

**NORTHERN TERRACE  
SUPPLEMENTAL DECLARATION OF CC&RS  
END PAGE**

**Receipt/Conformed Copy**

Requestor:

CHICAGO TITLE

10/30/2006 13:56:05 T20060191992

Book/Instr: 20061030-0004254

Restrictio Page Count: 100

Fees: \$113.00 N/C Fee: \$0.00

**Charles Harvey  
Clark County Recorder**

**When Recorded, Return To:**

**WILBUR M. ROADHOUSE, ESQ.  
4760 South Pecos Road, Suite 203  
Las Vegas, Nevada 89121  
(702) 966-6388**

(N:\wml\MH.1111.CCRS.04.wpd)

**APN: 126-13-113-041**

**WHEN RECORDED, RETURN TO:**

**WILBUR M. ROADHOUSE, ESQ.**  
4760 South Pecos Road, Suite 203  
Las Vegas, Nevada 89121  
(702) 966-6388

---

*(Space Above Line for Recorder's Use Only)*

**SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
NORTHERN TERRACE**

*(a Nevada Residential Common-Interest Planned Community)*  
**CITY OF LAS VEGAS, CLARK COUNTY, NEVADA**

## TABLE OF CONTENTS

	Page
ARTICLE 1 - DEFINITIONS .....	3
ARTICLE 2 - OWNERS' PROPERTY RIGHTS .....	10
Section 2.1 Ownership of Unit; Owners' Easements of Enjoyment .....	10
Section 2.2 Easements for Parking .....	12
Section 2.3 Easements for Vehicular and Pedestrian Traffic over Neighborhood Private Streets .....	12
Section 2.4 Easement Right of Declarant Incident to Construction and/or Marketing and/or Sales Activities .....	12
Section 2.5 Easements for Public Service Use .....	13
Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes .....	13
Section 2.7 Additional Reservation of Easements .....	14
Section 2.8 Waiver of Use .....	14
Section 2.9 Easement Data .....	15
Section 2.10 Owners' Right of Ingress and Egress .....	15
Section 2.11 No Transfer of Interest in Common Elements .....	15
Section 2.12 Ownership of Common Elements .....	15
Section 2.13 Taxes .....	15
Section 2.14 Alteration of Units .....	15
ARTICLE 3 - NORTHERN TERRACE HOMEOWNERS ASSOCIATION .....	15
Section 3.1 Organization of Association .....	15
Section 3.2 Duties, Powers and Rights .....	15
Section 3.3 Membership .....	16
Section 3.4 Transfer of Membership .....	16
Section 3.5 Articles and Bylaws .....	16
Section 3.6 Board of Directors .....	17
Section 3.7 Declarant's Control of the Board .....	18
Section 3.8 Control of Board by Owners .....	18
Section 3.9 Election of Directors .....	18
Section 3.10 Board Meetings .....	19
Section 3.11 Special Meetings and Removal Elections .....	20
Section 3.12 Attendance by Owners at Board Meetings; Executive Sessions .....	20
Section 3.13 Master Association Documents .....	21
ARTICLE 4 - VOTING RIGHTS .....	21
Section 4.1 Owners' Voting Rights .....	21
Section 4.2 Transfer of Voting Rights .....	21
Section 4.3 Meetings of the Membership .....	22
Section 4.4 Meeting Notices; Agendas; Minutes .....	22
Section 4.5 Record Date .....	23
Section 4.6 Proxies .....	23
Section 4.7 Quorums .....	23
Section 4.8 Actions .....	24
Section 4.9 Action by Meeting, and Written Approval of Absentee Owners .....	24
Section 4.10 Action By Written Consent, Without Meeting .....	24
Section 4.11 Adjourned Meetings and Notice Thereof .....	25
Section 4.12 Membership in Master Association .....	25

ARTICLE 5 - FUNCTIONS OF ASSOCIATION .....	25
Section 5.1 Powers and Duties .....	25
Section 5.2 Rules and Regulations .....	28
Section 5.3 Proceedings .....	29
Section 5.4 Additional Express Limitations on Powers of Association .....	33
Section 5.5 Community Manager .....	33
Section 5.6 Inspection of Books and Records .....	35
Section 5.7 Continuing Rights of Declarant .....	35
Section 5.8 Compliance with Applicable Laws .....	35
ARTICLE 6 - COVENANT FOR ASSESSMENTS .....	36
Section 6.1 Personal Obligation of Assessments .....	36
Section 6.2 Association Funds .....	36
Section 6.3 Reserve Fund; Reserve Studies .....	36
Section 6.4 Budget; Reserve Budget .....	38
Section 6.5 Limitations on Annual Assessment Increases .....	39
Section 6.6 Capital Contributions to Association .....	39
Section 6.7 Assessment Commencement Date .....	40
Section 6.8 Application of Payments .....	40
Section 6.9 Capital Assessments .....	40
Section 6.10 Uniform Rate of Assessment .....	40
Section 6.11 Exempt Property .....	41
Section 6.12 Special Assessments .....	41
Section 6.13 Subsidies and/or Advances by Declarant .....	41
Section 6.14 Master Association Assessments, Capital Contributions, and Transfer Fees .....	41
ARTICLE 7 - EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION .....	42
Section 7.1 Nonpayment of Assessments .....	42
Section 7.2 Notice of Delinquent Installment .....	42
Section 7.3 Notice of Default and Election to Sell .....	42
Section 7.4 Foreclosure Sale .....	43
Section 7.5 Limitation on Foreclosure .....	43
Section 7.6 Cure of Default .....	43
Section 7.7 Cumulative Remedies .....	43
Section 7.8 Mortgagee Protection .....	43
Section 7.9 Priority of Assessment Lien .....	44
ARTICLE 8 - ARCHITECTURAL AND LANDSCAPING CONTROL .....	44
Section 8.1 ARC .....	44
Section 8.2 Review of Plans and Specifications .....	44
Section 8.3 Homeowner Bond/Deposit .....	46
Section 8.4 Meetings of the ARC .....	47
Section 8.5 No Waiver of Future Approvals .....	47
Section 8.6 Compensation of Members .....	47
Section 8.7 Correction by Owner of Nonconforming Items; Commencement and Completion of Work .....	47
Section 8.8 Scope of Review .....	48
Section 8.9 Variances .....	48

Section 8.10	Non-Liability for Approval of Plans	48
Section 8.11	Declarant Exemption	49
Section 8.12	Master Association Design Review Committee	49
<b>ARTICLE 9 - MAINTENANCE AND REPAIR OBLIGATIONS</b>		<b>49</b>
Section 9.1	Maintenance Obligations of Owners	49
Section 9.2	Maintenance and Repair Responsibilities of Association	50
Section 9.3	Damage by Owners to Common Elements	50
Section 9.4	Damage and Destruction Affecting Dwellings and Duty to Rebuild	50
Section 9.5	Party Walls	50
Section 9.6	Perimeter Walls	51
Section 9.7	Installed Landscaping	51
Section 9.8	Maintenance of Security Lighting	52
Section 9.9	Modification of Improvements	53
Section 9.10	Maintenance of Common Recreational Area	53
Section 9.11	Compliance by Owners with EPA and other Requirements	53
<b>ARTICLE 10 - USE RESTRICTIONS</b>		<b>53</b>
Section 10.1	Single Family Residence	54
Section 10.2	No Further Subdivision	54
Section 10.3	Insurance Rates	54
Section 10.4	Animal Restrictions	54
Section 10.5	Nuisances	55
Section 10.6	Exterior Maintenance and Repair; Owner's Obligations	56
Section 10.7	Drainage	56
Section 10.8	Water Supply and Sewer Systems	56
Section 10.9	No Hazardous Activities	56
Section 10.10	No Unsightly Articles	57
Section 10.11	No Temporary Structures	57
Section 10.12	No Drilling	57
Section 10.13	Alterations	57
Section 10.14	Signs	57
Section 10.15	Improvements	58
Section 10.16	Antennas and Satellite Dishes	58
Section 10.17	Landscaping	59
Section 10.18	Prohibited Plant Types	60
Section 10.19	Parking and Vehicular Restrictions	60
Section 10.20	Sight Visibility Restriction Areas	61
Section 10.21	Prohibited Direct Access	61
Section 10.22	No Waiver	61
Section 10.23	Declarant Exemption	61
Section 10.24	Master Association Documents	61
<b>ARTICLE 11 - DAMAGE TO OR CONDEMNATION OF COMMON ELEMENTS</b>		<b>61</b>
Section 11.1	Damage or Destruction	61
Section 11.2	Eminent Domain	62
Section 11.3	Condemnation Involving a Unit	62
<b>ARTICLE 12 - INSURANCE</b>		<b>63</b>
Section 12.1	Casualty Insurance	63
Section 12.2	Liability and Other Insurance	63

Section 12.3	Fidelity Insurance .....	64
Section 12.4	Other Insurance Provisions .....	64
Section 12.5	Insurance Obligations of Owners .....	64
Section 12.6	Waiver of Subrogation .....	65
Section 12.7	Notice of Expiration Requirements .....	65
ARTICLE 13 - MORTGAGEE PROTECTION CLAUSE .....		65
ARTICLE 14 - DECLARANT'S RESERVED RIGHTS .....		68
Section 14.1	Declarant's Reserved Rights .....	68
Section 14.2	Exemption of Declarant .....	69
Section 14.3	Limitations on Amendments .....	70
Section 14.4	Master Declaration .....	70
Section 14.5	Subject to Developmental Declaration and Master Declaration .....	71
ARTICLE 15 - ANNEXATION .....		71
Section 15.1	Annexation .....	71
Section 15.2	Annexation Amendment .....	71
Section 15.3	FHA/VA Approval .....	72
Section 15.4	Disclaimers Regarding Annexation .....	72
Section 15.5	Expansion of Annexable Area .....	72
Section 15.6	Contraction of Annexable Area; Withdrawal of Real Property .....	72
ARTICLE 16 - ADDITIONAL DISCLOSURES, DISCLAIMERS, AND RELEASES .....		72
Section 16.1	Disclosures, Disclaimers and Releases Pertaining to Common Recreational Area .....	72
Section 16.2	Additional Disclosures, Disclaimers, and Releases of Certain Matters	73
Section 16.3	Releases .....	79
ARTICLE 17 - ADDITIONAL PROVISIONS .....		79
Section 17.1	Enforcement .....	79
Section 17.2	Severability .....	81
Section 17.3	Term .....	81
Section 17.4	Interpretation .....	81
Section 17.5	Amendment .....	81
Section 17.6	Notice of Change to Governing Documents .....	83
Section 17.7	No Public Right or Dedication .....	83
Section 17.8	Constructive Notice and Acceptance .....	83
Section 17.9	Notices .....	84
Section 17.10	Priorities and Inconsistencies .....	84
Section 17.11	Limited Liability .....	84
Section 17.12	Indemnity .....	84
Section 17.13	Business of Declarant .....	85
Section 17.14	Compliance With NRS Chapter 116 .....	85
Section 17.15	Declarant's Right to Repair .....	85
ARTICLE 18 - ADDITIONAL PROVISIONS PERTAINING TO NEIGHBORHOODS .....		86
Section 18.1	Designation of Neighborhoods and Neighborhood Common Areas ..	86
Section 18.2	Neighborhood Common Areas .....	87
Section 18.3	Designation of Neighborhood Common Areas .....	87
Section 18.4	Use of Neighborhood Common Area .....	87

Section 18.5	Maintenance, Repair, and Replacement of Neighborhood Common Area .....	87
Section 18.6	Allocation and Budgeting of Neighborhood Expenses .....	88

#### ARTICLE 19 - ADDITIONAL PROVISIONS PERTAINING TO NEIGHBORHOOD

	PRIVATE STREETS .....	88
Section 19.1	Neighborhood Private Streets .....	88
Section 19.2	Neighborhood Easement .....	88
Section 19.3	Easements for Parking on Neighborhood Private Streets .....	88
Section 19.4	Easements for Vehicular and Pedestrian Traffic .....	88

#### ARTICLE 20 - MASTER DECLARATION; MASTER ASSOCIATION DOCUMENTS .....

Section 20.1	Master Declaration .....	89
Section 20.2	Master Association .....	89
Section 20.3	Protection of Master Declarant and Master Association .....	89

#### EXHIBIT "A" ORIGINAL PROPERTY

#### EXHIBIT "B" ANNEXABLE AREA

**SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
NORTHERN TERRACE**

**THIS SUPPLEMENTAL DECLARATION** ("Declaration"), made as of the 30<sup>th</sup> day of October, 2006, by MERITAGE HOMES OF NEVADA, INC., an Arizona corporation, doing business as MERITAGE HOMES (formerly known as MTH-HOMES NEVADA, INC.) ("Declarant");

**WITNESSETH:**

**WHEREAS:**

A. LO LAND ASSETS, LP, a Delaware limited partnership ("LLA") (formerly known as LM CLIFF'S EDGE, LLC, a Delaware limited liability company), owns certain real property located in the City of Las Vegas, Clark County, Nevada, as further described herein ("Option Properties"); and

B. Declarant has the right to acquire from LLA the Option Properties, and/or portions thereof from time to time, pursuant to that certain Option Agreement, dated as of October 17, 2003 (as amended from time to time, the "Option Agreement"), by and between LLA, as optionor, and Declarant, as optionee, as evidenced in part by those certain instruments respectively Recorded in Book 20031017 as Instrument No. 1004, and Book 20040123 as Instrument No. 2259, in the Office of the County Recorder of Clark County, Nevada; and

C. Certain provisions for the protection and benefit of LLA are set forth in a separately Recorded Collateral Assignment of Declarant's and Developer's Rights related to the Option Agreement ("Collateral Assignment"); and

D. Subject to the Option Agreement, Declarant intends to acquire the Option Properties from LLA, and/or portions thereof from time to time, and, subject further to this Declaration, to subdivide, create, develop, construct, market and sell respectively thereon a single family detached residential common-interest planned community, to be known generally as "NORTHERN TERRACE"; and

E. A portion of the Option Properties, as more particularly described in Exhibit "A" attached hereto, shall constitute the property initially covered by this Declaration ("Original Property"); and

F. Subject to the Option Agreement, Declarant has the right to acquire from LLA the Option Properties, or portions thereof from time to time, and, subject further to this Declaration, Declarant further reserves the right to add to the Original Property and the Community, all or any portions from time to time of the remainder of the Option Properties, as from time to time described more particularly in Exhibit "B" hereto (collectively, the "Annexable Area"), up to an aggregate maximum total not to exceed one thousand one hundred twenty (1,120) aggregate Units ("Units That May Be Created"). The number of Units That May Be Created shall not be increased above 1,120 Units without Master Declarant's written consent; and

G. The Original Property and, following annexation from time to time, in Declarant's sole discretion, any and all Annexed Property, shall comprise the "Properties"; and



H. Declarant intends that, upon Recordation of this Declaration, the Properties shall be a Nevada Common-Interest Community, and a Planned Community, as respectively defined in NRS § 116.021 and § 116.075, created pursuant to NRS § 116.2101; and

I. The name of the Community shall be NORTHERN TERRACE, and the name of the Nevada nonprofit corporation organized as the homeowners association in connection therewith shall be NORTHERN TERRACE HOMEOWNERS ASSOCIATION ("Association"); and

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

K. In addition to this Declaration, the Properties are subject to the Recorded Amended & Restated Master Declaration for PROVIDENCE ("Master Declaration") as said Master Declaration from time to time may be amended and/or restated; and

L. The Master Declaration provides that Supplemental Declarations may be recorded which cover Neighborhoods within the Master Community (as such terms are defined in the Master Declaration), and that Neighborhood Associations may be established for the purpose of managing and administering said Neighborhoods; and

M. Declarant desires that the Properties be subject to further covenants, conditions and restrictions and reservations of easements, in addition to those set forth in the Master Declaration (taking into account certain unique aspects of the Properties), and that the Association be established (as a Neighborhood Association under the Master Declaration) for the purpose of assessing, managing and administering NORTHERN TERRACE; and

N. Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Properties pursuant to the provisions of this Declaration, to organize the Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements (as defined herein), administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created. Declarant will cause, or has caused, the Association to be formed for the purpose of exercising such functions;

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

## **ARTICLE 1 DEFINITIONS**

Section 1.1 "Act" (sometimes referred to as "NRS Chapter 116") shall mean Nevada's Uniform Common Interest Ownership Act, set forth in Chapter 116 of Nevada Revised Statutes, as the same may be amended from time to time. Except as otherwise indicated, capitalized terms herein shall have the same meanings ascribed to such terms in the Act.

