, and other insurance obtained pursuant to this Declaration; payment of any liability of the Association whatsoever for loss or damage arising out of or in connection with the Common Elements or any fire, accident, or nuisance occurring within the Common Elements; the cost of repair, rebuilding and replacement of the Improvements to the Common Elements; the cost of all utility services to the Common Elements, including water, electricity, refuse removal, landscape maintenance services, and any other similar service attributable to the Common Elements; the unpaid share of any Assessment levied during the previous fiscal year against any Owner who has defaulted in payment thereof to the extent that the same becomes uncollectible; accounting and legal fees, management fees, and cleaning, janitorial and lawn care fees, and other necessary expenses of upkeep, maintenance, management and operation incurred with respect to the Common Elements and the Improvements thereon.

6.4.2 Reserve Requirements. That portion of the Budget specific to the reserve required by the Act must include, without limitation:

- (a) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements;

(b) As of the end of the fiscal year for which the 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 of the Common Elements;

(c) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the Common Elements or to provide adequate funding for the reserves designated for that purpose; and

(d) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subsection (b) immediately above, including, without limitation, the qualifications of the person responsible for the preparation of the study required below in this Section. In addition to the foregoing, the Board shall:

(1) At least once every five (5) years, cause to be conducted a study of the reserves required to repair, replace and restore the major components of the Common Elements;

(2) At least annually, review the results of that study annually to determine if those reserves are sufficient; and

(3) At least annually, make any adjustments to the Association's funding plan which the Board deems necessary to provide adequate funding for the required reserves.

The study required by subsection (1) immediately above must be conducted by a person who holds a permit to conduct a study of the reserves of the Association pursuant to the Act. The study must include, without limitation:

(i) A summary of an inspection of the major components of the Common Elements and any other portion of the Community, if any, the Association is obligated to maintain, repair, replace or restore;

(ii) An identification of the major components of the Common Elements and any other portion of the Community, if any that the Association is obligated to maintain, repair, replace or restore which have a remaining useful life of less than thirty (30) years;

(iii) An estimate of the remaining useful life of each major component identified pursuant to item (ii) immediately above;

(iv) An estimate of the cost of maintenance, repair, replacement or restoration of each major component identified pursuant to item (iii) immediately above during and at the end of its useful life; and

(v) An estimate of the total Annual Assessments that may be necessary to cover the cost of maintaining, repairing, replacement or restoration the major components identified pursuant to item (ii) immediately above, after subtracting the reserves of the Association as of the date of the study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves. Money in the reserve account required by this Section 6.4.2 may not be withdrawn without the signatures of at least two (2) members of the Board or the signatures of at least one member of the Board and one officer of the Association who is not a member of the Board. The reserve account may be used only for Common Expenses that involve repairs, replacement or restoration of the major components of the Common Elements, including, without limitation, repairing and replacing roofs, roads and sidewalks, and must not be used for daily maintenance. The Association may comply with the requirement to establish adequate reserves for the repair, replacement, and restoration of the major components of the Common Elements through a funding plan that is designed to allocate the costs for the repair, replacement, and restoration of the major components of the Common Elements 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 of the Common Elements are necessary. The reserve, reporting and other requirements set forth in this Section 6.4.2 are reflective of and as required by the Act as of the recording hereof. Accordingly, this Section 6.4.2 shall be expanded and limited as to its requirements from time to time to be co-extensive with the current applicable requirements imposed by the Act.

6.4.3 Allocation of Annual Assessments. The Annual Assessments shall be allocated equally among the Units existing on the date the Annual Assessment for the applicable fiscal year is deemed approved, and re-allocated within any given fiscal year in the same manner as Allocated Interests.

6.4.4 Procedure for Establishing Annual Assessments. Not less than ninety (90) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of preparing the proposed Budget for the next succeeding fiscal year and establishing the Annual Assessment for such fiscal year. Not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall adopt a proposed Budget for such fiscal year; provide and distribute a copy of such proposed Budget to each Owner, and set a date for a meeting of the Owners to consider ratification of the Budget, which date shall be not less than fourteen (14) nor more than thirty (30) days after mailing of the proposed Budget. Unless at that meeting sixty-six and

two-thirds percent (66-2/3<sup>rd</sup> %) of all Members vote to reject the proposed Budget, the proposed Budget shall be deemed ratified by the Owners, whether or not a quorum is present at such meeting. If the proposed Budget is so rejected, the proposed Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. In lieu of distributing copies of the Budget required by this Section 6.4.4, the Board may distribute to each Owner a summary of the Budget, accompanied by a written notice that the Budget is available for review at the business office of the Association or other suitable location and that copies of the Budget will be provided upon request.

6.5 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses for a given fiscal year is or will become inadequate to meet the Common Expenses for any reason, including, but not limited to, delinquencies in the payment of Assessments, then the Board shall determine the approximate amount of such shortfall, shall provide a summary thereof to all of the Owners with the Board's recommendation for a special assessment ("Special Assessment") to meet such shortfall, and shall set a date for a meeting of the Owners which is not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless at that meeting a majority of all Owners votes to reject the proposed Special Assessment, the proposed Special Assessment shall be deemed ratified by the Owners, whether or not a quorum is present at such meeting, and shall become a Special Assessment against, and allocated equally to, the Owners of the Units. The Board may, in its discretion, provide for payment of any Special Assessment in any number of installments or provide that it is payable in one (1) installment within such time period as the Board deems reasonable.

6.6 Violation Assessments. The Board shall levy a violation assessment against the Owners of a Unit ("Violation Assessment"): (i) to pay for the cost of curing any Maintenance Violation of such Owners and/or any other work performed by the Association for such Owners' account pursuant to the provisions of this Declaration, and any costs or expenses incident thereto, including but not limited to attorneys' fees and court costs, and (ii) to collect liquidated damages and fines levied by the Association pursuant to the terms of this Declaration and any and all attorneys' fees and court costs.

6.7 Capital Improvement Assessments.

6.7.1 Association's Power to Levy: Definition. The Association shall have the power to levy assessments for Capital Improvements ("Capital Improvement Assessments") on the terms and conditions set forth below. As used herein "Capital Improvement" means (i) any Improvement upon the Common Elements which is not a repair or replacement of an existing Improvement, or (ii) any expenditure relating to the Common Elements which is outside the ordinary course of business of the Association.

6.7.2 Petition; Association Approval.

(a) Owners of not less than twenty-five percent (25%) of the Units comprising the Community from time to time may petition the Association for the construction, installation, or acquisition of, or expenditure for, a Capital Improvement. Such petition shall be in writing and be in such form and shall contain such information as the Board may reasonably require. The Board may, on its own motion, move for the construction, installation, or acquisition of, or expenditure for, a Capital Improvement, in which case such motion shall be treated as if it were a petition duly submitted by Owners of twenty-five percent (25%) or more of the Units.

(b) Upon receipt of a petition for a proposed Capital Improvement or if the Board desires to propose a Capital Improvement, the Board shall obtain three (3) estimates from licensed contractors for the construction of the Capital Improvement.

(c) The Board shall submit the Capital Improvement proposal to the Members at the annual meeting, or a special meeting called for such purpose. Written notice of any meeting during which an assessment for a capital improvement is to be considered shall be delivered to each Owner not less than twenty-one (21) days prior to such meeting and otherwise as required by this Declaration, the Bylaws and the Act. The Capital Improvement Assessment shall be deemed approved upon the affirmative vote of two-thirds (2/3rds) of the voting power of the Association and Declarant unless Declarant owns no Units within the Property.

6.7.3 Levy of Capital Improvement Assessments. Capital Improvement Assessments shall be levied in equal proportions against the Owners of all of the Units. The Owners of each Unit shall be assessed a fractional portion of such Assessment, the numerator of which fraction shall be one and the denominator of which shall be the sum of the number of Units within the Association on the date such Assessment is levied. A Capital Improvement Assessment shall be paid in such installments and during such period or periods as shall be voted upon by the Members at the time such Assessment is approved. If no terms of payment are specified by such vote of the Membership, then the Capital Improvement Assessment shall be due and payable upon terms set by the Board.

6.7.4 Expenditure for Capital Improvement. After the levy of the Capital Improvement Assessment and the collection of the entire Capital Improvement Assessment, or a sufficient portion thereof as the Board deems prudent, then the Board shall cause the Capital Improvement to be constructed, installed, or acquired, or shall contract for the extraordinary expenditure constituting the Capital Improvement.

6.7.5 Deficiency in Capital Improvement Assessment. If at any time and from time to time a Capital Improvement Assessment proves or appears likely to be inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may, subject to the limitations set forth in this Section 6.7.5 levy a further Capital Improvement

Assessment in the amount of such actual or estimated inadequacy, which shall be assessed to the Owners of all of the Units within the Association in the ratios defined in Section 6.7.3 hereof. If such additional assessment is in excess of five percent (5%) of the original Capital Improvement Assessment, the affirmative vote or written consent of a majority of the Members of the Association shall be required for any such further assessment.

6.8 Other Assessments.

6.8.1 Utilities Assessments. Any utility service delivered to the Units for which the Association is billed shall, in turn, be billed by the Association to each Unit, at a uniform rate, on a monthly basis. Such billings shall be considered an assessment levied against each Unit, and shall be enforced in accordance with the terms and provisions of this Article VI.

6.8.2 Special Benefitted Assessment. Any Common Expense benefitting fewer than all the Units or their Owners may be assessed exclusively against the Units or Owners benefitted. Special Benefitted Assessments may be levied as Annual Assessments, Special Assessments or Capital Improvement Assessments, provided that when a vote of the Owners is required to levy such Special Benefitted Assessments only the approval of the requisite percentage of Owners who would be benefitted is required.

6.9 Commencement of Annual Assessments; Rate of Assessment. The Annual Assessments provided for herein shall begin for each Unit on the first day of the month following the date on which the Unit is made subject to this Declaration as provided in Article X (other than unsold Units owned by Declarant if a Subsidy Agreement is in effect. The first assessments shall be adjusted according to the number of months remaining in the calendar year. Except as otherwise specifically provided in this Declaration, , all Assessments levied by the Association must be fixed at an equal rate for all Units; and the amount assessed to each Unit shall be determined by dividing the total amount assessed by the total number of Units then within the Community and subject to assessment.

6.10 Assessment Period. The Annual Assessment period shall coincide with the fiscal year of the Association, which shall commence on January 1 of each year and shall terminate on December 31 of such year. However, the initial Annual Assessment period shall commence on the first day of the calendar month following the date on which the sale of the first (1st) Unit in the initial phase of the Community is closed and recorded; and shall terminate on December 31 of the year in which such sale is closed and recorded. The first Annual Assessment and all Special Assessments shall be adjusted and prorated according to the number of days and months remaining in the fiscal year and shall be payable in equal monthly installments (subject to proration for partial months) unless the Board adopts some other basis for collection.

6.11 Notices of Assessments; Delinquencies. Any Assessment installment hereunder which is not paid within fifteen (15) days following the date it is due as specified in the notice of such Assessment given in the manner specified in this Section 6.11 and in Section 11.5 of this

Declaration shall be deemed delinquent. All delinquent Assessments, except Violation Assessments, shall bear interest as prescribed by the Act, and, in addition, a reasonable late charge in an amount determined by the Board shall be due for each delinquent installment. The Association shall give written notice of all Assessments, except Violation Assessments to the Owners of all of the Units, which notice shall specify the amount of the Assessment and the date or dates payment of the same is due and shall be given in the manner provided for notices in this Declaration. Notice of a Violation Assessment is required to be given only to the Owners of the Unit against whom the Violation Assessment is made. Nothing contained herein shall be construed so as to require the Association to give periodic notices of the same Assessment and one notice of an Assessment shall be sufficient to meet the requirements of this Section, even though the Assessment may be payable in installments. Failure of the Association to give notice of any Assessment shall not affect the liability of the Owners of the Unit for such Assessment; provided, however, that the date when payment of the first installment of such Assessment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given, and the first installment of such Assessment shall not be deemed delinquent until fifteen (15) days after such deferred due date.

6.12 Statement of Demand. Upon payment of a reasonable fee not to exceed any amount allowed pursuant to the Act, and within ten (10) days of receiving the written request of any Owner or the authorized agent of the Owner or the holder of a security interest, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner. Such statement shall remain effective for the period specified in the demand which shall not be less than fifteen (15) business days after the date of delivery. Unless the person who requested the statement of demand receives a replacement statement of demand as prescribed by the Act, the person may rely upon the accuracy of the information set forth in the statement of demand provided by the association for the resale. Payment of the amount set forth in the statement of demand constitutes full payment of the amount due from the selling unit's owner.

6.13 Collection of Assessments. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, including any Manager, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity; or the Board may enforce by judicial proceedings or, to the extent permitted by applicable law, through the exercise of the power of sale granted to the Board pursuant to applicable statutes and laws, and this Declaration. Suit to recover a money judgment against an Owner for unpaid assessments together with all other amounts due hereunder shall be maintainable without first foreclosing against the Unit which is subject to the lien for such assessment or waiving the lien rights granted hereby.

6.14 Lien for Assessments; Priority. All sums assessed to any Unit pursuant to this Declaration, and all fines imposed by the Association against the Owners of a Unit, together with interest, late charges and the costs of collection thereon as provided herein, shall be secured by a

lien on such Unit in favor of the Association from the date the Assessment or fine becomes due. If an Assessment or fine is payable in installments, the full amount of the Assessment or fine is a lien from the time the first installment thereof becomes due. Such lien shall be prior to all other liens and encumbrances on such Unit, except for (a) valid tax and special assessment liens in favor of any governmental assessing authority; (b) liens and encumbrances recorded before the recordation of the Declaration; (c) liens for any fee or charge levied pursuant to NRS 444.520(1); and (d) a First Deed of Trust recorded before the date on which the Assessment or fine sought to be enforced became delinquent. Subject to federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the lien created by this Declaration for unpaid Annual Assessments is also prior to a First Deed of Trust to the extent provided in the Act.

6.15 Enforcement of Lien. The liens for unpaid Assessments shall be enforced by the Association in accordance with the applicable terms and provisions of the Act as are in effect from time to time.

6.16 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves are not required to be paid to the Owners or credited to them to reduce their future assessments for Common Expenses.

6.17 Working Capital Fund. If the Community is or is to be qualified with and approved by HUD Declarant shall, or even if not, then at Declarant's sole election Declarant may, establish initially, as to the Community and each subsequent phase thereof, and the Association shall maintain thereafter, a "working capital fund" to meet unforeseen expenditures or to purchase additional equipment or services (the "Working Fund"). The Working Fund shall be funded initially in an amount equal to the number of Units in the applicable phase of the Community times the initial monthly common assessment amount for such Units, but in no event less than an amount at least equal to two (2) months of estimated Common Expenses for each Unit. As to each phase of the Community, the Working Fund for each Unit shall be established no later than the closing of the sale of such Unit. Declarant may reimburse itself as to each Unit for its contribution to such fund by collecting an amount equal to the contributed amount for such Unit from the initial Owner of a Unit at the close of escrow for the sale of such Unit. The Working Fund shall be transferred into a segregated account of the Association upon the Declarant's Control Termination Date, and are not intended to be advance payments of regular assessments. Declarant may not use any portion of the Working Fund to defray any expenses, reimburse contributions or construction costs or to make up any budget deficits. As to the Working Fund for the initial phase Units, Declarant shall have the right to require the Owners in such initial phase to pay such Working Fund as attributable to their Units, or to have all Owners in the Community pay an equal pro-rata share of the aggregate amount of such initial phase Working Fund.

## **ARTICLE VII** **INSURANCE**

7.1 Insurance to be Obtained. The Association shall obtain and maintain in full force and effect at all times insurance coverage, provided by companies duly authorized to do business



in Nevada, generally as set forth in this Article, and as required by the Act and by HUD if the Community has been, or is intended to be, qualified with such entity.

7.2 Casualty Insurance. The Association shall obtain a "master" or "blanket" policy of insurance equal to full replacement value (i.e., 100% of current "replacement cost" at the time the insurance is purchased and at each renewal date, exclusive of land, foundation, excavation, and other items normally excluded from coverage) (i) on all insurable Improvements upon the Common Element, (ii) on any other Improvements under the control of the Association (including all building service equipment and the like and any fixtures or equipment within such improvements), (iii) on all other personal property commonly owned by the Owners or by the Association and (iv) on each Unit, but not the Improvements or betterments installed by an Owner, to the extent reasonably available, and exclusive of the personal property insurance to be maintained by each Owner in accordance with Section 7.11. The Association shall insure the Units and fixtures installed by the Declarant to the extent such insurance is reasonably available and subject to reasonable deductibles. If the Board determines that insurance for the Unit and fixtures installed by the Declarant is not reasonably available, it shall promptly notify each Owner at which time each Owner shall be immediately responsible for obtaining insurance for the Unit and its fixtures. Upon request by the Association, each Owner shall provide evidence that the Owner has obtained and maintains in full force and effect replacement cost insurance on the Unit and its fixtures.

Insurance maintained by the Association shall include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement", and shall include further, fire and extended and all risk coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association shall comply with the above requirements by the purchase of a policy containing such coverage with "deductible" provisions as in the Association's opinion are consistent with good business practice, provided that in no event shall such deductible be in an amount greater than the lesser of \$10,000.00 or one percent (1%) of the face amount of such policy.

7.3 Liability Insurance. The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Such coverage shall be in an amount generally required by private institutional mortgage investors for projects similar in construction, location, and use, and in no event shall be less than \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association and activities in connection with the ownership, operation, maintenance, and other use of the Common Elements. The liability insurance shall name as separately protected insureds Declarant, the Association, the Board, and their representatives, members, and employees, with respect to any liability arising out of the maintenance or use of any Association property. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, the Board, and their representatives, members, and employees. After Declarant has no further interest in any portion of the Community, then the above insurance provisions regarding Declarant shall not apply.

7.4 Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law.