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

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

Section 1.4 "Annexation Amendment" shall mean an annexation amendment as set forth in Section 15.2 hereof.

Section 1.5 "Annexed Property" shall mean any and all portion(s) of the Annexable Area from time to time added to the Properties covered by this Declaration, by Recordation of Annexation Amendment(s) pursuant to Article 15 hereof.

Section 1.6 "ARC" shall mean the Architectural Review Committee created pursuant to Article 8 hereof.

Section 1.7 "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the Office of the Nevada Secretary of State, as such Articles may be amended from time to time.

Section 1.8 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments and/or Special Assessments (and, if applicable, Neighborhood Assessments with regard to a particular Neighborhood or Neighborhoods).

Section 1.9 "Assessment, Annual" shall mean the annual or supplemental charge against each Owner and his or her Unit, representing a portion of the Common Expenses, which are to be paid in equal periodic (monthly or quarterly, as determined from time to time by the Board) installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner, and at the times, and proportions provided herein.

Section 1.10 "Assessment, Capital" shall mean a charge against each Owner and his or her Unit, representing a portion of the costs to the Association for installation, construction or reconstruction of any Improvements on any portion of the Common Elements which the Association

may from time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.11 "Assessment, Special" shall mean a charge against a particular Owner and his or her Unit, directly attributable to or reimbursable by that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or levied by the Board as a reasonable fine or penalty for noncompliance herewith, plus interest and other charges on such Special Assessment as provided for in this Declaration.

Section 1.12 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.13 "Association" shall mean NORTHERN TERRACE HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, and its successors and assigns. The Association shall be a "Neighborhood Association" as such term is defined in the Master Declaration.

Section 1.14 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article 6 hereof.

Section 1.15 "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.16 "Board" or "Board of Directors" shall mean the Board of Directors of the Association, elected or appointed in accordance with the Bylaws and this Declaration. The Board of Directors is an "Executive Board" as defined by NRS § 116.045.

Section 1.17 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared and approved, and ratified pursuant to the provisions of this Declaration.

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

Section 1.19 "City" shall mean the City in which the Properties are located (i.e., City of Las Vegas, Clark County, Nevada).

Section 1.20 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser.

Section 1.21 "Collateral Assignment" shall mean that certain Collateral Assignment of Record in favor of LLA.

Section 1.22 "Common Elements" shall mean all real property or interests therein (including, but not necessarily limited to, those easements over portions of certain Lots, designated on the Plat as pedestrian access corridor easements, landscape easements, drainage easements, and certain other easements) owned or leased by the Association, and includes the Common Recreational Area, entry monumentation, Neighborhood Private Streets (as Neighborhood Common Area or Limited Common Elements with regard to such designated Neighborhood) and public utility easements shown on the Plat, street lights, street signs, curbs and gutters, certain drainage and sewer easements, certain water and power easements, Perimeter Walls, Common Element landscaping, access and ingress/egress easements (including, but not necessarily limited

to, those areas respectively designated "Private Drive and P.U.E.", and any areas designated as "Private Drainage Easement," "Water Easement," "Power Easement," "Sewer Easement," "Access Easement," "Ingress/Egress Easement," and/or other similar easements on the Plat) but otherwise, shall exclude Units. Subject to the Master Association Property of the Master Association, the Common Elements shall constitute Common Elements as to the Properties, as provided in NRS § 116.017.

Section 1.23 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, insurance, management, operation, repair and replacement of Common Elements; painting over or removing graffiti on Perimeter Walls; unpaid Special Assessments and/or Capital Assessments; the costs of any commonly metered utilities, if any, and any other commonly metered charges for the Properties; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to the Community Manager, accountants, attorneys, consultants, and employees; costs of all utilities, gardening, trash pickup and disposal, and other services benefitting the Common Elements; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Association, Common Elements, or Properties, or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, Community Manager, or any other Person handling the funds of the Association; any statutorily required ombudsman fees; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties or deemed prudent and necessary by the Board; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or pursuant to any applicable provision of NRS Chapter 116.

Section 1.24 "Common Recreational Area" shall mean a common recreational area for and located within the Community, and the structure(s) and other Improvements on such area, which all shall be part of the Common Elements, and subject to such Rules and Regulations as may be promulgated by the Board from time to time.

Section 1.25 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.021, and a Planned Community, as defined in NRS §116.075.

Section 1.26 "Community Manager" shall mean the Person, if any, whether an employee or independent contractor, hired as such by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 1.27 "County" shall mean Clark County, Nevada.

Section 1.28 "Declarant" shall mean MERITAGE HOMES OF NEVADA, INC., an Arizona corporation, doing business as MERITAGE HOMES, and its successors and any Person(s) to which it shall have assigned any rights hereunder by express written and Recorded assignment (but specifically excluding Purchasers as defined in NRS §116.079), all as subject to the Developmental Declaration and as subject further to the Collateral Assignment.

Section 1.29 "Declarant Control Period" shall have the meaning set forth in Section 3.7, below.

Section 1.30 "Declaration" shall mean this instrument, as may be amended from time to time, subject to Master Declarant's reasonable prior written approval and subject further to the Master Declaration and the Developmental Declaration, respectively.

Section 1.31 "Deed of Trust" shall mean a Recorded mortgage or a deed of trust, as the case may be.

Section 1.32 "Delegate" shall mean a natural person selected by the Members to represent all of the Members to vote on their behalf regarding matters concerning the Master Association, pursuant to and as provided in the Master Declaration.

Section 1.33 "Developmental Declaration" means each of: (a) that certain Declaration of Development Covenants and Restrictions, between Declarant (and/or Declarant' predecessor(s) in interest) and Master Declarant, Recorded in Book 20031017 as Instrument No. 01005, as amended by Amendment Declaration of Development Covenants and Restrictions, Recorded in Book 20040123 as Instrument No. 02260; (b) that certain Declaration of Special Land Use Restrictions, between Declarant (and/or Declarant' predecessor(s) in interest) and Master Declarant, Recorded in Book 20031017 as Instrument No. 01006; and (c) that certain Declaration of Special Land Use Restrictions, between Declarant (and/or Declarant' predecessor(s) in interest) and Master Declarant, Recorded in Book 20040123 as Instrument No. 02261. Notwithstanding any other provision in this Declaration, all Developmental Rights and Special Declarant Rights, and other rights and powers of Declarant, shall be subject to the Developmental Declaration.

Section 1.34 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.35 "Dwelling" shall mean a residential building located on a Unit designed and intended for use and occupancy as a residence by a single Family, subject to all applicable laws.

Section 1.36 "Eligible Holder" shall mean each Beneficiary, Insurer and/or guarantor of a first Mortgage encumbering a Unit, which has filed with the Board a written request for notification as to relevant matters as specified in this Declaration.

Section 1.37 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable Ordinances.

Section 1.38 "FHA" shall mean the Federal Housing Administration.

Section 1.39 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporations.

Section 1.40 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.41 "FNMA" or "GNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation. "GNMA"

shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.42 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and the Rules and Regulations (and, where applicable or required within the context, the Master Association Documents). Any irreconcilable inconsistency among the Governing Documents shall be governed pursuant to Section 17.10, below.

Section 1.43 "Identifying Number", pursuant to NRS § 116.053, shall mean the number which identifies a Unit on the Plat.

Section 1.44 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, located in the Properties, including but not limited to Dwellings and other structures, walkways (if any), sprinkler pipes, garages, swimming pools, spas and other recreational facilities, Common Recreational Area, carports, Neighborhood Private Streets, roads, driveways, parking areas, hardscape, curbs, gutters, walls, Perimeter Walls, party walls, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hardscape features, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water-softener fixtures or equipment.

Section 1.45 "LLA" shall mean LO LAND ASSETS, LP, a Delaware limited partnership (formerly known as LM CLIFF'S EDGE, LLC, a Delaware limited liability company) and any Person to whom it may expressly assign any or all of its rights under this Declaration by Recorded Instrument.

Section 1.46 "Lot" shall mean the residential real property of any residential lot to be owned separately by an Owner, as shown on the Plat (subject to Common Element easements over Lots as shown on the Plat, including, but not limited to, any Neighborhood Private Street easements). Notwithstanding the foregoing, in the event that certain Lots, shown as such on the Plat, are expressly designated by Declarant, in its sole and absolute discretion, by separate Recorded instrument to constitute Common Elements, pursuant to Declarant's reserved rights as set forth in Article 14 below, then such specifically designated Lots shall not be Lots for purposes of this Declaration and the other Governing Documents, but shall be conclusively deemed a portion of the Common Elements.

Section 1.47 "Master Association" shall mean the PROVIDENCE MASTER HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, and its successors or assigns. The rights and duties of the PROVIDENCE Master Homeowners Association are as set forth in the PROVIDENCE Master Declaration.

Section 1.48 "Master Association Documents" (sometimes "Master Governing Documents") shall mean the PROVIDENCE Master Declaration, the PROVIDENCE Master Homeowners Association Articles of Incorporation and Bylaws, and the PROVIDENCE Master Homeowners Association Rules (if any).

Section 1.49 "Master Association Property" shall mean the common elements, if any, owned by the Master Association. Master Association Property shall be subject to and governed by the Master Association Documents.

Section 1.50 "Master Community" shall mean the PROVIDENCE Master Community, subject to the Master Declaration and other Master Association Documents.

Section 1.51 "Master Declarant" shall mean the declarant under the PROVIDENCE Master Declaration.

Section 1.52 "Master Declaration" shall mean the Amended & Restated Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for PROVIDENCE, Recorded by Master Declarant as Instrument No. 03301 in Book 20040622, as supplemented by relevant Annexation Notice(s) of Record, as all of the same from time to time may be amended and/or restated.

Section 1.53 "Member," "Membership," "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.54 "Mortgage," "Mortgagee," "Mortgagor," "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his or her Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his or her Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor;" and "Beneficiary" shall be synonymous with "Mortgagee." For purposes of this Declaration, "first Mortgage" or "first Deed of Trust" shall mean a Mortgage or Deed of Trust with first priority over other mortgages or deeds of trust on a Unit in the Properties and "first Mortgagee" or "first Beneficiary" shall mean the holder of a first Mortgage or Beneficiary under a first Deed of Trust.

Section 1.55 "Neighborhood" shall have the meaning as set forth in Article 18 below.

Section 1.56 "Neighborhood Assessments" shall have the meaning set forth in Section 18.1, below.

Section 1.57 "Neighborhood Common Area" shall have the meaning set forth in Section 18.1, below.

Section 1.58 "Neighborhood Expenses" shall have the meaning set forth in Section 18.1, below.

Section 1.59 "Neighborhood Private Streets" shall mean all (if any) private streets, rights of way, Neighborhood entry gate(s), street scapes, and vehicular ingress and egress easements, within a designated Neighborhood, shown as such on the Plat therefor, which Neighborhood Private Streets shall be Neighborhood Common Area with regard to such designated Neighborhood and the Lots located therein only, and shall not be general Common Elements as to the entire Community; all as set forth in further detail in Articles 18 and 19 below.

Section 1.60 "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.61 "NRS Chapter 116" shall mean Nevada's Uniform Common-Interest Ownership Act, Chapter 116 of Nevada Revised Statutes, as may be amended from time to time.

Section 1.62 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.63 "Option Agreement" shall have the meaning set forth in Recital B above.

Section 1.64 "Option Property" shall mean the Original Property (for so long as owned by LLA) and the portion of the Annexable Area owned by LLA (for so long as owned by LLA), as more particularly described in Exhibit "B" hereto, which collectively shall initially comprise all of the property subject to and further described in the Option Agreement.

Section 1.65 "Ordinance(s)" shall mean all applicable ordinances, resolutions, and rules of the City, County, State of Nevada, and/or any other local governmental entity or agency with jurisdiction.

Section 1.66 "Original Property" shall mean that real property described on Exhibit "A," attached hereto and incorporated by this reference herein, which shall be the initial real property made subject to this Declaration, immediately upon the Recordation of this Declaration.

Section 1.67 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees. Pursuant to Article 3 hereof, a vendee under an installment land sale contract shall be deemed an "Owner" hereunder, provided the Board has received written notification thereof, executed by both vendor and vendee thereunder.

Section 1.68 "Perimeter Wall(s)" shall mean the walls and/or fences located generally around the exterior boundary of the Properties, all as constructed or to be constructed by or with the approval of Declarant, other than to the extent, if any, such Perimeter Wall(s) may constitute Master Association Property.

Section 1.69 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.70 "Plat" shall mean the final plat maps of NORTHERN TERRACE, as the same from time to time are Recorded, including but not limited to the final maps of: NORTHERN TERRACE AT PROVIDENCE UNIT 1, Recorded in Book 131 of Plats, Page 38; NORTHERN TERRACE AT PROVIDENCE UNIT 2, Recorded in Book 133 of Plats, Page 60; NORTHERN TERRACE AT PROVIDENCE UNIT 3, Recorded in Book 133 of Plats, Page 87; NORTHERN TERRACE AT PROVIDENCE UNIT 4, Recorded in Book 133 of Plats, Page 01; NORTHERN TERRACE AT PROVIDENCE UNIT 5, Recorded in Book 133 of Plats, Page 73; NORTHERN TERRACE AT PROVIDENCE UNIT 6, Recorded in Book 133 of Plats, Page 06; NORTHERN TERRACE AT PROVIDENCE UNIT 7, Recorded in Book 133 of Plats, Page 72; NORTHERN TERRACE AT PROVIDENCE UNIT 8, Recorded in Book 133 of Plats, Page 89; NORTHERN TERRACE AT PROVIDENCE UNIT 9, Recorded in Book 133 of Plats, Page 65; and any other final plat map(s) of the Properties, as all of the same from time to time may be amended or



supplemented of Record by Declarant, together with any map(s) which may, in the future, be Recorded with respect to the Annexable Area.

Section 1.71 "Properties" shall mean all of the Original Property described in Exhibit "A," attached hereto; together with such portions of the Annexable Area, described in Exhibit "B" hereto, as hereafter may be annexed from time to time thereto pursuant to Article 15 of this Declaration.

Section 1.72 "Purchaser" shall have that meaning as provided in NRS § 116.079.

Section 1.73 "Record," "Recorded," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.74 "Resident" shall mean any Owner, tenant, or other person who is physically residing in a Unit.

Section 1.75 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Board pursuant to this Declaration and the Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.76 "Sight Visibility Restriction Areas" shall mean those areas portions of which are or may be located on portions of Common Elements and/or Lots, identified on the Plat as "Sight Visibility Restriction Zones" ("S.R.V.Z."), in which the height of landscaping and other sight restricting Improvements (other than official traffic control devices) shall be limited to the maximum permitted height as may be set forth on the Plat.

Section 1.77 "Unit" shall mean that residential portion of this Community to be separately owned by each Owner (as shown and separately identified as such on the Plat), and shall include a Lot and all Improvements thereon. Subject to the foregoing, and subject to Section 9.5, below, the boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

Section 1.78 "Units That May Be Created" shall mean the total "not to exceed" maximum number of aggregate Units within the Original Property and the Annexable Area (which Declarant has reserved the right, in its sole discretion, to create) (i.e., 1,120 Units), subject to Section 14.1(j) below. The number of Units That May Be Created shall not be increased above 1,120 Units without Master Declarant's written consent.

Section 1.79 "VA" shall mean the United States Department of Veterans Affairs.

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

## **ARTICLE 2**

### **OWNERS' PROPERTY RIGHTS**

Section 2.1 Ownership of Unit; Owners' Easements of Enjoyment. Title to each Unit in the Properties shall be conveyed in fee to an Owner. Ownership of each Unit within the Properties shall include (a) the Unit, (b) one Membership in the Association, and (c) any easements appurtenant to such Unit over the Common Elements as described in this Declaration, the Plat, and/or in the deed to the Unit. Each Owner shall have a non-exclusive right and easement of

ingress and egress and of use and enjoyment in, to and over the Common Elements, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject to the following:

(a) the right of the Association to reasonably limit the number of guests and tenants an Owner or his or her tenant may authorize to use the Common Elements;

(b) the right of the Association to establish uniform Rules and Regulations regarding use, maintenance and/or upkeep of the Common Elements and to amend same from time to time (such Rules and Regulations may be amended upon a majority vote of the Board), provided that such Rules and Regulations shall not irreconcilably conflict with this Declaration or the other Governing Documents;

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

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

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

(f) the other easements, and rights and reservations of Declarant as set forth in this Article 2, in Article 14 and elsewhere in this Declaration;

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Elements in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and if not materially in accordance with such original design, finish or standard of construction only with the vote or written consent of Owners holding seventy-five percent (75%) of the voting power of the Association, and the vote or written consent of a majority of the voting power of the Board, and the approval of a majority of the Eligible Holders;

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

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

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

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

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

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

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

(o) the easements reserved in Sections 2.2 through 2.7, inclusive, Article 15, Article 17, and/or any other provision of this Declaration; and

(p) the rights of any other easement holders.

**Section 2.2 Easements for Parking.** Subject to the parking and vehicular restrictions set forth in Article 10, below and other portions of this Declaration, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, and to establish Rules and Regulations governing such matters, as well as to reasonably enforce such parking rules and limitations by all means which would be lawful for such enforcement on public streets, including the removal of any violating vehicle, by those so empowered, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

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

**Section 2.4 Easement Right of Declarant Incident to Construction and/or Marketing and/or Sales Activities.** An easement is hereby reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors,

sales representatives, prospective purchasers of Units, guests and other invitees, for access, ingress, and egress over, in, upon, under, and across the Properties, including Common Elements, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, advertising, marketing and/or sales related to the Properties, or any portions thereof, or any other project of Declarant; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his or her Family, guests, or invitees, to or of that Owner's Lot, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 14.1(a) below. Without limiting the generality of the foregoing, until such time as the Close of Escrow of the last Unit in the Properties, Declarant reserves the right to control entry gate(s) to any relevant gated Neighborhood, and neither the Association nor any one or more of the Owners in such Neighborhood(s) shall at any time, without the prior written approval of Declarant in its discretion, cause any entry gate in such Neighborhood(s) to be closed during regular marketing, sales, and/or construction hours (including weekend and/or holiday sales or construction hours) of Declarant, or shall in any other way impede, hinder, obstruct, or interfere with Declarant's marketing, sales and/or construction activities.

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

**Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes.** In addition to the foregoing easements, there shall be and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements reasonably upon, over and across Common Elements and portion of Units, for installation, maintenance, repair and/or replacement of public and private utilities, electric power, telephone, cable television, water, sewer, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district, of ingress or egress over the Properties, including portions of Lots, for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Properties). There is hereby created a blanket easement in favor of Declarant and the Association upon, across, over, and under all Units and the Common Elements, for the installation, replacement, repair, and maintenance of utilities (including, but not limited to, water, sewer, gas, telephone, electricity, "smart" data cabling, if any, and master and cable television systems, if any), provided that said easement shall not extend beyond, across, over, or under any structure located on any Unit. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances in the Properties and to install, repair, and maintain water, sewer and gas pipes, electric, telephone and television wires, circuits, conduits and meters. Notwithstanding anything to the contrary contained in this Section, no sewer, electric, water or gas lines or other utilities or service lines may be installed or relocated within the Properties until the Close of Escrow of the last Unit in the Properties, except as approved by Declarant. This easement shall in no way affect any other Recorded easements in the Properties. There is also hereby reserved to Declarant during such period the non-exclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant in connection with the orderly development of any property in the Properties. Any damage to a Unit resulting from the exercise of the easements described in this

Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the occupancy or use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant thereof. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Lots, for the control, installation, use, inspection, maintenance, repair and replacement of water and/or sewage lines and components and/or systems and related devices for watering or irrigation of any landscaping on, and/or sewage disposal or drainage from or related to, Common Elements. In the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

**Section 2.7 Additional Reservation of Easements.** Declarant hereby expressly reserves for the benefit of each Owner and his or her Unit, reciprocal, non-exclusive easements over the adjoining Unit(s) for the support, control, maintenance and repair of the Owner's Unit and the utilities serving such Unit. Declarant further expressly reserves, for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, non-exclusive easements over all Units and the Common Elements, for the control, installation, maintenance and repair of utility services and drainage facilities serving any portion of the Properties, (which may be located on portions of Lots, pursuant to the Plat), for drainage of water resulting from the normal use thereof or of neighboring Units and/or Common Elements, for the use, maintenance, repair and replacement of Neighborhood Private Streets and/or Perimeter Walls (subject to Section 9.6 below), and for any required customer service work and/or maintenance and repair of any Dwelling or other Improvement, wherever located in the Properties, and for compliance with Sight Visibility Restriction Area maximum permitted height requirements. In the event that any utility or third Person exceeds the scope of any easement pertaining to the Properties, and thereby causes bodily injury or damage to property, the injured or affected Owner or Resident shall pursue any and all resultant claims against the offending utility or third Person, and not against Declarant or the Association. In the event of any minor encroachment upon the Common Elements or Unit(s), as a result of initial construction or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist so long as the minor encroachment exists. Declarant, and each Owner of a Unit, on which there is constructed an Improvement along or adjacent to the property line, shall have an easement appurtenant to such property, over such property line, to and over the adjacent Unit and/or adjacent Common Elements, for the purposes of accommodating any natural movement or settling of such Improvement, any encroachment of such Improvement due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, patio walls and architectural features comprising parts of the original construction of such Improvement. Declarant further reserves (a) a non-exclusive easement on and/or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit of Declarant and its agents and/or contractors, for any inspections and/or required warranty repairs, and (b) a non-exclusive easement on and/or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit (but not the obligation) of Declarant, the Association, and their respective agents, contractors, and/or any other authorized party, for the maintenance and/or repair of any and all landscaping and/or other improvements located on the Common Elements and/or Units.

**Section 2.8 Waiver of Use.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of

the Common Elements or any Improvement thereon, or by abandonment of his or her Unit or any other property in the Properties.

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

Section 2.10 Owners' Right of Ingress and Egress. Each Owner within a relevant Neighborhood shall have an unrestricted right of ingress and egress to his or her Unit reasonably over and across the applicable Neighborhood Private Streets, which right shall be appurtenant to the Unit, and shall pass with any transfer of title to the Unit.

Section 2.11 No Transfer of Interest in Common Elements. No Owner shall be entitled to sell, lease, encumber, or otherwise convey (whether voluntarily or involuntarily) his or her interest in any of the Common Elements, or in any part of the component interests which comprise his or her Unit, except in conjunction with conveyance of his or her Unit. No transfer of Common Elements, or any interest therein, shall deprive any Unit of its rights of access. Any attempted or purported transaction in violation of this provision shall be void and of no effect.

Section 2.12 Ownership of Common Elements. The Association shall own the Common Elements. Except as otherwise limited in this Declaration, each Owner shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his or her Unit as a place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Unit.

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

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

### **ARTICLE 3**

#### **NORTHERN TERRACE HOMEOWNERS ASSOCIATION**

Section 3.1 Organization of Association. The Association is or shall be, by not later than the date on which the first Unit is conveyed to a Purchaser, incorporated under the name of NORTHERN TERRACE HOMEOWNERS ASSOCIATION, or similar name, as a non-profit corporation under NRS Chapter 82. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents and in compliance with applicable Nevada law.

Section 3.2 Duties, Powers and Rights. Duties, powers and rights of the Association are those set forth in this Declaration, the Articles and Bylaws, together with its general and implied

powers as a non-profit corporation, generally to do any and all things that a corporation organized under the laws of the State of Nevada may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, including any applicable powers set forth in NRS §116.3102, subject to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents, or in any applicable provision of NRS Chapter 116. The Association shall make available for inspection at its office by any prospective purchaser of a Unit, any Owner, and any Eligible Holders, during regular business hours and upon reasonable advance notice, current copies of the Governing Documents, and all other books, records, and financial statements of the Association. Notwithstanding the foregoing, or any other provision in this Declaration, the rights, powers, and duties of the Association shall in all instances be subject to and/or limited by the Master Association Documents, to the maximum extent not prohibited by applicable law.

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

**Section 3.4 Transfer of Membership.** The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. An Owner who has sold his or her Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and Assessments attributable to his or her Unit until fee title to the Unit sold is transferred. If any Owner should fail or refuse to transfer his or her Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the purchaser shall have a valid proxy from the seller of said Unit, pursuant to Section 4.6, below. The Association may levy a reasonable transfer fee against a new Owner and his or her Unit (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association. The new Owner shall, if requested by the Board or Community Manager, timely attend an orientation to the Community and the Properties, conducted by an Association Officer or Community Manager, and will be required to pay any costs necessary to obtain entry gate keys and/or remote controls (if applicable), if not obtained from the prior Owner at Close of Escrow.

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

- (a) the number of Directors (subject to Section 3.6, below) and the titles of the Officers;
- (b) for election by the Board of an Association president, treasurer, secretary and any other Officers specified by the Bylaws;
- (c) the qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and filling vacancies;
- (d) which, if any, respective powers the Board or Officers may delegate to other Persons or to a Community Manager;
- (e) which of the Officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association;
- (f) procedural rules for conducting meetings of the Association; and
- (g) a method for amending the Bylaws.

**Section 3.6 Board of Directors.**

(a) The affairs of the Association shall be managed by a Board of not less than three (3), nor more than seven (7) Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board, which shall initially consist of three (3) Directors. The number of Directors may be increased to five (5) or seven (7) by Declarant (during the Declarant Control Period), or by resolution of the Board, and otherwise may be changed by amendment of the Bylaws, provided that there shall not be less than any minimum number of Directors nor more than any maximum number of Directors from time to time required by applicable Nevada law. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, any Director, other than a Director appointed by the Declarant, may be removed pursuant to Section 3.11 below. If a Director is sued for liability for actions undertaken in his or her role as a Director, the Association shall indemnify him or her for his or her losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is not a record Owner, he or she



shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his or her successor.

(b) The term of office of a Director shall not exceed two (2) years. A Director may be elected to succeed himself or herself. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held in the same month as the Annual Meeting, as set forth in Section 4.3 below.

(c) A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.

**Section 3.7 Declarant's Control of the Board.** During the period of Declarant's control ("Declarant Control Period"), as set forth below, Declarant at any time, with or without cause, may remove or replace any Director appointed by Declarant. Directors appointed by Declarant need not be Owners. Declarant shall have the right to appoint and remove the Directors, subject to the following limitations:

(a) Not later than sixty (60) days after conveyance from Declarant to Purchasers of twenty-five percent (25%) of the Units That May Be Created, at least one Director and not less than twenty-five percent (25%) of the total Directors must be elected by Owners other than Declarant.

(b) Not later than sixty (60) days after conveyance from Declarant to Purchasers of fifty percent (50%) of the Units That May Be Created, not less than one-third of the total Directors must be elected by Owners other than Declarant.

(c) The Declarant Control Period shall terminate on the earliest of: (i) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Units That May Be Created; (ii) five (5) years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (iii) five (5) years after any right to annex any portion of the Annexable Area was last exercised pursuant to Article 15 hereof.

**Section 3.8 Control of Board by Owners.** Subject to and following the Declarant Control Period: (a) the Owners shall elect a Board of at least three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, within thirty (30) days of his or her appointment or election, certify in writing that he or she is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The Board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and Directors. The Owners, may remove any Director(s) with or without cause, pursuant to Section 3.11 below; provided, however, that any Director(s) appointed by Declarant may only be removed by Declarant.

**Section 3.9 Election of Directors.** The following portion of this Section 3.9 shall be subject to and following Declarant's control, as set forth in Section 3.7, above. Not less than thirty (30) days before the preparation of a ballot for the election of Directors, which shall normally be conducted at an Annual Meeting, the Association Secretary or other designated Officer shall cause

notice to be given to each Owner of his or her eligibility to serve as a Director. Each Owner who is qualified to serve as a Director may have his or her name placed on the ballot along with the names of the nominees selected by the Board or a nominating committee established by the Board. Each candidate must disclose whether or not he or she is a Member in good standing (i.e., with no unpaid or past due assessments or construction penalties required to be paid to the Association). The Association Secretary or other designated Officer shall cause to be sent prepaid by United States mail to the mailing address of each Unit within the Community or to any other mailing address designated in writing by the Unit Owner, a secret ballot and a return envelope. Election of Directors must be conducted by secret written ballot, for so long as so required by applicable Nevada law, with the vote publicly counted (which counting may be done as the meeting agenda progresses).

#### Section 3.10 Board Meetings.

(a) A Board meeting must be held at least once every 90 days. Except in an emergency, the Secretary or other designated Officer shall, not less than 10 days before the date of a Board meeting, cause notice of the meeting to be given to the Owners. Such notice must be: (1) sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner; or (2) published in a newsletter or other similar publication circulated to each Owner. In an emergency, the Secretary or other designated Officer shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Unit. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each Unit within the Community or posted in a prominent place or places within the Common Elements.

(b) As used in this Section 3.10, "emergency" means any occurrence or combination of occurrences that: (1) could not have been reasonably foreseen; (2) affects the health, welfare and safety of the Owners or Residents; (3) requires the immediate attention of, and possible action by, the Board; and (4) makes it impracticable to comply with regular notice and/or agenda provisions.

(c) The notice of the Board meeting must state the time and place of the meeting and include a copy of the agenda for the meeting (or the date on which and the locations where copies of the agenda may be conveniently obtained by Owners). The notice must include notification of the right of an Owner to: (1) have a copy of the minutes or a summary of the minutes of the meeting distributed to him or her upon request (and, if required by the Board, upon payment to the Association of the cost of making the distribution), and (2) speak to the Association or Board, unless the Board is meeting in Executive Session.

(d) The agenda of the Board meeting must comply with the provisions of NRS § 116.3108.3. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the Board may take action on an item which is not listed on the agenda as an item on which action may be taken.