7.5 Fidelity and Directors and Officers Insurance. The Association shall purchase crime insurance which includes coverage for dishonest acts by members of the Board and the officers, employees, agents, directors and volunteers of the Association and which extends coverage to any business entity that acts as the community manager of the Association and the employees of that entity. Such insurance shall not contain a conviction requirement, and the minimum amount of the policy must be not less than an amount equal to 3 months of aggregate assessments on all Units plus reserve funds or \$5,000,000, whichever is less. In addition, the Association shall cause to be maintained directors and officers insurance, insuring the Board Members and Association officers, employees, agents including the community manager and any employees of the community manager while acting as agents, and volunteers against any liability for any act or omission in carrying out their respective obligations, or resulting from membership on the Board or any committee thereof, to the extent reasonably available and subject to reasonable deductibles, in the amount of not less than \$1,000,000.00. Said policy or policies of insurance also shall contain an extended reporting period endorsement (a tail) for a six (6) year period if reasonably available.

7.6 Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Community, including any personal property of the Association located thereon.

7.7 Premiums and Reviews. Except as provided above, premiums for all of the foregoing insurance carried by the Association shall be a common expense and shall be included in the assessments or charges made by the Association. The Board shall review the limits of all insurance policies of the Association at least once a year and adjust the limits as the Board deems necessary or appropriate.

7.8 Form. Casualty, Liability and Fidelity insurance shall provide that each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association. Casualty insurance shall be carried in a form or forms naming the Association the insured as trustee for the Owners, which policy or policies shall specify the interest of each Owner (Owner's Name and Unit number), and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first mortgagees which from time to time shall give notice to the Association of such first mortgages; and such proceeds shall be used in accordance with the provisions of this Declaration. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days written notice is first given to the Association and to each first mortgagee. All policies of insurance shall provide for a waiver of subrogation by the insurer as to claims against the Association, the Board, employees, and agents, and against each Owner and each Owner's

employees, agents, household members, and guests, and shall provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, the Board, employees, and agents or the act or omission of any Owner or such Owner's employees, agents, household members, or guests, and shall provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee. The Association's insurance policy shall provide primary coverage if at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk. The insurer may not deny an Owner's claim because of the negligent acts of the Association or of other Owners, or, in the alternative; the policy shall include "severability of interest" in its terms. The Association shall furnish to each Owner who requests it and to Declarant a true copy of such policy together with a certificate identifying the interest of the Owner.

7.9 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner (except for the Secretary of the Department of Veterans Affairs, as Officer of the United States of America) to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 7.2, 7.3, 7.4, 7.5, or 7.6. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

7.10 Distribution to Mortgagees. As provided in the Act, any mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the mortgage of such mortgagee.

7.11 Owner's Insurance Responsibilities. The following insurance coverages shall be the responsibility of each respective Owner: (a) insurance on items of personal property placed in the Unit by Owner; (b) insurance for any upgrades, betterments and improvements made to the Unit by Owner; (c) insurance for casualty and public liability coverage within each Unit to the extent not covered by the Association's insurance; (d) insurance coverage for activities of the Owner, not acting for the Association, with respect to the Common Elements, (e) insurance against loss from theft on all personal property placed in the Unit or stored in any Limited Common Elements by the Owner and (f) insurance on the Unit and fixtures installed by the Declarant if the Association has notified the Owner that the Association has given each Owner notice that such insurance is not reasonably available. Pursuant to Section 7.6, the Association may elect to arrange for insurance coverage of the casualties and liabilities described above; however, in such event, each Owner shall be responsible for the amount, if any, by which the replacement cost exceeds the insurance proceeds.

7.12 Deductibles. When the Association's insurance adjusts a loss, the cost of the deductible shall be a Common Expense; provided that the deductible may be levied as a Violation Assessment for any loss created by the willful misconduct or gross negligence of an Owner. However, if the damage or claim is less than the insurance deductible or the Association's insurance does not adjust the loss, the cost of repair will be treated as Special Benefitted Assessment.

**ARTICLE VIII**  
**DAMAGE, DESTRUCTION, CONDEMNATION OR OBSOLESCENCE**

8A. Damage or Destruction.

8A.1 Association as Attorney-in-Fact. Each of the Owners (except the Secretary of the Department of Veterans Affairs, an Officer of the United States of America) irrevocably constitutes and appoints the Association its true and lawful attorney-in-fact in its name, place, and stead for the purpose of dealing with the Community upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

8A.2 General Authority of Association. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the Improvements as used in the succeeding subsections mean restoring the Community to substantially the same vertical and horizontal boundaries as before.

8A.3 Duty and Authority to Rebuild. Any portion of the Common Elements which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The common-interest community created by this Declaration is terminated, in which case NRS Sections 116.2118, 116.21183 and 116.21185 and Section 12.1 of this Declaration apply;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or
- (c) Eighty percent (80%) of the voting power of the Association and sixty-seven percent (67%) of the institutional holders of First Deeds of Trust on Condominiums vote not to rebuild. The Association shall have the authority and the duty to repair or reconstruct all Improvements to the Common Elements which are damaged or destroyed, which authority and duty shall be exercised in accordance with the provisions of this Article.

8A.4 Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any Improvements to the Common Elements, the Association shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of that part of the property damaged or destroyed.

8A.5 Funds for Reconstruction. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Association Property. If the proceeds of the insurance are insufficient to pay the estimated or actual

cost of such repair or reconstruction, then the Board, pursuant to Article VI hereof, shall levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction.

8A.6 Repair or Reconstruction. Except as otherwise provided herein, as soon as practicable after receiving the estimates, the Board shall diligently pursue to complete the repair or reconstruction of the damaged or destroyed Common Element Improvements. The Association may take all necessary or appropriate action to effect repair or reconstruction as attorney-in-fact for the Owners; and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in substantial accordance with the original plans and specifications of the Community or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event, (i) the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the buildings shall be substantially the same as prior to damage or destruction and (ii) written consent from the Eligible Mortgage Holders on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders is first obtained in the event of any restoration or repair not in substantial compliance.

8A.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 8A.5 constitute a fund for the payment of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner to the Association.

8A.8 Decision Not to Rebuild. In the event of a determination not to rebuild, the damaged or destroyed facilities shall be cleared; and the land shall be landscaped in a manner ensuring the existence of adequate rights-of-way and legal access over and to the area. The cost of removal and landscaping shall be paid for with insurance proceeds; and the remaining proceeds shall be retained by the Association in its general or other funds or allocated or distributed as determined appropriate by the Board, provided that any such distribution of insurance proceeds shall be proportionate to the interests of all Members.

8B. Obsolescence.

8B.1 Adoption of a Plan. The record Owners, as reflected on the real estate records of Douglas County, Nevada, representing an aggregate record ownership interest of eighty percent (80%) or more of the Condominiums may agree that the Community is obsolete and adopt a written plan for renewal and reconstruction, which plan has the approval of sixty-seven percent (67%) of the Eligible Mortgage Holders at the time of the

adoption of such plan. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in Douglas County, Nevada, real estate records.

8B.2 Payment for Renewal and Reconstruction. The expense of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Condominiums. These assessments shall be levied in advance pursuant to Article VI hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

8B.3 Distribution of Excess. In the event amounts collected pursuant to Section 8B.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

8B.4 Dissents From the Plan. An Owner not a party to such a plan for renewal or reconstruction shall give written notice of dissent to the Association within fifteen (15) days after the recordation of such plan. The Association shall then give written advice of such dissents to all the Owners within five (5) days after the expiration of such fifteen (15) day period. Within fifteen (15) days of receipt of such notice from the Association, the record Owners, representing an aggregate record ownership of more than fifteen percent (15%) of the Condominiums may cancel the plan by written instrument recorded in Douglas County, Nevada, real estate records. If the plan is not cancelled, then the Condominium of each dissenter shall be purchased according to the following procedures. If the Owner and the Association can agree on the fair market value thereof, then such sale and conveyance shall be completed within sixty (60) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencing date, each party shall nominate a qualified appraiser by written nomination and shall give notice of such nomination to the other. If either party fails to make such nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with him another qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of default of one party, are unable to agree, then they shall appoint another qualified appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two (2) qualified appraisers; and from the names of the four (4) persons so nominated, one shall be drawn by lot by a judge of any court of record in Nevada; and the person whose name is so drawn shall be the umpire. The nominations from among which the name of the umpire is to be drawn by lot shall be submitted within ten (10) days after the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, the decision of such umpire shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be

consummated within sixty (60) days after decision of the appraisers or umpire. The Association shall have the right and power to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the Condominium so acquired.

The Association, pursuant to **Article VI** hereof, may levy a special assessment sufficient to provide funds to pay for the Condominiums of the dissenters, provided that such assessment shall not apply to any of the Owners who are among the dissenters and shall not be a lien against the Condominium of any such Owner; and upon the Association's conveyance of any such Condominium, the Association as attorney-in-fact shall disburse the proceeds in the same manner provided in Section 8B.5 of this Declaration. The obligation of the Association to make such purchase shall be conditioned on the fair market value of the Condominium exceeding the obligations secured by liens on such Condominium, and upon the marketability of the title of the Owner. Owner shall furnish the Association an appropriate preliminary title report or commitment for title insurance evidencing marketability of his title not less than fifteen (15) days prior to the date set for completion of the sale.

**8B.5 Sale of Obsolete Community.** The Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Condominiums may agree that the Condominiums are obsolete and that the Community should be sold. Such an agreement must have the approval of sixty-seven percent (67%) of Eligible Mortgage Holders of record at the time such agreement is made. In such instance, the Association shall forthwith record a notice setting forth such facts; and upon the recording of such notice by the Association, the Community shall be sold by the Association as attorney-in-fact for all of the Owners free and clear of the provisions contained in this Declaration, the Condominium Map, the Articles, and the Bylaws. The sale proceeds shall be apportioned among the Owners in the same proportion as the square footage of the Owner's Unit bears to the total square footage of all the Units; and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association and shall be further identified by the Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to mortgagees and other lienors in the order of priority of their mortgages and other liens, and the balance remaining to each respective Owner.

**8C. Condemnation.** If at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, all or any part of the Community shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the making of awards and disbursement of the proceeds thereof shall be undertaken in accordance with the terms and provisions of NRS 116.1107. The Association is hereby designated to represent the Owners in all proceedings (including negotiations and settlements) related to any condemnation, and each Owner appoints the Association as attorney-in-fact for this purpose. The proceeds of any settlement related to any condemnation of the Project shall be paid to the Association for the benefit of the Owners and Eligible Mortgage Holders, as their interests may appear.

**ARTICLE IX**  
**PROTECTION OF LENDERS**

9.1 Encumbrance of Parcels Permitted. Any Owner may encumber such Owner's Unit with a Deed of Trust.

9.2 Subordination. Except as provided otherwise by NRS Chapter 116 or Article VI hereof, any lien created or claimed under Article VI of this Declaration is subject and subordinate to the lien of any First Deed of Trust encumbering any Unit, unless the priority of such First Deed of Trust is expressly subordinated to such assessment lien by a written instrument duly recorded.

9.3 Non-Liability for Unpaid Assessments. Any beneficiary of a First Deed of Trust who acquires title to a Unit pursuant to the judicial or non-judicial foreclosure remedies provided in the Deed of Trust shall take the Unit free of any lien for unpaid assessments or Association charges against the encumbered Unit except the portion of the lien for those charges, assessments and costs provided for in NRS 116.3116(3). After the foreclosure of any such Deed of Trust, such Unit shall remain subject to the Declaration; and the amount of all regular and special assessments, to the extent they relate to expenses incurred subsequent to such foreclosure sale, shall be assessed hereunder to the grantee or purchaser thereunder.

9.4 Breach of Covenants. A breach by an Owner of any of the provisions of this Declaration, shall not defeat or render invalid the lien of any Deed of Trust made in good faith and for value as to the Community or any portion thereof; provided, however, the provisions of this Declaration shall be binding upon the Owners whose title thereto is acquired under foreclosure, trustee's sale, or otherwise.

9.5 Notice to Eligible Mortgage Holders, Insurers and Guarantors. The holder of any First Deed of Trust shall be entitled to become an "Eligible Mortgage Holder" pursuant to the provisions of this Declaration and any insurer or guarantor of a First Deed of Trust shall be entitled to become an "Eligible Insurer" hereunder by notifying the Association of its name, address and the address of the Unit encumbered by the First Deed of Trust which it holds or insures in the manner provided in Section 12.5 below. The Association shall give written notice to Eligible Mortgage Holders in accordance with the provisions of this Section 9.5 and in the manner prescribed in Section 12.5 below. Any holder of a First Deed of Trust encumbering any Unit or any portion of the Property who does not so request notice, shall not be deemed to be an Eligible Mortgage Holder under the terms of this Declaration. Unless and until notice is given to the Association as provided in this Declaration by a mortgage holder, insurer or guarantor, such mortgage holder, insurer or guarantor shall not be entitled to notice of default, nor to any right, distribution or notice pursuant to this Declaration.

9.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the Articles shall give an Owner, or any other party, priority over any rights of the holders of First Deeds of Trust in the case of a distribution to Owners of insurance proceeds or condemnation awards.



9.7 Appearance at Meetings. Because of its financial interest in the Community, any beneficiary of a First Deed of Trust may appear (but cannot vote) at meetings of the Members and the Board, and may draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

9.8 Examination of Records. The holders of First Deeds of Trust shall have the right to examine at reasonable times the books and records of the Association and can require the submission of financial data concerning the Association, including annual audit reports and operating statements as and when furnished to the Owners.

9.9 Prior Approvals. Subject to the effect and operation of Section 12.8, unless fifty-one percent (51%) of Eligible Mortgage Holders have given their prior written approval, neither the Association, nor any Owner, nor any other individual shall do the following:

- (a) By act or omission, seek to abandon or terminate the Condominium regime, except as expressly allowed and provided for by this Declaration;
- (b) Change the method of determining the obligations, assessments, or other charges which may be levied against an Owner; or change the pro rata interest or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or change the method of determining the pro rata share of ownership of each Owner in the Common Elements;
- (c) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Association or the Owners shall not be deemed to be a transfer within the meaning of this section;
- (d) Use hazard insurance proceeds for losses to Condominium Units or Common Elements or to any Association property, for other than the repair, replacement, or reconstruction of such improvements or property, except as provided in **Article VIII**.
- (e) By act or omission, change, waive, or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to control of the exterior appearance of structures in the Community, and the maintenance of the Common Elements;
- (f) Terminate professional management and assume self-management of the Community;
- (g) Except as provided in Sections 3.1.2 and 3.1.3, make a material change in the boundaries of any Condominium, Unit or Common Elements;
- (h) Impose any material restrictions on an Owner's right to sell or transfer his Condominium Unit, or use the Common Elements;

- (i) Change materially and adversely any provision herein that by its terms refers to and expressly benefits institutional holders of first deeds of trust;
- (j) Except as provided in the purchase and sale agreement between Declarant and a potential Unit purchaser, impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit;
- (k) Change the subordinate priority of the provisions of this Declaration relating to allocation of hazard insurance proceeds or condemnation awards as set forth in Section 9.6 hereof in relation to the holders of First Deeds of Trust;
- (l) Fail to maintain the insurance required by **Article VII**, Section 7.1 hereof; or
- (m) Change the purposes to which any Unit or the Common Elements are restricted. In the event any Eligible Mortgage Holder is notified in the manner provided in Section 12.5 below and at the address designated by such Eligible Mortgage Holder to the Association in the manner provided in such Section 12.5, of any proposed decision or action described in subsections (a) through (m), inclusive, above, and fails to submit a written response within sixty (60) days after notice of such proposed decision or action, then such Eligible Mortgage Holder shall be deemed to have given its approval of such decision or action and such implied approval shall be conclusive as to all persons relying thereon in good faith.

9.10 Notices to Eligible Mortgage Holders. Upon written request from an Eligible Mortgage Holder, such Eligible Mortgage Holder shall be entitled to written notification from the Association of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Community or the Unit securing its mortgage;
- (b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
- (c) A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (d) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

**ARTICLE X**  
**SPECIAL DECLARANT'S AND DEVELOPMENTAL RIGHTS**

10.1 General. Declarant and any Successor Declarant may be undertaking the work of constructing Improvements to and upon the Community and adding real property to the Community in accordance with the terms and provisions of this **Article X**. The completion of such

construction and the sale or other disposition of Units within the Community is essential to the establishment and welfare of the Community as a planned community. The covenants contained in this **Article X** are personal to Declarant and any Successor Declarant, and may only be transferred by a written assignment duly recorded from a Declarant to a Successor Declarant, or from a Successor Declarant to another Successor Declarant.

10.2 Reservation of Developmental Rights. Declarant reserves the following Development Rights:

(a) The right, but not the obligation, to add additional property to the Property, to convert Units owned by Declarant into Common Elements or Limited Common Elements, and to allocate Common Elements as Limited Common Elements in accordance with this **Article X**.

(b) The right, but not the obligation, to construct underground utility lines, pipes, wires, ducts, conduits and other facilities upon the real property in the Community, for the purpose of furnishing utility and other services to buildings and Improvements to be constructed in the Community. Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Community not occupied by buildings, for the purposes mentioned above.

(c) The right, but not the obligation, to withdraw any Unit from this Declaration at any time prior to the sale or conveyance of that Unit by Declarant. Such withdrawal shall be accomplished by recording a declaration of withdrawal in the records of the Recorder of Douglas County, Nevada, describing the real property to be withdrawn, and providing for the readjustment of voting rights and assessment allocations provided for herein. Such declaration of withdrawal shall not require the consent of the Owners. Any such withdrawal shall be effective upon the filing for record of such declaration of withdrawal except as provided therein. The withdrawal may be accomplished in stages by successive declarations or in one declaration of withdrawal.

(d) The right, but not the obligation, to unilaterally amend this Declaration at any time prior to the close of the first sale of a Unit.