(e) At least once every 90 days, the Board shall review at one of its meetings: (1) a current year-to-date financial statement; (2) a current year-to-date schedule of revenues and expenses for the Operating Fund (as defined in Section 6.2 below) and the Reserve Fund (as defined in Section 6.3 below), compared to the budget for those accounts; (3) a current reconciliation of the Operating Fund; (4) a current reconciliation of the Reserve Fund; (5) the latest account statements prepared by the financial institutions in which the accounts of the Association

are maintained; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

(f) The minutes of a Board meeting must be made available to Owners in accordance with NRS § 116.3108.5.

**Section 3.11 Special Meetings and Removal Elections.** A special meeting of the Association Membership may be called at any reasonable time and place by written request of: (a) the Association President, (b) a majority of the Directors, or (c) Members representing at least ten percent (10%) of the voting power of the Association, or as otherwise may be required by applicable law. Notice of special meetings shall be given by the Secretary of the Association in the form and manner provided in Section 4.4, below.

(a) The same number of Members may also call a removal election. To call a special meeting or a removal election, the Members must submit a written petition signed by the required percentage of the total number of voting Members of the Association, mailed return receipt requested to, or served by a process server on, the Board or the Community Manager.

(b) The Board shall set the date for the special meeting or removal election so that it is held not less than fifteen (15) days or more than sixty (60) days after the date on which the petition is received.

(c) If the removal election is conducted by secret written ballot, the ballots must be sent to the Members in the manner required by NRS § 116.31036 not less than fifteen (15) days nor more than sixty (60) days after the date on which the petition is received. The Board shall set the date for the meeting, to open and count the secret written ballots, to be held not more than fifteen (15) days after the deadline for returning the secret written ballots.

(d) Any Director (other than a Director appointed by Declarant) may be removed with or without cause at a duly noticed removal election at which a quorum is present, if the number of votes cast in favor of removal constitutes: (a) at least thirty-five percent (35%) of the total number of voting Members of the Association, and (b) at least a majority of all votes cast in that removal election.

**Section 3.12 Attendance by Owners at Board Meetings; Executive Sessions.** Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and reasonable limitations on the time an Owner may speak at such meeting. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. Owners may not attend or speak at an Executive Session, unless the Board specifically so permits. An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

(a) consulting with an attorney for the Association on matters relating to proposed or pending litigation, if the contents of the discussion would otherwise be governed by the privilege set forth in NRS §§ 49.035 to 49.115, inclusive; or

(b) discussing Association personnel matters of a sensitive nature; or

(c) discussing any violation ("Alleged Violation") of the Governing Documents (including, without limitation, the failure to pay an Assessment) alleged to have been committed by

an Owner ("Involved Owner") (provided that the Involved Owner shall be entitled to request in writing that such hearing be conducted by the Board in open meeting, and provided further that the Involved Owner may attend all portions of the hearing related to the Alleged Violation, and may testify, present evidence, and put on witnesses. The Involved Owner may only be excluded by the Board from the Board's deliberation).

(d) discussing any alleged failure of an Owner to adhere to a schedule required pursuant to NRS § 116.310305 if the alleged failure may subject the Owner to a construction penalty.

No other matter may be discussed in Executive Session. Any matter discussed in Executive Session must be generally described in the minutes of the Board meeting, provided that the Board shall maintain detailed minutes of the discussion of any Alleged Violation, and, upon request, shall provide a copy of said detailed minutes to the Involved Owner or his or her designated representative.

Section 3.13 Master Association Documents. Nothing in this Declaration shall be deemed to affect or limit in any way the Master Association Documents, including, but not limited to, the DRC requirements set forth in the Master Declaration. The use restrictions set forth in the Master Association Documents shall apply to this Community. In the event of any irreconcilable conflict, the provisions of the Master Association Documents shall control.

#### **ARTICLE 4**

#### **VOTING RIGHTS**

Section 4.1 Owners' Voting Rights. Subject to the following provisions of this Section 4.1, and to Section 4.6 below, each Member shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member, and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The non-voting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns. Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent.

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

Board may reasonably request, and shall deliver to the Association a copy of the Recorded deed therefor.

**Section 4.3 Meetings of the Membership.** Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting." The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring. If the Members have not held a meeting for one (1) year, a meeting of the Association Membership must be held by not later than the March 1 next following.

**Section 4.4 Meeting Notices; Agendas; Minutes.** Meetings of the Members shall be held in the Properties or at such other convenient location near the Properties and within Clark County as may be designated in the notice of the meeting.

(a) Not less than fifteen (15) nor more than sixty (60) days in advance of any meeting, the Association Secretary shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other physical or electronic mailing address designated in writing by any Owner. The meeting notice must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of an Owner to: (i) have a copy of the minutes or a summary of the minutes of the meeting distributed to him or her upon request, if the Owner pays the Association the cost of making the distribution; and (ii) speak to the Association or Board (unless the Board is meeting in Executive Session).

(b) The meeting agenda must consist of:

(i) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to any of the Governing Documents, any fees or Assessments to be imposed or increased by the Association, any budgetary changes, and/or any proposal to remove an Officer or Director; and

(ii) a list describing the items on which action may be taken, and clearly denoting that action may be taken on those items ("Action Items"); and

(iii) a period devoted to comments by Owners and discussion of such comments; provided that, except in emergencies, no action may be taken upon a matter raised during this comment and discussion period unless the matter is an Action Item. If the matter is not an Action Item, it shall be tabled at the current meeting, and specifically included as an Action Item for discussion and consideration at the next following meeting, at which time, action may be taken thereon.

(c) In an "emergency" (as said term is defined in Section 3.10(b), above), Members may take action on an item which is not listed on the agenda as an item on which action may be taken.

(d) If the Association adopts a policy imposing a fine on an Owner for the violation of a provision of the Governing Documents, the Board 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 Owner thereof, a specific schedule of fines that may be imposed for those particular violations, at least thirty (30) days prior to any attempted enforcement, and otherwise subject to Section 17.1, below.

(e) Not more than thirty (30) days after any meeting, the Board shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or a summary of the minutes must be provided to any Owner who pays the Association the cost of providing the copy.

**Section 4.5 Record Date.** The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any Budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for an adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Members is proposed or expected to be taken or to occur.

**Section 4.6 Proxies.** Every Member entitled to attend, vote at, or exercise consents with respect to, any meeting of the Members, may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting to which the proxy is applicable. A Member may give a proxy only to a member of his or her immediate Family, a tenant of said Member residing in the Community, or another Member residing in the Community, or as otherwise may be authorized from time to time by applicable Nevada law. No proxy shall be valid after the conclusion of the meeting (including continuation of such meeting) for which the proxy was executed. Such powers of designation and revocation may be exercised by the legal guardian of any Member or by his or her conservator, or in the case of a minor having no guardian, by the parent legally entitled to permanent custody, or during the administration of any Member's estate where the interest in the Unit is subject to administration in the estate, by such Member's executor or administrator. Any form of proxy or written ballot shall afford an opportunity therein to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy or written ballot is solicited, and shall provide, subject to reasonably specified conditions, that where the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with such specification. Unless applicable Nevada law provides otherwise, a proxy is void if: (a) it is not dated or purports to be revocable without notice; (b) it does not designate the votes that must be cast on behalf of the Member who executed the proxy; or (c) the holder of the proxy does not disclose at the beginning of the meeting (for which the proxy is executed) the number of proxies pursuant to which the proxy holder will be casting votes and the voting instructions received for each proxy. If and for so long as prohibited by Nevada law, a vote may not be cast pursuant to a proxy for the election of a Director.

**Section 4.7 Quorums.** The presence at any meeting of Members who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Members present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of the Members required to constitute a quorum, unless a greater vote is required by applicable law or by this Declaration. If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may, except as otherwise provided by applicable law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at

which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Members entitled to vote at least twenty percent (20%) of the total votes of the Association. Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e.g., 67%) of votes of the total voting Membership as set forth in this Declaration.

Section 4.8 Actions. If a quorum is present, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two (2) candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by applicable law or by this Declaration.

Section 4.9 Action by Meeting, and Written Approval of Absentee Owners. The proceedings and transactions of any meeting of Members, either regular or special, however called and noticed and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members not present in person or by proxy signs a written waiver of notice, a consent to the holding of such meeting or an approval of the minutes thereof. Neither the business to be transacted at, nor the purpose of any regular or special meeting of Members, need be specified in any written waiver of notice. All such waivers, consents or approvals shall be filed with the Association records or made a part of the minutes of the meeting. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except when the Member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law to be included in the notice but not so included, if such objection is expressly made at the meeting.

Section 4.10 Action By Written Consent, Without Meeting. Any action which may be taken at any regular or special meeting of the Members may be taken without a meeting and without prior notice, if authorized by a written consent setting forth the action so taken, signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members were present and voted, and filed with the Association Secretary; provided, however, that Directors may not be elected by written consent except by unanimous written consent of all Members. Any Member giving a written consent, or such Member's proxy holder, may revoke any such consent by a writing received by the Association prior to the time that written consents of the number of Members required to authorize the proposed action have been filed with the Association Secretary, but may not do so thereafter. Such revocation shall be effective upon its receipt by the Association Secretary. Unless the consents of all Members have been solicited in writing and have been received, prompt notice shall be given, in the manner as for regular meetings of Members, to those Members who have not consented in writing, of the taking of any Association action approved by Members without a meeting. Such notice shall be given at least ten (10) days before the consummation of the action authorized by such approval with respect to the following:

- (a) approval of any reorganization of the Association;
- (b) a proposal to approve a contract or other transaction between the Association and one or more Directors, or any corporation, firm or association in which one or more Directors has a material financial interest; or
- (c) approval required by law for the indemnification of any person.

Section 4.11 Adjourned Meetings and Notice Thereof. Any Members' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members present either in person or by proxy thereat, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in this Section 4.11. When any Members' meeting, either regular or special, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any Members' meeting, either regular or special, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Member as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Members may transact any business that might have been transacted at the original meeting.

Section 4.12 Membership in Master Association. Each Member also concurrently shall be a member of the Master Association, and also subject to the Master Declaration and other Master Association Documents, as and to the extent set forth therein.

## **ARTICLE 5**

### **FUNCTIONS OF ASSOCIATION**

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

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

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

(c) Removal of Graffiti. The power and duty to remove or paint over any graffiti from or on Perimeter Walls, pursuant and subject to Section 9.6, below.

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



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

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

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

(h) Rights of Entry. The power, but not the duty, after Notice and Hearing (except in the event of bona-fide emergency which poses an (a) imminent and substantial threat to health, or (b) imminent and substantial threat (as verified by an engineer, architect, or professional building inspector, duly licensed in the State of Nevada) of material property damage; in which event of emergency, Notice and Hearing shall not be required), to peaceably enter upon any area of a Unit, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment pursuant to Article 7 below. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Dwelling without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party.

(i) Rights of Enforcement. Without limiting any other provision of the Governing Documents, and subject to Section 5.3 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

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

(k) Community Manager. The power, subject to Section 5.5, below, but not the duty to employ or contract with a certified (as required by applicable Nevada law), professional Community Manager to perform all or any part of the duties and responsibilities of the Association, and the power but not the duty to delegate powers to committees, Officers and employees of the Association. Any such management agreement, or any agreement providing for services by Community Manager to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than ninety (90) days written notice.

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

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

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

(o) Records and Accounting; Annual Audit. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Financial statements for the Association shall be regularly prepared and distributed to all Members as follows:

(i) A pro forma operating statement (Budgets, including a Reserve Budget), and Reserve Studies for each fiscal year shall be distributed pursuant to Section 6.4, below.

(ii) Reviewed or audited Financial Statements (consisting of a reasonably detailed statement of revenues and expenses of the Association for each Fiscal Year, and a balance sheet showing the assets (including, but not limited to, Association Reserve Funds) and liabilities of the Association as at the end of each Fiscal Year), and a statement of cash flow for the Fiscal Year, shall be distributed within one hundred twenty (120) days after the close of each Fiscal Year.

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

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

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

Section 5.2 Rules and Regulations. The Board, acting on behalf of the Association, shall be empowered to adopt, amend, repeal, and/or enforce reasonable and uniformly applied Rules and Regulations, which shall not discriminate among Members, for the use and occupancy of the Properties as follows:

(a) General. A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Elements and/or shall be mailed or otherwise delivered to each Member and also kept on file with the Association. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein and shall be binding on all Persons having any interest in, or making any use of any part of, the Properties, whether or not Members; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the other Governing Documents. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, whether or not a Member, as though notice of such Rules and Regulations had been given pursuant to this Section 5.2. The Rules and Regulations may not be used to amend any of the other Governing Documents.

(b) Limitations. The Rules and Regulations must be:

- (i) reasonably related to the purpose for which adopted;
- (ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;
- (iii) adopted without intent to evade any obligation of the Association;
- (iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);
- (v) uniformly enforced under the same or similar circumstances against all Owners; provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and
- (vi) duly adopted and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

(c) Enforcement. Subject to Sections 5.3, 5.8, and 17.14, below, the Association shall have the right to enforce any of the Rules and Regulations and the obligations of any Owner under any provision of the other Governing Documents, by assessing a reasonable fine as a Special Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use the other

Common Elements (other than ingress and egress, by the most reasonably direct route, to the Unit), subject to the following:

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

(ii) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after notice of such violation has been given to such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;

(iii) no fine imposed under this Section 5.2 may exceed the maximum permitted from time to time by applicable Nevada law for each failure to comply or may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially threatens the health and welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2(b), above);

(iv) subject to Section 5.2(c)(iii) above, if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid within thirty (30) days after written notice of the imposition thereof, then such Special Assessment shall be enforceable pursuant to Articles 8 and 9; and

(v) subject to Section 5.3 below, the Association may also take judicial action against any Owner or Resident to enforce compliance with such Rules and Regulations and/or provision of other Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(d) Responsibility for Violations. Should any Resident violate any of the Rules and Regulations or any provision of the other Governing Documents, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident.

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

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an Assessment or an Assessment lien or other lien against an Owner as provided for in this

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

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

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational 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, strict compliance with all of the following provisions of this Section 5.3 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than 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 voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinions of each and every one of: (A) a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); (B) a

reputable appraiser and/or real estate consultant regularly conducting business in Clark County, Nevada, expressly opining that the marketability and market value of Units will not be substantially or materially affected by such Non-Operational Controversy ("Appraiser's Opinion"); and (C) a senior executive from a reputable lender in the business of regularly making residential loans in Clark County, Nevada, that financing and refinancing of Units will not be affected by such Non-Operational Controversy, and that such financing and refinancing will be readily available ("Lender's Opinion"). (The Legal Opinion, Appraiser's Opinion, and Lender's Opinion are sometimes collectively referred to herein as the "Opinions"). The Board shall be authorized to spend up to an aggregate of 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 said \$5,000.00 limit, with the express consent of seventy-five percent (75%) or more of all of the Members of the Association, at a special meeting called for such purpose.

(2) The Legal Opinion shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. 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").