10.3 Special Declarant Rights. Declarant hereby reserves unto itself the rights to:

10.3.1 Complete all Improvements within the Community, including, but not limited to, those indicated on Plats or Plans or described in this Declaration;

10.3.2 Maintain at least three (3) model homes and one (1) sales office and management office within the Property which may be relocated from time to time;

10.3.3 Maintain signs advertising the Community, which signs may be maintained anywhere on the Community, excluding Units owned by Owners other than Declarant;

10.3.4 Use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community or any other real property owned by Declarant or an affiliate of Declarant regardless of whether such real property is part of the Community;

10.3.5 To make the Community subject to a master association;

10.3.6 To merge or consolidate the Community with another common interest community of the same form of ownership;

10.3.7 Subject to Section 4.3.3(b) to appoint or remove any officer of the Association or any member of the Board during the Declarant Control Period; and

10.3.8 Appoint or remove any officer of the Association or any member of the Board at any time and from time to time prior to the Declarant's Control Termination Date (defined in Section 4.3.3[b] hereof).

Nothing in this Article shall give the Declarant the right to damage any Unit or Improvement not owned by Declarant or interfere unreasonably with the Owners' use of the Common Elements; and Declarant's right to so use the Community shall terminate upon final completion of construction of the Community, including all future phases of the Community, or eight (8) years from the recordation of this Declaration, whichever first occurs, except as required for maintenance and repair obligations conducted by Declarant which may continue after such date.

10.4 Models, Sales Offices and Management Offices. For so long as Declarant is an Owner, Declarant, its duly authorized agents, representatives and employees reserves the right to use a portion of any "clubhouse" facility in the Common Elements for sales offices and/or management/ offices. Declarant further reserves the right to maintain any Units owned by Declarant or any portion of the Common Elements as model Units, sales office or management office.

10.5 Construction; Declarant's Easement. Declarant reserves the right to perform warranty work, repairs and construction work in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed by Declarant without the consent or approval of the Board. Declarant has an easement through the Common Elements (including but not limited to that portion of the Common Elements consisting of the private streets and entry gates) as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility and drainage easements to public utilities, municipalities, the State, riparian owners or upland owners to fulfill the plan of development. Such power to convey easements over the Common Elements shall pass to the Association at such time as Declarant no longer owns any portion of the Property.

10.6 Signs and Marketing. Declarant reserves the right to post signs and displays in the Common Elements in order to promote sales of Units. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

10.7 Declarant's Personal Property. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Community that has not been represented as property of the Association. Declarant reserves the right to remove from the Community (promptly after the sale and close of escrow of the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

10.8 Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant until the later of the following: as long as Declarant (a) is obligated under any warranty or obligation, (b) holds a Development Right, (c) owns any Unit; or (d) eight (8) years have elapsed after the recording of this Declaration. Earlier termination of certain rights may occur by statute.

10.9 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

10.10 Declarant's Rights to Complete Development. No provision of this Declaration shall be construed to prevent or limit Declarant's rights, hereby reserved, to complete the development, construction, promotion, marketing, sale and leasing of Units within the boundaries of the Property; to construct or alter Improvements within the Community; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within such boundaries; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within such boundaries. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approval to: (a) excavate, cut, fill or grade on any part of the Community or to construct, alter, remodel, demolish or replace any Improvements on any part of the Community; (b) use any structure on any part of the Community as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the Community; or (c) require Declarant to seek or obtain the approval of the Board, the Architectural Committee or the Association for any such activity or Improvement to property by Declarant on any part of the Community. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provide in this Declaration. In exercising Declarant's rights under this **Article X**, Declarant shall not unreasonably interfere with any non-Declarant Owner's use and enjoyment of his or her Unit.

10.11 Priority of Declarant's Rights and Reservations. Declarant shall have, and hereby retains and reserves, certain rights as set forth in this Declaration with respect to the Association and the Community. The rights and reservations of Declarant set forth in this Declaration shall be deemed accepted and reserved in each conveyance of property by Declarant to the Association and

in each deed or other instrument by which any property encumbered hereby is conveyed by Declarant, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in this Declaration shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration, including any amendment of this Article X. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.

10.12 Annexation. Declarant hereby reserves unto itself for a period of twelve (12) years after this Declaration has been Recorded (or to the extent it is less, for such period that may be permitted under Law), the right to cause to be annexed to this Declaration as part of the Property from time to time all or a portion of the Annexable Property, provided that, if required by law, a subdivision map shall have been recorded for the real property to be annexed. No assurances are made by Declarant prior to the annexation of any Annexable Property as to the size or configurations of such portion, or the order in which any such portion may be annexed. If any portion of the Annexable Property is annexed to the Property, there are no assurances that any other portion or all of such Annexable Property will be annexed. The Annexable Property shall be annexed by recording a Supplemental Declaration executed by Declarant describing the real property to be so annexed and declaring that such property shall be held, conveyed, sold, encumbered, leased, rented, used, occupied, improved or otherwise affected in any manner subject to the provisions of this Declaration ("Annexed Property"). Such Supplemental Declaration may set forth any additional restrictions or covenants which may be applicable to such Annexed Property, provided that such additional restrictions shall not be in any manner inconsistent with the provisions of this Declaration. Upon recordation of any Supplemental Declaration, the real property described in the Supplemental Declaration shall become Annexed Property as defined herein and shall be subject to all of the provisions of this Declaration.

## ARTICLE XI ARCHITECTURAL COMMITTEE

### 11.1 General.

11.1.1 Organization. There shall be an Architectural Committee comprised of the Board; provided, however, that the Board may appoint an Architectural Committee of not less than three (3) nor more than five (5) members, at least two (2) of whom must be Directors, and remainder of whom need not be Members. Notwithstanding the foregoing to the contrary, until such time as Declarant's Special Rights are terminated or expire, Declarant shall have the sole right to appoint the members of the Architectural Committee in such number and source of persons as Declarant chooses.

11.1.2 Meetings. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of Committee members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Architectural Committee may charge a filing fee to be used to pay an architect or other

professional, who may or may not be a member of the Architectural Committee, to review the submitted plans and specification and to inspect an Improvement to ensure that such Improvement has been constructed or installed as approved. The Board may reimburse members for reasonable expenses incurred by them in the performance of any Architectural Committee function.

11.2 Requisite Approvals and Procedures for Owner Alteration. No Owner may paint, stain or alter in any way the exterior of any building or Improvement within the Community, nor make or commence any structural addition, structural alteration or Improvement in the Community or such Owner's Unit, including without limitation, the alteration or construction of a building, fence, wall or structure or the placement, erection or alteration of any Limited Common Element, including any landscaping, without the prior written consent of the Architectural Committee. It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to adopted Architectural Committee Guidelines if it so chooses, to perform other duties delegated to it by the Association, and to carry out all other duties imposed upon it by this Declaration.

(a) Any request for approval of anything prohibited under Section 11.2 must be submitted in writing to the Architectural Committee. Such submittal shall contain and set forth such information and in such detail as required by the Architectural Committee to reasonably inform the Architectural Committee of the proposed work of improvement for the purpose of determining its compliance with the terms and provisions of this Article XI and the propriety of granting or denying such application. All improvements or modifications, if approved by the Architectural Committee, shall be undertaken, prosecuted and completed in full and timely compliance with all applicable zoning laws, building codes, such plans and specifications as presented to and approved by the Architectural Committee, and all other applicable laws, ordinances and regulations relating to the construction, use and occupancy of the Improvements. The Architectural Committee shall answer any written request for approval within sixty (60) days after the request. Failure to answer the request within this time shall not constitute a consent or approval by the Architectural Committee to the proposed action. Any such request shall be reviewed in accordance with any Architectural Committee Guidelines then in effect.

(b) Subject to this Section 11.2, an Owner:

(i) May make any improvements or alterations to the interior of their Units that do not impair the structural integrity, mechanical systems, lessen the support of any portion of the Community, or otherwise alter, in any way, the originally installed condition of any component contained within the framing of the structure, provided that any such improvements or alterations to the interior of the Unit does not result in a violation, in and of itself or as a result of the use thereof, of any other term or provision of this Declaration.

(ii) May not change the appearance of the Common Elements, the exterior appearance of a Unit, any component that may be seen from the exterior of the

building, or any other portion of the Project, or make any change or modification to such Owner's Unit such as replacing carpeting with hardwood floors, without permission of the Board or the Architectural Committee, as applicable. Exterior colors must harmonize with the surrounding landscape; gaudy or bright colors, purples, reds and blues are not acceptable. All colors and trim must be approved by the Architectural Committee. All reflective metal, such as flashings, exhaust vents and pipes must be painted to match or blend with the surrounding materials. Aluminum windows, door frames, solar panels and skylights must be a compatible color. Steel window and door frames must be painted to match or blend with surrounding materials. The use of solar panels will be subject to the approval of the Architectural Committee.

(iii) After acquiring an adjoining Unit, may not remove or alter any intervening partition or create apertures therein.

(c) Any applications to any department or governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only and the reasonable expense incurred by the Association in connection therewith shall be borne by the Owner of such Unit. This execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or material man on account of the addition, alteration or improvement or to any person because of any claim for injury to person or damage to property arising from the permit.

(d) Any member or authorized consultant of the Board or the Architectural Committee, or any authorized officer, manager, employee or other agent of the Association may enter upon any Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect any structural addition, alteration or Improvement constructed or under construction in the Unit to determine whether the work has been or is being built in compliance with the plans and specifications approved by the Board or the Architectural Committee. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

(e) All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Board, cause any increase in the premiums of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

11.3 Limitation on Liability of Architectural Committee. Provided that the Architectural Committee or a particular member of the Architectural Committee has acted in good faith on the basis of the information as may be possessed by the Architectural Committee or the member, as the case may be, then neither the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner, or any other person for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and



specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property subject to this Declaration. Without limiting the generality of the foregoing, the Architectural Committee may, but it is not required to, consult with knowledgeable outsiders with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

11.4 Architectural Committee Guidelines. The Architectural Committee may prepare and recommend "Architectural Committee Guidelines" containing guidelines and review procedures on behalf of the Association, which shall be approved by the Board. The Board shall make the Architectural Committee Guidelines available to the Owners.

11.5 Board of Directors and Architectural Committee Discretion. Except as may be expressly provided in this Declaration, any consent or approval of the Architectural Committee that is required under the provisions hereof, may be granted or withheld in the sole and absolute discretion of the Architectural Committee. In that regard, the granting or withholding of such consent or approval shall not be subject to any objective standards of "reasonableness" or otherwise. Further, the approval of or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

11.6 No Applicability to Construction by Declarant. The provisions of this Article XI shall not apply to the initial construction by Declarant in the Project, and neither the Board nor the Architectural Committee shall have any authority or right to approve or disapprove the initial construction by Declarant in the Project.

## ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Duration. The provisions of this Declaration shall continue and be effective for a period of fifty (50) years from the date of recordation hereof and shall be automatically extended for successive periods often (10) years each until (i) the Owners of at least eighty percent (80%) of the Units within the Community and sixty-seven percent (67%) of the then Eligible Mortgage Holders shall execute a written instrument, which may be executed in counterparts, in recordable form declaring that the provisions of this Declaration shall terminate, and (ii) such written instrument is recorded in the office of the Recorder of Douglas County, Nevada.

12.2 Amendment. Except as otherwise provided in Section 3.1.2, the Act and below, this Declaration may be amended by vote or agreement of (i) not less than sixty-seven percent (67%) of the voting power of the Association if the Community is qualified with HUD and HUD requires such percentage approval or (ii) otherwise not less than fifty-one percent (51%) of the voting power of the Association. All such amendments must be in writing, and prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for such purpose or by the President of the Association in the absence of such designation. Such amendment shall be recorded in the office of the County Recorder of the County in which the Property is located.

Any substantive amendment to any of the following described provisions of this Declaration requires the written consent of fifty-one percent (51%) of the Eligible Mortgage Holders:

- (a) Voting rights;
- (b) Reductions in reserves not related to the maintenance, repair, and replacement of the Common Element Improvements which the Association is required to maintain pursuant to the provisions of this Declaration and the Act;
- (c) Responsibility for maintenance and repairs;
- (d) Insurance or fidelity bond provisions;
- (e) Except as provided in the purchase agreement between Declarant and an Owner, imposition of any restrictions on the leasing of Units or on a Owner's right to sell or transfer such Owner's Unit;
- (f) Any provision that expressly benefits mortgage holders or mortgage insurers or guarantors;
- (g) Provisions pertaining to termination of the Declaration;
- (h) Subject to the exercise of Special Declarant's Rights, reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (i) Subject to the exercise of Special Declarant's Rights, and except as provided in Sections 3.1.2 and 3.1.3, redefinition of any Unit boundaries;
- (j) Subject to the exercise of Special Declarant's Rights, convertibility of Units into Common Elements or vice versa;
- (k) Expansion or contraction of the Community, or the addition, annexation, or withdrawal of property to or from the Community;
- (l) A decision by the Association to establish self-management if professional management had been required previously by the Community documents or by an Eligible Mortgage Holder;
- (m) Restoration or repair of the Community (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (n) Leasing of Units; or
- (o) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Unit.

In the event any Eligible Mortgage Holder is notified in the manner provided in Section 12.5 below and at the address designated by such Eligible Mortgage Holder to the Association in the manner provided in such Section 12.5, of any proposed substantive amendment to this Declaration in the nature of the amendments described in subsections (a) through (o), inclusive, above, and fails to submit a written response within sixty (60) days after notice of such proposed amendment, then such Eligible Mortgage Holder shall be deemed to have given its approval of such amendment and such implied approval shall be conclusive as to all persons relying thereon in good faith. A certificate signed by the Secretary of the Association as to any Eligible Mortgage Holder's failure to so respond shall be deemed to be sufficient evidence of such approval.

Section 12.1 shall be amended only upon the written consent of the Owners of eighty percent (80%) of the Units within the Community; and Sections 3.1.2 and Article X may be amended only with the consent of Declarant during any time that Declarant owns a Unit.

### 12.3 Enforcement and Waiver.

12.3.1 Rights of Enforcement. In addition to the rights of enforcement granted to the Association pursuant to the provisions of Section 5.1.2 hereof, any Owner shall have the right (but not the duty) to enforce any and all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration upon the Owners or upon any of the Property. Nothing herein shall be construed as creating a third party beneficiary contract in favor of parties who are not Owners or Eligible Mortgage Holders.

12.3.2 Complaints/Enforcement. In addition, the Association, Declarant and any Owner shall have the right to submit a grievance regarding any violation and/or enforce the provisions of this Declaration or of the Act, now or hereafter imposed: (1) as provided by the applicable provisions of the Act; (2) by arbitration as prescribed by NRS 38.300-360; and/or (3) by any proceeding at law or in equity. To the extent they are not inconsistent with the Act, the Association may also establish and impose administrative procedures for resolving claims or disputes arising from the interpretation, application, or enforcement of any provisions stated herein or specified in the Articles, Bylaws, or Rules and Regulations adopted by the Association or the Committee.

If the Board receives a written complaint from a Unit's owner alleging that the Board has violated any provision of the Act or any provision of stated in the Articles, Bylaws, or Declaration, the Board shall proceed as required by NRS 116.31087 or other/additional provision of the Act, as may be applicable.

12.3.3 Violations and Nuisance. Every act or omission whereby a covenant, condition, or restriction of the Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action.

12.3.4 Violation of Law. Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

12.3.5 Remedies Cumulative. Each remedy provided by this Declaration and the Act is cumulative and not exclusive.

12.3.6 Non-waiver. The failure to enforce the provisions of any covenant, condition, or restriction contained in the Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of the Declaration.

12.4 Termination of Former Owner's Liability for Assessments. Upon the conveyance, sale, assignment, or other transfer of a Unit to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Unit after notification of the Association of such transfer in the manner provided in Sections 4.4 and 12.5 hereof and the payment of a transfer fee as provided in Section 4.4 hereof. No person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration.

12.5 Notices. All notices hereunder to the Association or the Board shall be sent by regular mail, or registered or certified mail, return receipt requested, addressed to the Board at the address of the Manager, or to such other place as the Board may designate from time to time by notice in writing to the Owners of all of the Units.

All notices given by the Association to any Owner shall be sent by regular mail, or by registered or certified mail, return receipt requested, to such Owner's Unit address or to such other address, including an electronic mail address as permitted by the Act, as may be designated by such Owner from time to time, in writing, to the Board. All notices to Eligible Mortgage Holders shall be sent by registered or certified mail, return receipt requested, at the address to which such Eligible Mortgage Holder has last requested that notice be sent by notifying the Association in the manner provided in this Section 12.5. All notices shall be deemed to have been received within seventy-two (72) hours after the mailing thereof, except notices of change of address which shall be deemed to have been given when actually received.

12.6 Approvals. Any consent or approvals by the Board or Architectural Committee shall be in writing.

12.7 Construction and Severability: Singular and Plural: Titles.

12.7.1 Restrictions and Easements Construed Together. All of the covenants, conditions, restrictions and easements of this Declaration shall be liberally construed together to promote the purposes of this Declaration as set forth herein.

12.7.2 Restrictions and Easements Severable. The covenants, conditions, restrictions and easements contained in this Declaration shall be deemed independent and severable; and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

12.7.3 Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter, as the context requires.

12.7.4 Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions of any Section.

12.8 Savings Clause. To the extent of the non-allowable inconsistency between any term or provision of this Declaration and the requirements or prohibitions of (i) applicable federal, state or local laws, ordinances, rules, regulations or directives or (ii) rules, regulations directives, announcements, statutes or laws governing or promulgated by the Federal National Mortgage Association, HUD, the United States Department of Veteran's Affairs or any other agency or entity with which the Community is qualified for the purpose of providing financing or the insurance or enhancement of such financing to buyers of Units ((i) and (ii) collectively, "Applicable Law and Regulation") at any given time, the Applicable Law and Regulation shall control over such inconsistent term or provision; and such term or provision, and this Declaration, shall be deemed amended automatically to the extent, but only to the extent, necessary to comply fully with such Applicable Law and Regulation; and in each such instance the Board shall prepare, execute and record an actual amendment to this Declaration in a manner reasonably appropriate to reflect and evidence such amendment, notice of which shall be sent to all Owners within the time and in the manner required by the Act for amendments to declarations; provided, however, that the Board shall be responsible for the foregoing only upon being actually informed in writing of the subject inconsistency between this Declaration and Applicable Law and Regulation. In the event and to the extent of any inconsistency between Applicable Law and regulation under (i) and (ii) above, the Applicable Law and Regulation under (i) shall prevail.