(3) Upon receipt and review of the Attorney Letter, the Appraiser's Opinion, and the Lender's Opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The Board shall provide written notice of the meeting to each Owner at least twenty-one (21) calendar days before the date of such meeting. The Board may only commence a civil action upon a vote or written agreement of the Owners to which at least a majority of the votes of the Members are allocated. Together with the notice, the Board shall provide a written statement to each Owner that includes: a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, the Appraiser's Opinion, and the Lender's Opinion, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment, (C) explaining the potential benefits of the proceeding and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and (D) making all disclosures that are required to be made upon the sale of the property as required by applicable Nevada law. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Appraiser's Opinion, Lender's Opinion, and Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (x) if not more than seventy-five percent (75%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special

Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than seventy-five percent (75%) of the total voting power of the Association (i.e., more than seventy-five percent (75%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred ten percent (110%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than monthly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

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

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

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra vires as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 5.3 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors; and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void.

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

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year; or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

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

(c) Pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for reasonable expenses incurred in carrying on the business of the Association, subject to the Governing Documents.

Section 5.5 Community Manager. The Association shall have the power to employ or contract with a certified Community Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

(a) Any agreement with a Community Manager shall be in writing and shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than ninety (90) days written notice. In the event of any explicit conflict between the Governing Documents and any agreement with a Community Manager, the Governing Documents shall prevail.

(b) The Community Manager shall be certified by the Commission as and to the extent required by and pursuant to NRS Chapter 116, and shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in Clark County, Nevada, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities (and must have the qualifications, including education and experience, as required for the issuance of the relevant certificate by the Nevada Real Estate Division, pursuant to the provisions of NRS Chapter 116 and/or NRS Chapter 645 (as applicable), and/or regulations respectively implementing the same). Any and all employees of the Community Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Community Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Community Manager, or any director, officer, shareholder, principal, partner, or employee of the Community Manager, or related family member, may be a Director or Officer of the Association.



(d) As a condition precedent to the employ of, or agreement with, a Community Manager, the Community Manager (or any replacement Community Manager) first shall be required, at its expense, to review the Governing Documents, Plat, and any and all Association Reserve Studies, and all inspection reports pertaining to the Properties.

(e) By execution of its agreement with the Association, each and every Community Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, prompt and full and faithful accounting for all Association funds within the possession or control of Community Manager) required of the Community Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Community Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Community Manager's error or omission shall be paid (or reimbursed to the Association) by the Community Manager; (3) to comply fully, at its expense, with all applicable regulations of the Nevada Real Estate Division; (4) to refrain, without specific prior written direction of a majority of the voting power of the Board, from referring or introducing to the Association, or contacting directly or indirectly for or on behalf of the Association, any attorney regarding any matter in any way related to the Community or any portion thereof; (5) prior to time of hire, and from time to time thereafter upon request of the Board: (a) to disclose to the Board, in writing, the identities of any and all other communities, managed by Community Manager (at such time, and within the three year period preceding such time), and involved in litigation involving any claim of construction defect, and the current status of any and all such litigation, and (b) to certify in writing to the Board that Community Manager, and its then current and prior employees, have had no relationship to, and have received no benefit or thing of value from, the attorney(s) commencing and/or prosecuting such litigation, and/or any attorney referred to the Association at the specific written direction of the Board (or if there was or is any such relationship or benefit, to disclose and identify the same); and (6) at Community Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Community Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Community Manager until such time as the Community Manager turnover in good faith has been completed).

(f) Upon expiration or termination of an agreement with a Community Manager, a replacement Community Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a limited review performed by qualified Person designated by the Board, of the books and records of the Association, to verify assets.

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. Such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

Section 5.6 Inspection of Books and Records.

(a) The Board shall, upon the written request of any Owner, make available the books, records and other papers of the Association for review during the regular working hours of the Association, with the exception of: (1) personnel records of employees (if any) of the Association; and (2) records of the Association relating to another Owner.

(b) The Board shall cause to be maintained and made available for review at the business office of the Association or other suitable location: (1) the financial statements of the Association; (2) the Budgets and Reserve Budgets; and (3) Reserve Studies.

(c) The Board shall cause to be provided a copy of any of the records required to be maintained pursuant to (a) and (b) above, to an Owner or to the Nevada State Ombudsman, as applicable, within 14 days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing such copy, but not to exceed 25 cents per page (or such maximum amount as permitted by applicable Nevada law).

(d) Notwithstanding the foregoing, each Director shall have the unfettered right at any reasonable time, and from time to time, to inspect all such records.

Section 5.7 Continuing Rights of Declarant. Until the twelfth (12th) anniversary ("Declarant Rights Period") of the close of escrow of the last Unit in the Properties, Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). From and after the end of Declarant Control Period, through the end of the Declarant Rights Period, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. During such period, Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties, or any portion(s) thereof, and shall have the right upon request from time to time to review all manuals, books, records, and reports of or pertaining to the Association. The Board shall also, through the end of the Declarant Rights Period, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and audited or reviewed annual reports, as required in Section 5.1(o), above. Such notices and information shall be delivered to Declarant at its most recently designated address.

Section 5.8 Compliance with Applicable Laws. The Association and its governance shall comply with all applicable laws (including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person) relating thereto. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or applicable Ordinance. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

## **ARTICLE 6**

### **COVENANT FOR ASSESSMENTS**

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

**Section 6.2 Association Funds.** The Board shall establish and maintain at least the following separate accounts (the "Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as accounts, in the name of the Association, at a federally or state insured banking or savings institution and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, (2) an Association reserve fund ("Reserve Fund") for capital repairs and replacements, as set forth in Section 6.3 below, and (3) any other funds which the Board of Directors may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than Reserve Fund which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate savings or checking account, at a federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Community Manager shall not be authorized to make withdrawals from the Reserve Fund. **Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer (or, in the absence of either the President or Treasurer, the Secretary may sign in place of the absent Officer). The President, Treasurer, and Secretary all must be Directors and (after the Declarant Control Period) must also all be Owners.**

**Section 6.3 Reserve Fund; Reserve Studies.**

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements, (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any other purpose whatsoever other than as

specifically set forth in (ii) above (and any use of the Reserve Fund in violation of the foregoing provisions shall be unauthorized and ultra vires as to the Association, and shall subject any Director who acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.3(a) to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized use of the Reserve Fund), (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing, (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); and (vi) under no circumstances shall the Community Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund.

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

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event **initially within one (1) year** after the Close of Escrow for the first Unit within the Properties, and thereafter at least **once every five (5) years** (or at such other intervals as may be required from time to time by applicable Nevada law). The Board shall review the results of the most current Reserve Study **at least annually** to determine whether those reserves are sufficient; and shall **at least annually** make **adjustments** to the Association funding plan as necessary to provide adequate funding for the required reserves (i.e., by increasing Assessments). It shall be an obligation of the Community Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

(d) Each Reserve Study must be conducted by a person who holds the required permits, and who is qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Community Manager who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation: (1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore; (2) an identification of the Major Components which have a remaining useful life of less than 30 years; (3) an estimate of the remaining useful life of each Major Component so identified; (4) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life; and (5) an estimate of the total Annual Assessment that may be necessary to cover the cost of repairing, replacement or restoration the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study), and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves. The Reserve Study shall be conducted in accordance with any applicable regulations promulgated from time to time by the Nevada Real Estate Division.

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

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

#### Section 6.4 Budget; Reserve Budget.

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

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

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

(2) the Reserve Budget, which must include, without limitation:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements ("Major Component");

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

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

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

(c) The Board shall cause the annual budget of the Association to be audited and/or reviewed in the following manner:

(i) If the annual budget of the Association is \$75,000 or more, but less than \$150,000, the Board shall cause the financial statement to be: (1) audited by an independent certified public accountant at least once every four (4) fiscal years; and (2) reviewed by an independent certified public accountant every fiscal year for which an audit is not conducted.

(ii) If the annual budget of the Association is \$150,000 or more, the Board shall cause the financial statement of the Association to be audited by an independent certified public accountant every fiscal year.

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

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

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

**Section 6.6 Capital Contributions to Association.** At the Close of Escrow for the sale of a Unit by Declarant to a Purchaser, the Purchaser of such Unit shall be required to pay an initial capital contribution to the Association, in an amount equal to two (2) full monthly installments of the initial or then-applicable Annual Assessment. Such initial capital contribution is in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and shall be deposited at each Close of Escrow into the Association Reserve Fund, and used exclusively to help fund the Association Reserve Fund, and shall not be applied to non-Reserve Fund items. Additionally, at the Close of Escrow for each resale of a Unit by an Owner (other than Declarant), the Purchaser of such Unit shall be required to pay a resale capital contribution to the Association, in an amount equal to two (2) full monthly installments of the then-applicable Annual Assessment.

Such resale capital contribution is in addition to the foregoing described initial capital contribution, and is further in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and may be applied to working capital needs and/or the Reserve Fund, in the Board's business judgment. Such capital contributions are in addition to all transfer fees, assessments, and any other amounts charged from time to time by or for the benefit of the Association.

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

**Section 6.8 Application of Payments.** Unless otherwise requested by an Owner before or at the time of payment, assessment payments shall be applied to the Owner's obligations in the following order: fines, attorneys' fees, late charges, interest, Special Assessments, Supplemental Assessments, and Annual Assessments. An Owner's request may be denied or modified by the Board, in its sole discretion.

**Section 6.9 Capital Assessments.** The Board may levy, in any Fiscal Year, a Capital Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement or other such addition upon the Common Elements, including fixtures and personal property related thereto; provided that any proposed Capital Assessment shall require the advance consent of a majority of the voting power of the Association.

**Section 6.10 Uniform Rate of Assessment.** Annual Assessments, and any Capital Assessments shall be assessed at an equal and uniform rate against all Owners and their Units.

Each Owner's share of such Assessments shall be a fraction, the numerator of which shall be the number of Units owned by such Owner, and the denominator of which shall be the aggregate number of Units in the Original Property (and, upon annexation, of Units in portions of the Annexed Property).

**Section 6.11 Exempt Property.** The following property subject to this Declaration shall be exempt from the Assessments herein:

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

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

**Section 6.12 Special Assessments.** The Association may, subject to the provisions of Article 7, Section 9.3 and Section 11.1(b) hereof, levy Special Assessments against specific Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorneys' fees, amounts expended to enforce assessment liens against Owners as provided for herein, and other charges of similar nature. Special Assessments, if not paid timely when due, shall constitute unpaid or delinquent Assessments, pursuant to Article 7, below.

**Section 6.13 Subsidies and/or Advances by Declarant.** To the maximum extent not prohibited by applicable Nevada law, Declarant shall have the right, in its sole and absolute discretion, from time to time during the Declarant Control Period, to: (a) subsidize the Association, by direct payment of any and all Excess Common Expenses ("Declarant Subsidies"); and/or (b) advance funds and/or make loan(s) to the Association, to be used by the Association for the sole purpose of paying Excess Common Expenses ("Declarant Advances"). "Excess Common Expenses" for purposes of this Section 6.13 shall mean such amount, if any, of Common Expenses in excess of Assessments and non-Reserve funds reasonably available at such time to pay Common Expenses. The aggregate amount of any and all Declarant Subsidies and/or Declarant Advances, or portions from time to time respectively thereof, together with interest thereon at the rate of eighteen percent (18%) per annum, shall be repaid by Association to Declarant as soon as non-Reserve funds are reasonably available therefor (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Assessments and/or contributions to Reserve Funds, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration or under applicable Nevada law). Each Owner, by acceptance of a deed to his or her Lot, shall be conclusively deemed to have acknowledged and agreed to all of the foregoing provisions of this Section 6.13, whether or not so stated in such deed.

**Section 6.14 Master Association Assessments, Capital Contributions, and Transfer Fees.** Additionally, each Owner, by acceptance of a deed to a Unit (whether or not so expressed in such deed) shall be deemed to agree to pay all required Master Association transfer fees, capital contributions, and assessments, as and to the extent required under applicable provisions of the Master Association Documents, and that the Master Association shall have the same rights and remedies against Owners hereunder as the Master Association has against "Owners" (as said term is defined in the Master Declaration) with respect to the enforcement of the assessments described above. Notwithstanding any provision of this Declaration to the contrary, the terms of this Section



6.14 may not be amended, altered, suspended, or superseded without the express written consent of the Master Association, in its sole discretion, which consent must be acknowledged in a Recorded document (and any purported amendment in the absence of such prior written consent shall be null and void).

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

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

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

**Section 7.3 Notice of Default and Election to Sell.** No action shall be brought to enforce any Assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default and election to sell is Recorded; or (b) the date the Recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default and election to sell must recite a good and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid Assessment as described in Section 7.1 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, the name and address of the Person authorized by the Board to enforce the lien by sale, and the following warning in fourteen (14) point bold type: **WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN**

**DISPUTE!** The notice of default and election to sell shall be signed and acknowledged by an Association Officer, Community Manager, or other Person designated by the Board for such purpose, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

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

Section 7.5 Limitation on Foreclosure. Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a Special Assessment or a fine for a violation of the Governing Documents, unless the violation is of a type that substantially and imminently threatens the health, safety, and welfare of the Owners and Residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for an Annual Assessment, or Capital Assessment, or any portion respectively thereof, pursuant to this Article 7.

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

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

Section 7.8 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title, subject to the following. The lien of the Assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual Assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien). The release or discharge

of any lien for unpaid Assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his or her personal obligation for the payment of such unpaid Assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for Assessments. A lien for Assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the Assessment sought to be enforced, and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS § 116.3116. The sale or transfer of any Unit shall not affect an Assessment lien, and shall be governed by Nevada law.

## **ARTICLE 8**

### **ARCHITECTURAL AND LANDSCAPING CONTROL**

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

Section 8.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 8, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including the inspection of construction in progress to assure conformance with plans and specifications approved by the ARC.

(a) With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, repair or reconstruction of an Improvement, including Dwelling and landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval. The Owner submitting such plans and specifications ("Applicant") shall obtain a written receipt therefor from an authorized agent of the ARC. The ARC shall approve plans and specifications submitted for its approval only if it deems that: (1) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole; (2) the appearance of any structure affected thereby will be in harmony with other structures in the vicinity; (3) the construction will not detract from the beauty, wholesomeness and attractiveness of the Common Elements or the enjoyment thereof by the Members; and (4) the

upkeep and maintenance will not become a burden on the Association. Notwithstanding the foregoing, the ARC shall not prohibit an Owner from installing or maintaining drought tolerant landscaping that is selected to the maximum extent practicable to be compatible with the style of the Community and which is properly submitted to the ARC for approval. For purposes of this Section 8.2, "drought tolerant landscaping" shall mean landscaping which conserves water, protects the environment, and is adaptable to local conditions.

(b) The ARC may condition its review and/or approval of plans and specifications for any Improvement upon such changes therein as the ARC may deem appropriate or necessary, which may, but need not necessarily include any one or more or all of the following conditions: (1) agreement by the Applicant to furnish to the ARC a cash deposit, bond or other security acceptable to the ARC in an amount reasonably sufficient to (i) assure the completion of such Improvement or the availability of funds adequate to remedy any damage, or any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Common Elements as a result of such work; (2) such changes therein as the ARC deems appropriate; (3) agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the Improvement; (4) agreement of the Applicant to reimburse the Association for the costs of maintenance; (5) agreement of the Applicant to replace such removed trees as may be designated by the ARC; (6) agreement of the applicant to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvements in detail as actually constructed upon completion of the Improvement; (7) payment or reimbursement, by Applicant, of the ARC and/or its members for their actual costs incurred in considering the plans and specifications; (8) agreement by the Applicant to furnish to the ARC a cash deposit or other security acceptable to the ARC in an amount reasonably sufficient to (A) assure the completion of such Improvement or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (B) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Common Elements as a result of such work; (9) payment, by Applicant, of the professional fees of a licensed architect or engineer to review the plans and specifications on behalf of the ARC, if such review is deemed by the ARC to be necessary or desirable; and/or (10) such other conditions as the ARC may reasonably determine to be prudent and in the best interests of the Association. The ARC may further require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans and specifications, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that the fee may be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alteration or addition contemplated or the cost of architectural or other professional fees incurred by the ARC in reviewing plans and specifications. Also, with respect to plans and specification which may involve or which may have a direct impact on one or more neighbors of the applicant, the ARC in its sole discretion may require a Neighbor Impact Statement (in such form as may be required from time to time by the ARC), with written approval signed by all such involved neighbors, to be submitted by applicant to the ARC together with the relevant plans and specifications.

(c) The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors.

Until receipt by the ARC of any required plans and specifications, and Neighbor Impact Statement (if applicable), the ARC may postpone review of any plans and specifications submitted for approval. Any application submitted pursuant to this Section 8.2 shall be deemed disapproved, unless written approval by the ARC shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the ARC of all required materials. The ARC will or may condition any approval required in this Article 8 upon, among other things, compliance with Declarant's (a) design criteria as may be established from time to time, (b) Improvement standards and (c) development standards, as amended from time to time, all of which are incorporated herein by this reference.

(d) Any Owner aggrieved by a decision of the ARC may appeal the decision to the ARC in accordance with procedures to be established by the ARC. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the ARC's opinion warrant reconsideration. If the ARC fails to allow an appeal or if the ARC, after appeal, again rules in a manner aggrieving the appellant, the decision of the ARC is final. The foregoing notwithstanding, after such time as the Board appoints all members of the ARC, all appeals from ARC decisions shall be made to the Board, which shall consider and decide such appeals.

(e) Notwithstanding the foregoing or any other provision herein, the ARC's jurisdiction shall normally extend only to the external appearance or "aesthetics" of any improvement, and shall not extend to structural matters, method of construction, or compliance with a building code or other applicable legal requirement. ARC approval shall be subject to all applicable requirements of applicable government authority, drainage, and other similar matters, and shall not be deemed to encompass or extend to possible impact on neighboring Lots.

**Section 8.3 Homeowner Bond/Deposit.** In addition to, and without limiting, the provisions of Section 8.2 above (or any other provision herein), each Owner shall or may be required to post a bond (in such amount, and in such form and substance acceptable to the ARC in its sole discretion) or cash deposit ("Bond/Deposit") with the ARC prior to commencing any installation of or other work pertaining to installation of any permitted Improvement on any Lot. Said Bond/Deposit shall be held by the ARC. At such time as the Owner work is completed, and the Owner so notifies the ARC, the ARC shall inspect the Lot and surrounding areas, and shall authorize release of the Bond/Deposit to the Owner; provided that, in the event the ARC determines in its sole discretion that there has been any damage to any sidewalk, curb, street, party wall, Common Element, or other area relevant to the Bond/Deposit, then the ARC shall use the Bond/Deposit to repair such damaged areas, and the balance, if any, of the Bond/Deposit remaining after such repair shall be returned to the Owner; provided further that if the Bond/Deposit is insufficient to repair all such damage, then the additional cost, and any related cost, shall be assessed against the Owner as a Special Assessment levied against such Owner and his or her Lot. Each Owner, by acquiring title to a Lot, whether or not so expressed in the deed therefor, agrees that the Association shall suffer irreparable harm, for which there is no adequate legal remedy, in the event any such work of Improvement is commenced by or on behalf of such Owner without the Bond/Deposit having first been posted, and agrees that, in such event, the Association shall be entitled to a temporary restraining order or preliminary injunction, issued by a court of competent jurisdiction, requiring the Owner to immediately cease and desist from continuing with or retaining such work of Improvement unless and until the Bond/Deposit first has been posted by the Owner. Notwithstanding the foregoing or any other provision, this Section 8.3 shall not apply with regard to any activity of Declarant.

Section 8.4 Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 8.9 below. In the absence of such designation, the vote of a majority of the ARC, or the written consent of a majority of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 8.5 No Waiver of Future Approvals. The approval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 8.6 Compensation of Members. Subject to the provisions of Section 8.2(b) above, members of the ARC shall not receive compensation from the Association for services rendered as members of the ARC.

Section 8.7 Correction by Owner of Nonconforming Items; Commencement and Completion of Work. Subject in all instances to compliance by the Owner with all applicable requirements of governmental authorities with jurisdiction, an ARC inspection (which shall normally be limited to inspection of the visible appearance of the size, color, location and materials of work), and Owner correction of visible nonconformance therein, shall proceed as follows:

(a) The ARC or its duly appointed representative shall have the right to inspect any Improvement ("Right of Inspection") whether or not the ARC's approval has been requested or given, provided that such inspection shall be limited to the visible appearance of the size, color, location, and materials comprising such Improvement (and shall not constitute an inspection of any structural item, method of construction, or compliance with any applicable requirement of governmental authority). Such Right of Inspection shall, however, terminate sixty (60) days after receipt by the ARC of written notice from the Owner of the Unit that the work of Improvement has been completed. If, as a result of such inspection, the ARC finds that such Improvement was done without obtaining approval of the plans and specifications therefor or was not done in substantial compliance with the plans and specifications approved by the ARC, it shall, within sixty (60) days from the inspection, notify the Owner in writing of the Owner's failure to comply with this Article 8 specifying the particulars of noncompliance. If work has been performed without approval of plans and specifications therefor, the ARC may require the Owner of the Unit in which the Improvement is located, to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvement in detail as actually constructed. The ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance (with the visible appearance of the size, color, location, and/or materials thereof) and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a notice of noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance, and, in addition, may peacefully remedy the

noncompliance. The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise to remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration.

(c) If for any reason the ARC fails to notify the Owner of any noncompliance with previously submitted and approved plans and specifications within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in compliance with ARC requirements (but, of course, shall remain subject to compliance by Owner with all requirements of applicable governmental authority).

(d) All construction, alteration and/or other work shall be performed as promptly and as diligently as possible following the date on which the work is approved by the Architectural Review Committee ("ARC Approval Date"), and in any event, all work shall be commenced by not later than one hundred eighty (180) days following the ARC Approval Date and completed by not later than one hundred eighty (180) days following the ARC Approval Date.

**Section 8.8 Scope of Review.** The ARC shall review and approve, conditionally approve, or disapprove, all proposals, plans and specifications submitted to it for any proposed Improvement, alteration, or addition, solely on the basis of the considerations set forth in Section 8.2 above, and solely with regard to the visible appearance of the size, color, location, and materials thereof. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all applicable governmental (including, but not necessarily limited to City) requirements.

**Section 8.9 Variances.** When circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may require, the ARC may authorize limited variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions on size (including height, size, and/or floor area) or placement of structures, or similar restrictions. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any such variance by the ARC shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, regulations and requirements affecting the use of his or her Unit, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by the City, or any municipal or other public authority with jurisdiction. The granting of a variance by the ARC shall not be deemed to be a variance or approval from the standpoint of compliance with such laws or regulations, nor from the standpoint of structural safety, and the ARC, provided it acts in good faith, shall not be liable for any damage to an Owner as a result of its granting or denying of a variance.

**Section 8.10 Non-Liability for Approval of Plans.** The ARC's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether

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

Section 8.11 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 8 shall not apply to Improvements built by Declarant, or, until such time as Declarant conveys title to the Unit to a Purchaser, to Units owned by Declarant. This Article 8 shall not be amended without Declarant's written consent set forth on the amendment.

Section 8.12 Master Association Design Review Committee. With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, repair or reconstruction of any Improvement, including Dwelling and/or landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the Master Association Design Review Committee ("DRC"), pursuant to the Master Association Governing Documents. The Owner submitting such plans and specifications ("Applicant") shall obtain a written receipt therefor from an authorized agent of the DRC. Notwithstanding any other provision in this Declaration, Declarant shall have the right and the power, in its sole discretion, to suspend the jurisdiction and operation of the ARC; provided that, in such event, the DRC shall have sole and exclusive jurisdiction over all architectural and landscaping matters. In the event of any irreconcilable conflict between this Section 8.12 and the Master Declaration, the provisions of the Master Declaration shall prevail.

## **ARTICLE 9**

### **MAINTENANCE AND REPAIR OBLIGATIONS**

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



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

**Section 9.2 Maintenance and Repair Responsibilities of Association.** No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than initially by Declarant, or by the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to this Declaration (including, but not limited to the provisions of Sections 9.3 and 11.1(b) hereof), upon the Assessment Commencement Date, the Association shall provide for the periodic maintenance, repair, and replacement of the Common Elements, and the costs thereof shall be Common Expenses. The Common Elements shall be maintained in a safe, sanitary and attractive condition, and in good order and repair. The Association shall also provide for any utilities serving the Common Elements, and shall ensure that any landscaping on the Common Elements is regularly and periodically maintained in good order and in a neat and attractive condition. The Association shall not be responsible for the maintenance of any portions of the Common Elements which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its business judgment to be appropriate.

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

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

**Section 9.5 Party Walls.** Each wall which is built as a part of the original construction by Declarant and placed approximately on the property line between Units shall constitute a party wall. In the event that any party wall is not constructed exactly on the property line, the Owners affected shall accept the party wall as the property boundary. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party wall is destroyed or damaged by fire or other casualty, the party wall

shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the wall. Subject to the foregoing, any Owner whose Unit has or had use of the wall may restore the wall to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section 9.5, an Owner who by his or her negligent or willful act causes a party wall to be exposed to the elements, or otherwise damaged or destroyed, shall bear the entire cost of furnishing the necessary protection repair or replacement. The right of any Owner to contribution from any other Owner under this Section 9.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. The foregoing, and any other provision in this Declaration notwithstanding, no Owner shall alter, add to, or remove any party wall constructed by Declarant, or portion of such wall, without the prior written consent of the other Owner(s) who share such party wall, which consent shall not be unreasonably withheld, and the prior written approval of the ARC. In the event of any dispute arising concerning a party wall under the provisions of this Section 9.5, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

**Section 9.6 Perimeter Walls.** Perimeter Walls, constructed or to be constructed by Declarant, are Improvements which are Common Elements (or which may be Master Association Property, pursuant to the Master Association Documents), and owned and maintained and repaired by the Association (or Master Association, as applicable), subject to the right of the Association (or Master Association, as applicable) to recover the costs of or related to such repair from the Owner or other Person causing damage to any portion of the Perimeter Wall by negligence or willful act. By acquiring title to the Unit, each Owner of a Unit abutting the Perimeter Wall covenants that no changes or alterations (including, without limitation, temporary alterations, such as removal of a portion of the Perimeter Wall for construction of a swimming pool or other improvement) shall be made to any Perimeter Wall, or any portion thereof, without the prior written approval of the ARC in its sole discretion (and any request therefor shall be subject to the provisions of Article 8 above, including, but not necessarily limited to, any conditions imposed by the ARC pursuant to Section 8.2(b) above). The foregoing and any other provision herein notwithstanding, under no circumstances shall any wall, or portion thereof, originally constructed by Declarant, be changed, altered or removed by any Owner (or agent or contractor thereof) if such wall, or portion thereof, is shown on any improvement plan as wall, or if such change, alteration or removal in the sole judgment of Declarant or the ARC (as applicable) (without obligation to make such judgment) would adversely affect surface water or drainage considerations or requirements. Without limiting the foregoing, the Association shall be responsible for removing or painting over any graffiti from or on Perimeter Walls.

**Section 9.7 Installed Landscaping.**

(a) Declarant shall have the option, in its sole and absolute discretion, to install landscaping on the front yards and other portions of Lots ("Declarant Installed Landscaping"). Subject to the foregoing and to Section 9.9 below, and subject further to the requirements of Article 8 (Architectural and Landscaping Control), above, each Owner shall have, following the close of escrow on his or her Lot: (a) sixty (60) days in which to complete front yard landscaping, and (b) six (6) months within which to commence and thereafter diligently prosecute and complete installation of all other landscaping on the Lot (all, collectively, "Homeowner Installed Landscaping"). Declarant Installed Landscaping and Homeowner Installed Landscaping shall collectively be referred to herein as "Installed Landscaping."

(b) Subject to the requirements of Article 8 (Architectural and Landscaping Control), above, each Owner shall have an aggregate period, following the Close of Escrow on his or her Lot, of (i) not more than six (6) months (with regard to front yard landscaping other than Declarant Installed Landscaping), and one (1) year (with regard to rear yard landscaping), in which to apply for and obtain approval of plans for landscaping and to commence and complete, in accordance with such approved plans, installation of such landscaping on the Lot ("Homeowner Installed Landscaping"). Each Owner shall be responsible, at his or her sole expense, for: (1) maintenance, repair, replacement, and watering of all landscaping on his or her Unit (whether initially installed by Declarant or an Owner) in a neat and attractive condition; and (2) maintenance, repair, and/or replacement of any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping, subject to subsections (c) through (e), below.

(c) Each Owner covenants to pay promptly when due all water bills for his or her Unit, and (subject to bona-fide force majeure events) to not initiate or continue any act or omission which would have the effect of water being shut off to the Unit. In the event that all or any portion of landscaping and/or related systems is or are damaged because of any Owner's act or omission, then such Owner shall be solely liable for the costs of repairing such damage, and any and all costs reasonably related thereto, and the Association may, in its discretion, perform or cause to be performed such repair, and to assess all related costs against such Owner as a Special Assessment, and the Association, and its employees, agents and contractors, shall have an easement over Lots to perform such function.

(d) In the event that any plants (including, but not necessarily limited to, trees, shrubs, bushes, lawn, flowers, and ground cover) on a Unit require replacement, then the cost of such replacement, and costs reasonably related thereto, shall be the responsibility of the Owner of the Unit.

(e) To help prevent and/or control water damage to foundations and/or walls, each Owner covenants, by acceptance of a deed to his or her Unit, whether or not so stated in such deed, to not cause or permit spray irrigation water or sprinkler water on his or her Unit to seep or flow onto, or to strike upon, any foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or Perimeter Wall), and/or any other Improvement. Without limiting the generality of the foregoing or any other provision in this Declaration, each Owner shall at all times ensure that: (1) there are no unapproved grade changes (including, but not necessarily limited to, mounding) within three (3) feet of any such foundation or wall located on or immediately adjacent to the Owner's Unit; and (2) only non-irrigated desert landscaping is located on the Owner's Unit within three feet of any such foundation, slab, side or other portion of Dwelling, and/or wall (including, but not necessarily limited to, party wall and/or Perimeter Wall).

**Section 9.8 Maintenance of Security Lighting.** Each Owner shall maintain in good and operating condition the exterior security landscape lighting (if any) installed on the exterior and/or front yard or rear yard area of the Dwelling. Such maintenance shall include, but not be limited to, the replacement of light bulbs and photoelectric cells, the provision of electrical power to such lights, and timely payment of electrical service, as applicable. Absent prior written approval of the ARC, in its sole discretion, no Owner may delete, modify, or change any photoelectric cell as initially installed by Declarant, or any lighting activated thereby (including, without limitation, disconnecting lighting from such photoelectric cell and/or connecting such lighting to a timer device). If any Owner shall fail to so maintain such exterior lighting, or permit such lighting to fall into disrepair, or delete or modify such lighting without prior approval of the ARC, the Association

shall have the right to correct such condition. If any such condition is corrected by the Association, the Association shall be fully reimbursed by the Lot Owner for all costs incurred.