12.9 Conflict. This Declaration is intended to comply with the requirements of the Act applicable to common-interest communities and the Declaration shall be interpreted, if at all possible so as to be consistent with the Act. If there is any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control, without any requirement, express or implied to amend or modify this Declaration (though amendment for the purpose of making the Declaration match the Act is not hereby limited or prohibited). In the event of any conflict between this Declaration and the Bylaws, Articles or Community Guidelines, this Declaration shall control.

### **ARTICLE XIII** **ASSOCIATION'S POWER TO BRING SUIT**

To protect the Association and the Owners from being subjected to potentially costly or prolonged controversies without full disclosure, analysis and consent; to 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 ensure voluntary and well-informed consent and clear and express authorization by the Owners, the Board, in seeking the assent of a Majority of Members to commence an action or maintain an action pursuant to Section 5.3, shall take the steps set forth below. Any action that may be commenced or maintained only upon the assent of a Majority of Members is referred to in this Article as a Major Controversy. A Major Controversy shall not include any action commenced pursuant to NRS 116.31088(1) including an action to: (a) enforce the payment of an assessment; (b) enforce the Declaration, Bylaws or Community Guidelines; (c) enforce a contract with a vendor; (d) proceed with a counterclaim; or (e) protect the health, safety and welfare of the Members of the Association.

13.1 Negotiation. The Board shall first endeavor to resolve any Major Controversy by good faith negotiations with the adverse party or parties.

13.2 Alternative Dispute Resolution. In the event that good faith negotiations fail to reasonably resolve the Major Controversy, the Board shall then endeavor in good faith to resolve such controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) 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 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 Major Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Major Controversy until the Board has fully complied with the following procedures:

(a) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Major Controversy, and shall obtain, if reasonably available, the written opinions of each and every one of (1) 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 Major Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); and (2) a reputable appraiser and/or real estate consultant regularly conducting business in Douglas County, Nevada, expressly opining how the marketability and market value of Units will likely be affected by such Major Controversy ("Appraiser's Opinion"). (The Legal Opinion and Appraiser's Opinion are sometimes collectively referred to herein as the "Opinions"). The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars (\$5,000.00) 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 such \$5,000.00 limit to an amount equal to the cost of an aggregate total of ten (10) hours of work (at regular hourly billing rates)

among the attorney, the appraiser and others in preparing and delivering the Opinions to the Association. Any expenditure to obtain the Opinions in excess of the foregoing cost limitations may not be incurred by the Board without the express consent of a Majority of the Members at a special or regularly held meeting of the Association.

(b) 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 Major Controversy. 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 also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(c) Upon receipt and review of the Attorney Letter and the Appraiser's Opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, intervention in, or maintenance of the Major Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, and the Appraiser's Opinion together with a written report ("Special Assessment Report") prepared by the Board: (1) itemizing the amount necessary to be assessed to each Member, on a monthly basis, to fund the Quoted Litigation Costs ("Special Litigation Assessment"), and (2) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, the Appraiser's Opinion, and Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Major 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: (i) if less than Majority of the Members vote in favor of pursuing such Major Controversy and levying the Special Litigation Assessment, then the Major Controversy shall not be pursued further, but (ii) if a Majority of the Members affirmatively vote in favor of pursuing such Major 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, maintain, and/or intervene in the Major 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 (x) 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 (y) 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 Major 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.

13.3 Settlement. The Board shall have the authority to accept or reject any settlement offer. If any action in which the Association is a party is settled, the Board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting of Board after the settlement has been reached. The Board may not approve a settlement which contains any terms and conditions that would prevent the Board from complying with the provisions of this subsection.

13.4 No Use of Reserves. In no event shall any Association reserves be used as the source of funds to institute, prosecute, maintain and/or intervene in proceeding, including any Major Controversy.

13.5 Failure to Comply. Any provision in this Declaration notwithstanding other than as set forth in this Article, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Major Controversy Proceeding. Any institution, prosecution, or maintenance of, or intervention in, a Major Controversy by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Article, shall be unauthorized and ultra vires 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 Article 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 Major Controversy. This Article 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; and any purported amendment or deletion of this Article, or any portion hereof, without both of such express prior written approvals shall be void.

#### ARTICLE XIV ARBITRATION

14.1 Arbitration of Disputes. Any claim, controversy, cause of action, claim for relief, liability or dispute ("Claims") between the Association and Declarant arising out of or relating in any way to the Community, including, without limitation, claims for breach of contract, express or implied, breach of warranty, strict liability, negligence, nuisance, statutory violation, misrepresentation and fraud (including claims in any manner relating to or arising out of a constructional defect as defined in NRS 40.615 which have not been resolved as provided in NRS 40.680[2] [mediation]) shall be resolved by binding arbitration pursuant to NRS Chapter 38.

14.2 Rules for the Arbitration Proceeding. Claims shall be resolved in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"), the



AAA's supplementary procedures for consumer/residential construction disputes (collectively, the "Construction Industry Rules") and the terms of this Article. In the event the provisions of this Article are inconsistent with the Construction Industry Rules, the Construction Industry Rules shall control. If the matter proceeds to arbitration, discovery shall be allowed pursuant to the Nevada Rules of Civil Procedure ("NRCP"). In the event any provision of NRCP pertaining to discovery is inconsistent with the Construction Industry Rules, such provisions of NRCP shall prevail. Arbitration of any matter pursuant to this clause shall not be deemed a waiver of the attorney/client or attorney/work product privilege in any manner.

14.3 Right to Repair. Nothing set forth in this Article is intended to affect the rights of Declarant, contractors or subcontractors under NRS Chapter 40 to repair any constructional defect.

14.4 Arbitrator. The dispute constituting a claim shall be heard and determined by a single neutral arbitrator who has expertise in the area of the dispute. The arbitrator shall be appointed within a period of time, which in no event shall be more than sixty (60) days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of the Construction Industry Rules shall apply.

14.5 Joinder of Parties. The parties may join other parties as provided in the Construction Industry Rules. For example, Declarant may include its contractor and any and all subcontractors and suppliers or other parties in the arbitration.

14.6 Location of Arbitration. The venue of the arbitration shall be in a location in the county where the property is located. Unless the parties agree otherwise, the arbitration shall commence, be conducted, and conclude promptly in accordance with the Construction Industry Rules.

14.7 Award. The arbitrator is authorized to provide all recognized remedies available in law or in equity for the claims. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Any award rendered by the arbitrator may be confirmed, entered and enforced in any court having jurisdiction over the matter.

14.8 Strict Confidentiality. Except as may be required by law or for confirmation of the award, neither of the parties nor the arbitrator may disclose the existence, content or results of the arbitration hearing without the prior written consent of both parties and such content and results are strictly confidential.

14.9 Arbitration Costs and Attorney's Fees. Any costs to initiate arbitration shall be advanced by the party initiating the arbitration, but the costs of arbitration shall ultimately be borne by the losing party and, if there is more than one losing party, in such proportions as the arbitrator may determine. The prevailing party or parties in such arbitration shall be entitled to recover reasonable attorneys' fees from the losing party or parties in such amounts as the arbitrator shall determine.

14.10 Statutes of Limitation. The arbitration must be filed within the statute of limitations applicable to the Claim.

14.11 Effect of Article. Nothing in this Article shall be construed so as to waive, alleviate, or otherwise modify the Association's obligations under Section 5.3.2 and Article XIII of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed.

**Jenuane Communities the Ranch LLC,**  
A Nevada limited liability company

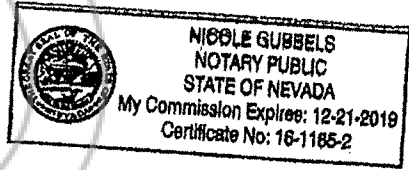
By: [Signature]  
Name: Kenneth Hendrix  
Title: Manager

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF WASHOE    )

On 3/2/2018 before me, NICOLE GUBBELS, Notary Public, personally appeared KENNETH HENDRIX, 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.

WITNESS my hand and official seal.

Signature: Nicole Gubbels



**EXHIBIT A  
INITIAL PROPERTY**

The following Units and Common Elements/Common Area within that certain real property situated in the County of Douglas, State of Nevada, described as follows:

Final SUBDIVISION MAP LDA 15-020 ESPLANADE AT THE RANCH, recorded in the office of the Douglas County Recorder, State of Nevada on November 7, 2017 as Document No. 2017-906665, Official Records.