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

**Section 9.10 Maintenance of Common Recreational Area.** The Common Recreational Area is a Common Element, which shall be maintained and repaired by the Association as a Common Expense.

**Section 9.11 Compliance by Owners with EPA and other Requirements.** Notwithstanding any other provision in this Declaration, the following are strictly prohibited with regard to Owners (which term, for purposes of this section, shall include the families, contractors, agents, invitees, and guests of Owners, but shall specifically exclude Declarant) anywhere in the Community (including, but not limited to, any Lot, Common Element, and/or any street): (a) the piling of any dirt or construction materials or debris (all dirt or construction materials or debris must be hauled in and hauled out on impermeable membranes; (ii) the dripping or running off of any dirt or construction materials or debris, from any Lot, Common Element, and/or adjacent street, into any drainage or runoff area; and/or (b) any activity which violates, or which reasonably could result in a violation of, the Federal Clean Water Act, EPA regulation, and/or any other applicable law or regulation; and/or (c) any activity which violates, or which reasonably could result in a violation of, Clark County Dust, Southern Nevada Water Authority, and/or Las Vegas Valley Water or other similar ordinance or regulation. Any Owner who violates any the foregoing, and causes Declarant or the Association to incur a fine or penalty under the Federal Clean Water Act, EPA regulation, and/or any other applicable law, ordinance, or regulation, shall be subject to a Special Assessment hereunder in the amount of such fine or penalty, plus any applicable attorneys fees and costs. All such amounts shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 6.12 hereof.

## **ARTICLE 10** **USE RESTRICTIONS**

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying the Community and this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 10 may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Any other provision herein notwithstanding, neither Declarant, the Association, the Board, nor their respective directors, officers, members, agents or employees shall be liable to any

Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

**Section 10.1 Single Family Residence.** Each Unit shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering" destructive construction testing, or any other nonresidential purpose; provided that Declarant may exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-Family children, when added to the number of Family children being cared for at the Unit, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 10.5, below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable Ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his or her entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no such lease shall be for a term of less than six (6) consecutive months.

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

**Section 10.3 Insurance Rates.** Without the prior written approval of the Board and the Master DRC, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any applicable law. Any other provision herein notwithstanding, the Board nor the Master DRC shall have any power whatsoever to waive or modify this restriction.

**Section 10.4 Animal Restrictions.** No animals, reptiles, poultry, fish, or fowl or insects of any kind ("animals") shall be raised, bred or kept on any Unit, except that a reasonable number of dogs, cats, household birds or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable Ordinance or any other provision of the Declaration, and are subject to such limitations as may be set forth in the Rules and Regulations. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, that the Board or Master DRC 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 in any Unit which constitutes, in the opinion of the Board or Master DRC, a nuisance to other Owners or Residents. Subject to the foregoing, animals belonging to Owners, Residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner and/or Resident shall be liable to each and all other Owners, Residents, and their respective Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or Resident or respective Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner and Resident to clean up after such animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar structure pertaining to animals shall be placed or permitted in any Lot, unless approved by the Board and Master DRC in advance and in writing (and, in any event, any such "dog run" or similar Improvement shall not exceed the height of any party wall on the Lot, and shall otherwise not be permitted, or shall be immediately removed, if it constitutes a nuisance in the reasonable judgment of the Board or Master DRC), and (b) all Owners shall comply fully in all respects with all applicable Ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

**Section 10.5 Nuisances.** No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings; and no plant waste, compost, bulk materials or other debris of any kind; (all, collectively, hereafter, "rubbish and debris") shall be placed or permitted to accumulate on any privately owned Unit unless stored within an enclosed structure or container which has been approved by the Master DRC, or unless such matter is screened from view in a manner approved by the Master DRC, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. Without limiting the foregoing, all rubbish and debris shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time (not to exceed twelve (12) hours before or after scheduled trash collection hours) to permit garbage or trash pickup. No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security, or fire protection purposes), noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers, edgers, and other equipment normally utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or Residents, or any equipment or item which unreasonably interferes with regular television or radio reception within any Unit, the Common Elements, shall be located, used or placed on any portion of the Properties without the prior written approval of the Board. No unusually loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Properties without the prior written approval of the Board and/or Master DRC, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce frequently occurring false alarms in a manner annoying to neighbors. The Board shall have the right to reasonably determine if any noise, odor, activity, or circumstance, constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including

Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his or her Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

Section 10.6 Exterior Maintenance and Repair; Owner's Obligations. No Improvement anywhere within the Properties shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. If any Owner or Resident shall permit any Improvement, the maintenance of which is the responsibility of such Owner or Resident, to fall into disrepair so as to create a dangerous, unsafe, or unsightly condition, the Board, after consulting with the ARC, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.12 above, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment for all purposes of Article 7, above. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

Section 10.7 Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself or herself and his or her assigns that he or she will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements or Master Association Property, unless adequate alternative provision is made for properly engineered drainage and approved in advance and in writing by the ARC, and any request therefor shall be subject to Article 8 above, including, but not necessarily limited to, any condition imposed by the ARC pursuant to Section 8.2(b) above. Without limiting the generality of the foregoing, any request by an Owner for ARC approval of alteration of established drainage pattern shall be subject to payment, by the Owner, of the professional fees of a licensed engineer to review the plans and specifications on behalf of the ARC, pursuant to Section 8.2(b)(8) above, which shall be required in all such cases, and further shall be subject to the Owner obtaining all necessary governmental approvals pursuant to Section 8.7, above. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to a Purchaser from Declarant, or later grading changes which are shown on plans and specifications approved by the Board or Master DRC.

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

Section 10.9 No Hazardous Activities. No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, or Common Elements or Master Association Property. Without limiting the foregoing, (a) no firearm shall be discharged within the Properties, and (b) there shall be no exterior or open fires whatsoever, except within a regular barbecue and contained within a

receptacle commercially designed therefor, while attended and in use for cooking purposes, so that no fire hazard is created, or except as specifically authorized in writing by the Board (all as subject to applicable ordinances and fire regulations).

**Section 10.10 No Unsightly Articles.** No unsightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, and garden and maintenance equipment, or inoperable vehicle) shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, Common Elements, or neighboring property. Without limiting the foregoing or any other provision herein, all refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to view of the public, or neighboring Units, only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours).

**Section 10.11 No Temporary Structures.** Unless required by Declarant during the initial construction of Dwellings and other Improvements, or unless approved in writing by the Master DRC in connection with the construction of authorized Improvements, no outbuilding, tent, shack, shed or other temporary or portable structure or Improvement of any kind shall be placed upon any portion of the Properties. No garage, carport, trailer, camper, motor home, recreational vehicle, or other vehicle, or any Improvement other than a Dwelling, shall be used as a residence in the Properties, either temporarily or permanently.

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

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

**Section 10.14 Signs.** Subject to the reserved rights of Declarant contained in Article 14 hereof, no flag (other than the flag of the United States, in a manner that is consistent with the Federal Flag Code and applicable Nevada law and Ordinances, of normal residential proportions, and properly and respectfully displayed and maintained), flag pole, balloon, beacon, banner, sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view on any portion of the Properties, or on any public street abutting the Properties, without the prior written approval of the ARC, except: (a) one (1) sign for each Unit, not larger than eighteen (18) inches by thirty (30) inches, advertising the Unit for sale or rent; or (b) traffic and other signs installed by Declarant as part of the original construction of the Properties; or (c) signs regulated to the maximum extent permitted by applicable law. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the regulations of all applicable Ordinances.



#### Section 10.15 Improvements.

(a) Unless otherwise designated in the Declaration (or unless an ancillary guest house or "casita" is originally constructed on a Lot by Declarant, in its sole and absolute discretion, without obligation to do so, subject to the proviso that any such "casita" shall be subject to all applicable Ordinances, shall be ancillary and appurtenant to a Unit, and shall not separately comprise another Unit), no Lot shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its occasional guests, plus a garage, fencing and/or wall, and such other Improvements as are necessary or customarily incident to a single-Family Dwelling. No part of the construction on any Lot shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any building within the Properties, except one or more chimneys or vent stacks. No basketball backboard, jungle gym, play equipment, or other sports apparatus, whether temporary or permanent, shall be constructed, erected, or maintained on the Properties without the prior written approval of the Master DRC. Apart from any installation by Declarant as part of its original construction, no patio cover, antennae, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant during the original construction of the Dwelling), unless the prior written approval of the ARC has been obtained, subject to Section 10.16, below, unless the prior written approval of the Master DRC is obtained.

(b) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and neighboring properties.

(c) No fence or wall shall be erected or altered without prior written approval of the ARC. All alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the ARC, in its discretion (and the ARC may, but need not necessarily, require written consent of the Owners of all adjacent Lots as a prerequisite thereto).

(d) Garages shall be used only for their ordinary and normal purposes. Unless constructed or installed by Declarant as part of its original construction, no Owner or Resident may convert the garage on his or her Unit into living space or otherwise use or modify a garage so as to preclude regular and normal parking of vehicles therein, without the prior written approval of the Master DRC in its discretion. The foregoing notwithstanding, Declarant may convert a garage located in any Unit owned by Declarant into a sales office or related purposes.

**Section 10.16 Antennas and Satellite Dishes.** Expressly subject to the Declarant exemption set forth in Section 10.23, below, no exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained anywhere in the Properties. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (i) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (ii) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is:

(a) located in the attic, crawl space, garage, or other interior space of the Dwelling, or within another approved structure on the Unit, so as not to be visible from outside the Dwelling or other structure, or, if such location is not reasonably practicable, then,

(b) located in the rear yard of the Unit (i.e., the area between the plane formed by the front facade of the Dwelling and the rear lot line) and set back from all lot lines at least such distance as may be established in the Rules and Regulations and/or by the Board; or, if such location is not reasonably practicable, then,

(c) attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna; or, if such location is not reasonably practicable, then,

(d) attached to or mounted on the rear wall of the Dwelling so as to extend no higher than the eaves of the Dwelling at a point directly above the position where attached or mounted to the wall; provided that,

(e) if an Owner reasonably determines that a Permitted Device cannot be located in compliance with the foregoing portions of this Section 10.16 without precluding reception of an acceptable quality signal, then the Owner may install such Permitted Device in the least conspicuous alternative location within the Unit where an acceptable quality signal can be obtained; provided that,

(f) Permitted Devices shall be reasonably screened from view from the street or any other portion of the Properties, and shall be subject to Rules and Regulations adopted by the Board, establishing a preferred hierarchy of alternative locations, so long as the same do not unreasonably increase the cost of installation, or use of the Permitted Device.

Declarant or the Association may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners. Declarant may grant easements for installation, maintenance, repair and/or replacement of any such master or cable television service.

**Section 10.17 Landscaping.** Subject to the provisions of Articles 8 and 9 (including, but not limited to, Section 9.7 above), each Owner shall install and shall thereafter maintain the landscaping on his or her Unit in a neat and attractive condition. No plants or seeds infected with insects or plant diseases shall be brought upon, grown or maintained upon any part of the Properties. The Board may adopt Rules and Regulations to regulate landscaping permitted and required in the Properties, but shall not prohibit an Owner from installing or maintaining drought tolerant landscaping that is selected to the maximum extent practicable to be compatible with the styles of the Community and which is submitted to the ARC for approval (for the purposes of this Section 10.17, "drought tolerant landscaping" shall mean landscaping which conserves water, protects the environment, and is adaptable to local conditions"). If an Owner fails to install and maintain landscaping in conformance with the Governing Documents, or allows his or her landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, or allows weeds to grow or debris to accumulate on his or her Lot, the Board shall have the right to either (a) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists a bona-fide unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon the exterior portion of such Owner's Unit for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Special Assessment enforceable in the manner set forth in Article 7, above. Each Owner shall be responsible, at his or her sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Lot, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

**Section 10.18 Prohibited Plant Types.** Without limiting the generality of any other provision herein, the following plant types are hereby specifically declared to be nuisances, and shall not be permitted anywhere within the Properties: (a) *Olea europaea* ("olive") (other than "fruitless olive," which shall be permitted); (b) *Morus alba* or *nigra* ("mulberry"); or (c) *Cynodon dactylon* ("bermuda grass"); (d) *Amaranthus palmeri* ("careless weed"); (e) *Salsola kali* ("Russian thistle"); and/or (f) *Franserian dumosa* ("desert ragweed"). Declarant may, from time to time and at any time, add or delete any plant species to the foregoing list of prohibited plants. If Declarant adds a plant species to the foregoing list of prohibited plants, each Owner shall refrain from planting or placing such plant species on the Properties; provided, however, that Owners shall not be obligated to unearth landscaping existing at such time to remove such newly prohibited plant species from the Properties.

**Section 10.19 Parking and Vehicular Restrictions.** No Person shall park, store or keep anywhere within the Properties, any inoperable or similar vehicle, or any large commercial-type vehicle, including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, bus, aircraft, or any vehicular equipment, mobile or otherwise, except wholly within the Owner's garage as originally constructed by Declarant ("Garage") and only with the Garage door closed. Any boat, trailer, camper, motor home, and similar recreational vehicle (collectively and individually, "RV"), shall be parked only (i) wholly within a Garage, with the Garage door completely closed; provided that the Board shall have the power and authority to entirely disapprove and/or prohibit such parking of an RV if such parking reasonably may be deemed to constitute a nuisance, as determined by the Board in its business judgment. The foregoing shall not be deemed to prohibit a pickup or camper truck or similar vehicle up to and including one (1) ton, which vehicle shall be allowed when used for daily transportation of the Owner or Resident, or the Family respectively thereof, subject to the provisions in this Declaration pertaining to Garages, nuisance, and parking. No Person shall conduct repair or restoration of any motor vehicle, boat, trailer, aircraft, or other vehicle upon any portion of the Properties or on any street within or abutting the Properties; provided that repair and/or restoration of one (1) such item only shall be permitted within an Owner's Garage so long as the Garage door remains closed; provided further that such activity may be prohibited entirely by the Board if the Board determines in its reasonable discretion that such activity constitutes a nuisance. Vehicles owned, operated or within the control of any Owner or of a resident of such Owner's Dwelling shall be parked in the garage of such Dwelling to the extent of the space available therein. All garages shall be kept neat and free of stored materials so as to permit the parking of at least one (1) standard sized American sedan automobile therein at all times. Garage doors shall not remain open for prolonged periods of time, and must be closed when not reasonably required for immediate ingress and egress. The Association, through the Board, is hereby empowered to establish and enforce any additional parking limitations, rules and/or regulations (collectively, "parking regulations") which it may deem necessary, including, but not limited to, the levying of fines for violation of parking regulations, and/or removal of any violating vehicle at the expense of the owner of such vehicle. No parking of any vehicle shall be permitted along any curb or otherwise on any street within the Properties, except only for ordinary and reasonable guest parking, subject to parking regulations established by the Board. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner as to permit any parking or other activity which would be contrary to any Ordinance, or which is determined by the Board, in its reasonable discretion, to constitute a bona-fide nuisance. These vehicle and parking rules may be enforced on any Lot, Common Element, Private Street, or road within the Properties. Notwithstanding any of the foregoing, these restrictions shall not be enforced on any road, street, alley, or other thoroughfare, the right-of-way of which is accepted by the State of Nevada or a local government for dedication for public use.