**Building 6:**

6A: APN: 1320-33-220-001 (1256 Conch Trail Unit 1)  
6B: APN: 1320-33-220-002 (1256 Concho Trail Unit 2)  
6C: APN: 1320-33-220-003 (1256 Concho Trail Unit 3)  
Common Area APN: 1320-33-220-000

**Building 13:**

13A: APN: 1320-33-227-001 (1243 Cinch Trail Unit 1)  
13B: APN: 1320-33-227-002 (1243 Cinch Trail Unit 2)  
13C: APN: 1320-33-227-003 (1243 Cinch Trail Unit 3)  
Common Area APN: 1320-33-227-000

**EXHIBIT B  
ANNEXABLE PROPERTY**

The following Units and Common Elements/Common Area within that certain real property situated in the County of Douglas, State of Nevada, described as follows:

Final SUBDIVISION MAP LDA 15-020 ESPLANADE AT THE RANCH, recorded in the office of the Douglas County Recorder, State of Nevada on November 7, 2017 as Document No. 2017-906665, Official Records.

Common Area APN: 1320-33-214-001

**Building 1**

1A: APN: 1320-33-215-001 (1244 Cinch Trail Unit 1)

1B: APN: 1320-33-215-002 (1244 Cinch Trail Unit 2)

1C: APN: 1320-33-215-003 (1244 Cinch Trail Unit 3)

Common Area APN: 1320-33-215-000

**Building 2**

2A: APN: 1320-33-216-001 (1246 Cinch Trail Unit 1)

2B: APN: 1320-33-216-002 (1246 Cinch Trail Unit 2)

2C: APN: 1320-33-216-003 (1246 Cinch Trail Unit 3)

Common Area APN: 1320-33-216-000

**Building 3**

3A: APN: 1320-33-217-001 (1248 Cinch Trail Unit 1)

3B: APN: 1320-33-217-002 (1248 Cinch Trail Unit 2)

3C: APN: 1320-33-217-003 (1248 Cinch Trail Unit 3)

Common Area APN: 1320-33-217-000

**Building 4**

4A: APN: 1320-33-218-001 (1252 Concho Trail Unit 1)

4B: APN: 1320-33-218-002 (1252 Concho Trail Unit 2)

4C: APN: 1320-33-218-003 (1252 Concho Trail Unit 3)

Common Area APN: 1320-33-218-000

**Building 5**

5A: APN: 1320-33-219-001 (1254 Concho Trail Unit 1)

5B: APN: 1320-33-219-002 (1254 Concho Trail Unit 2)

5C: APN: 1320-33-219-003 (1254 Concho Trail Unit 3)

Common Area APN: 1320-33-219-000

**Building 7**

7A: APN: 1320-33-221-001 (1255 Concho Trail Unit 1)

7B: APN: 1320-33-221-002 (1255 Concho Trail Unit 2)  
7C: APN: 1320-33-221-003 (1255 Concho Trail Unit 3)  
Common Area APN: 1320-33-221-000

Building 8

8A: APN: 1320-33-222-001 (1253 Concho Trail Unit 1)  
8B: APN: 1320-33-222-002 (1253 Concho Trail Unit 2)  
8C: APN: 1320-33-222-003 (1253 Concho Trail Unit 3)  
Common Area APN: 1320-33-222-000

Building 9

9A: APN: 1320-33-223-001 (1251 Concho Trail Unit 1)  
9B: APN: 1320-33-223-002 (1251 Concho Trail Unit 2)  
9C: APN: 1320-33-223-003 (1251 Concho Trail Unit 3)  
Common Area APN: 1320-33-223-000

Building 10

10A: APN: 1320-33-224-001 (1249 Concho Trail Unit 1)  
10B: APN: 1320-33-224-002 (1249 Concho Trail Unit 2)  
10C: APN: 1320-33-224-003 (1249 Concho Trail Unit 3)  
Common Area APN: 1320-33-224-000

Building 11

11A: APN: 1320-33-225-001 (1247 Concho Trail Unit 1)  
11B: APN: 1320-33-225-002 (1247 Concho Trail Unit 2)  
11C: APN: 1320-33-225-003 (1247 Concho Trail Unit 3)  
Common Area APN: 1320-33-225-000

Building 12

12A: APN: 1320-33-226-001 (1245 Concho Trail Unit 1)  
12B: APN: 1320-33-226-002 (1245 Concho Trail Unit 2)  
12C: APN: 1320-33-226-003 (1245 Concho Trail Unit 3)  
Common Area APN: 1320-33-226-000

Building 14

14A: APN: 1320-33-228-001 (1247 Cinch Trail Unit 1)  
14B: APN: 1320-33-228-002 (1247 Cinch Trail Unit 2)  
Common Area APN: 1320-33-228-000

**EXHIBIT C  
LIGHTING PLAN**



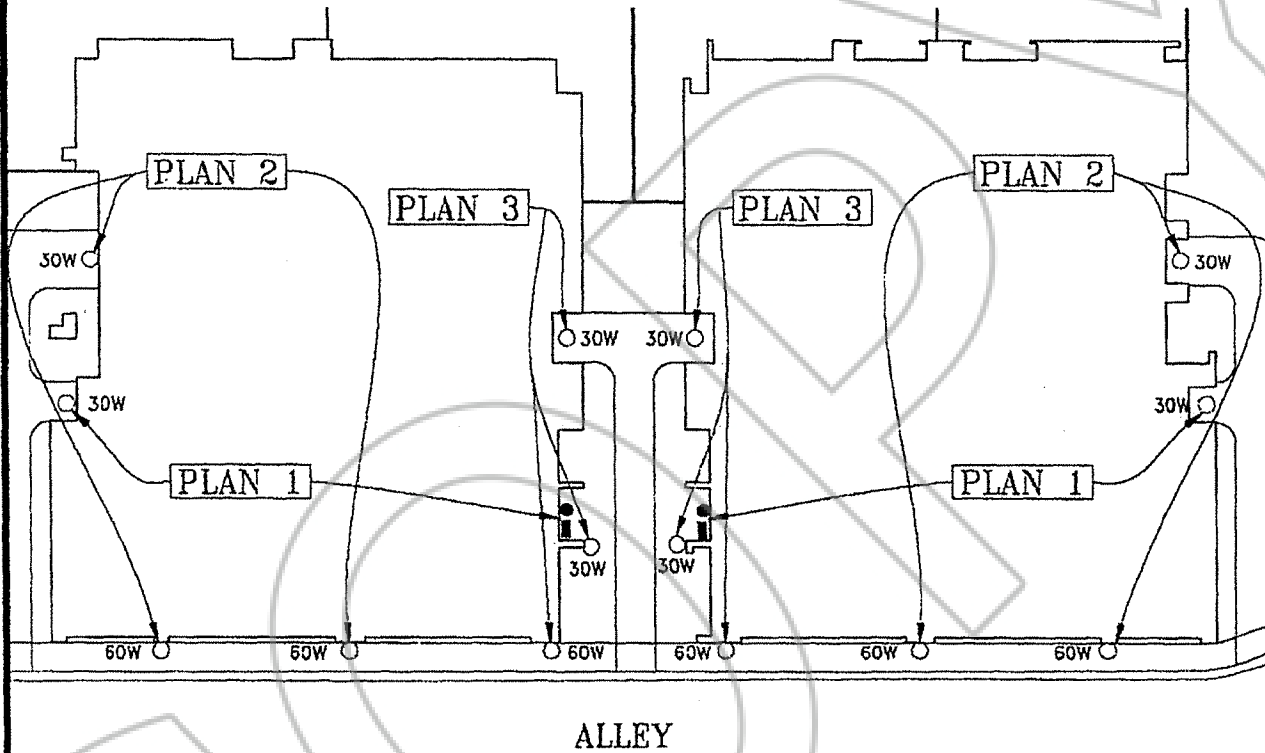
EXTERIOR BUILDING LIGHTING & POWER PROVIDED BY RESIDENCE OWNERS

# THE ESPLANADE AT DAMONTE RANCH 24C EXHIBIT C

RENO

NEVADA

AUGUST, 2015



## NOTES:

1. 30W - 30 WATT FLUORESCENT LIGHT ESTIMATED TO COST APPROXIMATELY \$0.95/MONTH EACH.
2. 60W - 60 WATT METAL HALIDE LIGHT ESTIMATED TO COST APPROXIMATELY \$1.91/MONTH EACH.
3. LIGHTS ARE ON A PHOTOCELL AND WILL BE ON DURING DARK HOURS.
4. SATELLITE CONTROLLER POWER ESTIMATED TO COST APPROXIMATELY \$0.66/MONTH.
5. IRRIGATION CONTROLLER, WHEN PRESENT, ESTIMATED TO COST APPROXIMATELY \$0.50/MONTH.
6. ESTIMATED COSTS BASED ON OCTOBER 2015 NV ENERGY RATE OF \$0.08113/KILOWATT-HR.

## LEGEND:

- SATELLITE SWITCH
- POTENTIAL IRRIGATION CONTROLLER



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Reno, NV 89511 Fax 775.823.4055

J:\Jobs\1332-Damonte Ranch\_V24C\Civil\Exhibits\Exh\_RES\_LIGHTING\_2015.dwg 8/31/2015 4:10 PM Megan Sulezich