Section 10.20 Sight Visibility Restriction Areas. The maximum height of any and all sight restricting Improvements (including, but not necessarily limited to, landscaping), on all Sight Visibility Restriction Areas, if any, shown as such on the Plat, shall be restricted to a maximum height not to exceed such height set forth in the Plat ("Maximum Permitted Height"). In the event that any Improvement located on any Sight Visibility Restriction Area on a Unit exceeds the Maximum Permitted Height, the Association shall have the power and easement to enter upon such Unit and to bring such Improvement into compliance, and the Owner shall be solely liable for the costs thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration.

Section 10.21 Prohibited Direct Access. Any other provision herein notwithstanding, there shall be no direct vehicular access from any Lot over Common Elements directly onto certain thoroughfares; all as set forth in further detail on the Plat.

Section 10.22 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Community Manager of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Community Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Community Manager.

Section 10.23 Declarant Exemption. Each Unit owned by Declarant, shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Unit to a Purchaser, and activities of Declarant reasonably related to Declarant's development, construction, advertising, marketing and sales efforts, shall be exempt from the provisions of this Article 10. This Article 10 may not be amended without Declarant's prior written consent.

Section 10.24 Master Association Documents. The use restrictions set forth in the Master Association Documents shall apply to this Project. The provisions of the Master Association Documents shall prevail in the event of any irreconcilable conflict with the provisions of this Declaration, although such documents shall be construed to be consistent with one another to the extent reasonably possible, and the inclusion in this Declaration of additional use restrictions or provisions which are more restrictive than the restrictions or provisions set forth in the Master Association Documents shall not be deemed to constitute a conflict with the provisions of the Master Association Documents.

## **ARTICLE 11**

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

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

(a) Repair of Damage. Any portion of this Community, for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Common-Interest Community is terminated, in which case the provisions of NRS §§ 116.2118, 116.21183

and 116.21185 shall apply; (ii) repair or replacement would be illegal under any applicable statute or Ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community; (A) the proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units; and (B) the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the liabilities of all the Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations.

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

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

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

## **ARTICLE 12**

### **INSURANCE**

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

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

Section 12.2 Liability and Other Insurance. The Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem prudent (but in no event less than \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Community Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests and invitees, against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available and reasonably necessary, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Worker's Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Community Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

Section 12.3 Fidelity Insurance. The Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance coverage (in an amount at least equal to 100% of the Association Funds from time to time handled by such Persons) and such other insurance as it deems prudent, insuring the Board, the Directors, and Officers, and any Community Manager against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof, if reasonably feasible, in the amount of not less than \$1,000,000.00. Said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period, if reasonably available. The Association shall require that the Community Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From and after the end of the Declarant Control Period, blanket fidelity insurance coverage which names the Association as an obligee shall be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Community Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Units, plus Reserve Funds) (or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable).

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

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his or her Unit, at his or her sole expense to have obtained, and to have furnished his or her Mortgagee and the Board (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of, a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his or her Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and shall provide the Board with duplicate copies of such insurance policy at Close of Escrow, and periodically thereafter prior to expiration from time to time of such policy, and upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he or she deems desirable to cover his or her individual liability, damage to person or property occurring inside his or her Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by

or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him or her to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein, each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance.

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

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

### **ARTICLE 13**

#### **MORTGAGEE PROTECTION CLAUSE**

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

(a) Each Eligible Holder, upon its specific written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws,



which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Unit, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.

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

(c) Except as provided in NRS § 116.3116.2, each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title to such Unit free and clear of any claims of unpaid Assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee.

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

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

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

(iii) by act or omission change, totally waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other Improvements on the Units, the maintenance of the Perimeter Walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

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

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

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

(e) Eligible Holders, upon express written request in each instance therefor, shall have the right to: (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement

(without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

(f) Eligible Holders, who have filed a written request for such notice with the Board, shall be given thirty (30) days' written notice prior to: (1) any abandonment or termination of the Association; and/or (2) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties. Such first Mortgagees shall be given immediate notice: (i) following any damage to the Common Elements whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00); and (ii) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

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

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

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

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

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

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to reasonably satisfy the express applicable express requirements of FHA, VA, FNMA or GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the

Membership, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Unit.

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

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

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

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

(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, construction trailers, and/or models in any Unit owned or leased by Declarant in the Properties, and signs anywhere on the Common Elements, for the period set forth in Section 14.1(a) above, and Declarant further expressly reserves the right during such period to use said signs, offices and models, in connection with marketing and sales of other projects of Declarant in the Las Vegas Valley.

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

(e) Designation of Neighborhoods and Neighborhood Common Areas. Declarant reserves the right to designate Neighborhoods and Neighborhood Common Areas, as set forth in Article 18, below, until the later of such time as Declarant no longer owns any property in the Properties, or no longer has the power to exercise any developmental right pursuant to this Declaration.

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

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

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

(i) Control of Entry Gates. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control the entry gates in gated Neighborhoods (if any), and to keep such entry gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

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

(k) Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control, restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, subject to applicable laws and Ordinances, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(l) Marketing Names. Declarant reserves the right, for so long as Declarant owns or has any interest in any of the Annexable Area, to market and/or advertise different portions of the Properties under different marketing names.

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

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

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

Section 14.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, but subject to the Master Declaration and Developmental Declaration respectively, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the

construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties, for so long as any Unit owned by Declarant remains unsold.

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

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

(d) Without limiting Section 14.1(c), above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, for this Community or for any other project of Declarant and/or its affiliates, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity. Any garages which have converted into sales offices by Declarant shall be converted back to garages at the time of sale to a Purchaser of such Unit.

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

(f) The prior written approval (which shall not be unreasonably withheld) of Declarant, as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 14) can be effective.

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the date set forth in Section 14.1(a) above.

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

**Section 14.4 Master Declaration.** The foregoing developmental rights and special Declarant's rights shall be in addition to, and cumulative with, any applicable developmental rights and special declarant's rights reserved by the Master Declarant under the Master Declaration. In the event of any irreconcilable conflict, the provisions of the Master Declaration shall prevail.

Section 14.5 Subject to Developmental Declaration and Master Declaration. Notwithstanding any other provision in this Declaration, this entire Article 14 also shall be subject to the Developmental Declaration and the Master Declaration.

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

Section 15.1 Annexation. Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portions of the Annexable Area then owned by Declarant, by Recording an annexation amendment ("Annexation Amendment") with respect to the real property to be annexed ("Annexed Property"). Upon the recording of an Annexation Amendment covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if the Annexed Property were originally covered in this Declaration and originally constituted a portion of the Original Property; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Property shall be the same as with respect to the Original Property and the rights, obligations, privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter (and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his or her successors and assigns) to unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15.

Section 15.2 Annexation Amendment. Each Annexation Amendment shall conform to the requirements of NRS § 116.211, and shall include:

- (a) the written and acknowledged consent of Declarant;
- (b) a reference to this Declaration, which reference shall state the date of Recordation hereof and the County, book and instrument number, and any other relevant Recording data;
- (c) a statement that the provisions of this Declaration shall apply to the Annexed Property as set forth therein;
- (d) a sufficient description of the Annexed Property;
- (e) assignment of an Identifying Number to each new Unit created;
- (f) a reallocation of the allocated interests among all Units; and
- (g) a description of any Common Elements created by the annexation of the Annexed Property.

Section 15.3 FHA/VA Approval. In the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) on any portion of the Annexable Area with respect to the initial sale by Declarant to a Purchaser of any Unit, then a condition precedent to any annexation of any property other than the Annexable Area shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA; provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

Section 15.4 Disclaimers Regarding Annexation. Portions of the Annexable Area may or may not be annexed, and if annexed, may be annexed at any time by Declarant, and no assurances are made with respect to the boundaries or sequence of annexation of such portions. Annexation of a portion of the Annexable Area shall not necessitate annexation of any other portion of the remainder of the Annexable Area. Declarant has no obligation to annex the Annexable Area, or any portion thereof.

Section 15.5 Expansion of Annexable Area. In addition to the provisions for annexation specified in Section 15.2 above, the Annexable Area may, from time to time, be expanded to include additional real property, not as yet identified. Such property may be annexed to the Annexable Area upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners of such property and containing thereon the approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written approvals.

Section 15.6 Contraction of Annexable Area; Withdrawal of Real Property. So long as real property has not been annexed to the Properties subject to this Declaration, the Annexable Area may be contracted to delete such real property effective upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners, if any, of such real property, and declaring that such real property shall thereafter be deleted from the Annexable Area. Such real property may be deleted from the Annexable Area without a vote of the Association or the approval or consent of any other Person, except as provided herein.

## **ARTICLE 16**

### **ADDITIONAL DISCLOSURES, DISCLAIMERS, AND RELEASES**

Section 16.1 Disclosures, Disclaimers and Releases Pertaining to Common Recreational Area. NO SECURITY OR MONITORING IS PROVIDED FOR THE COMMON RECREATIONAL AREA OR OTHER COMMON ELEMENTS AND/OR PERSONS OR ACTIVITIES WITHIN OR RELATED TO THE COMMON RECREATIONAL AREA OR OTHER COMMON ELEMENTS. All persons entering upon the Common Recreational Area shall do so at their own risk and shall conclusively be deemed to have fully and unconditionally assumed the risk of property damage and/or bodily injury from conditions, activities, and/or occurrences on or the use by others of such areas, and shall indemnify and hold Declarant, the Association, and their respective directors, officers, employees, and agents, harmless from and against any and all liability arising from or in any way related to the Common Recreational Area. Without in any way limiting the foregoing: (a) parents shall at all times personally supervise any minor child or children on or about the Common Recreational Area; (b) such animals as may be allowed from time to time in the Common Recreational Area must at all times be kept on a leash held by a person capable of controlling the animal, and such person must immediately clean up and reasonably remove any and all droppings

or waste deposited by such animal; and (c) the Board shall have the right, in their respective discretion (but not the obligation), to establish additional Rules and Regulations regulating use of the Common Recreational Area, and to prohibit any activity thereon deemed to be a nuisance. Without limiting the foregoing, such Rules and Regulations may set forth limits on the number of people using the Common Recreational Area, limits on the number of guests permitted in the Common Recreational Area, and/or deposits required for clean-up or damage, and other rules and regulations from time to time deemed appropriate or necessary.

Section 16.2 Additional Disclosures, Disclaimers, and Releases of Certain Matters. The term "Properties" or "Community", as used throughout these disclosure and disclaimer provisions, shall include this Unit, other dwellings, and the Common Elements. All disclosures and disclaimers set forth in this Declaration shall be cumulative with, and shall not limit, any and all disclosures and disclaimers set forth in this Declaration, the Purchase Agreement, and/or in the various documents described in, and/or listed and set forth as attachments to the Public Offering Statement, all of which disclosures and disclaimers are incorporated herein by this reference. Inclusion or description of certain items or matters herein shall not raise any inference whatsoever regarding the importance or lack of importance of any other item or matter not included or described herein. Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit, or by possession of a Unit, each Owner (for purposes of this Article 16, and all of the Sections thereof, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), (and by residing within the Properties, each Resident) (for purposes of this Article 16, the term "Resident" shall include each Resident, and their guests) shall conclusively be deemed to understand, and to have acknowledged and agreed that each such person's decision to purchase or reside in a Unit is based solely upon such person's own independent investigation, and not upon any information orally provided by any sales agent, and further to have acknowledged and agreed to, all of the following disclosures, disclaimers, and releases, all of which are cumulative and supplemental with each other and any other disclosures, disclaimers and releases, and none of which shall be deemed in any way or to any extent to replace or limit any other disclosure, disclaimer, and/or release:

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

(b) The Units and other portions of the Properties from time to time are or may be located underneath, within, or nearby airplane flight patterns, and/or subject to frequent and substantial levels of airplane traffic and loud noise and/or vibration; and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to airplane flight patterns, and/or airplane noise and vibration.

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



(d) The Units and other portions of the Properties are or may be nearby major regional underground natural gas transmission pipelines. Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to gas transmission pipelines.

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

(f) Construction or installation of Improvements by Declarant, Master Declarant, other Owners, or third parties, or installation or growth of trees or other plants, may obstruct, impair or eliminate the view, if any, of or from any Unit and/or Common Elements. Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to views or preservation of views, and each Owner, by acquiring title to a Unit, whether or not so expressed in the deed thereto, shall be deemed to have waived and released Declarant, Association, Master Declarant, and Master Association, and their respective directors, officers, members, managers, employees and agents, with regard to from any and all claims arising from or related to view obstruction, impairment, or elimination.

(g) Residential subdivision and new home construction is an industry inherently subject to variations and imperfections. Purchaser acknowledges and agrees that items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and are not constructional defects. Purchaser acknowledges that: (1) the finished construction of the Unit and the Common Elements, while within the standards of the industry in the Las Vegas Valley, Clark County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to variations and imperfections and expected minor flaws; and (2) issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards.

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

(i) No security or monitoring is provided for any part of the Community, including, but not limited to, the Common Recreational Area or other Common Elements and/or

persons or activities within or nearby or related to the Common Elements. All persons entering upon the Common Elements shall do so at their own risk and shall conclusively be deemed to have fully and unconditionally assumed the risk of property damage and/or bodily injury from conditions, activities, and/or occurrences on or the use by others of such areas, and shall indemnify and hold Declarant, the Association, the Master Declarant, the Master Association, and their respective directors, officers, employees, and agents, and the DRC and ARC, harmless from and against any and all liability arising from or in any way related to the Common Elements. Without in any way limiting the foregoing: (a) parents shall at all times personally supervise any minor child or children on or about the Common Elements; (b) such animals as may be allowed from time to time in the Common Elements must at all times be kept on a leash held by a person capable of controlling the animal, and such person must immediately clean up and reasonably remove any and all droppings or waste deposited by such animal; and (c) the Board shall have the right, in its sole discretion (but not the obligation), to establish additional Rules and Regulations pertaining to use of the Common Elements, and to prohibit any activity thereon deemed to be a nuisance.

(j) Northern Terrace itself is not a gated Community. Declarant has the right, in its sole discretion, to develop one or more gated Neighborhood(s) within Northern Terrace. With regard to such gated Neighborhood(s), if any: installation and maintenance of a gated Neighborhood (as applicable) and/or any security device shall not create any presumption or duty whatsoever of Declarant, Association, Master Declarant, or Master Association (or their respective officers, directors, managers, employees, agents, and/or contractors) with regard to security or protection of person or property within or adjacent to the Properties or such gated Neighborhood; and each Owner within such gated Neighborhood, by acquiring title to or occupying a Unit, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Neighborhood had been located within public areas.

(k) Gated entrances (in those Neighborhoods, if any, which have gated entrances) may restrict or delay entry into such gated Neighborhood(s) by law enforcement, fire protection, and/or emergency medical care personnel and vehicles; and each Owner within such gated Neighborhood(s), by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have voluntarily assumed the risk of such restricted or delayed entry.

(l) The Las Vegas Valley contains a number of earthquake faults, and Properties or portions thereof may be located on or nearby an identified or yet to be identified seismic fault line. Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to earthquakes or seismic activities; and each Owner must make its own independent determination regarding such matters, and releases Declarant and the Association from any and all claims arising from or relating to earthquakes or seismic activities.

(m) The Las Vegas Valley currently is undergoing drought conditions, and relevant water districts and authorities have announced certain water conservation measures and restrictions on outdoor watering and/or outdoor water features. It is possible that these drought conditions may continue or worsen, and/or that the relevant water districts and authorities may announce further water conservation measures and restrictions, which may affect Unit and/or Common Element landscaping and features, and the appearance and/or use of same, and further restricting what plants the Owner can plant or install on the Owner's Lot (for example, among others, the Owner may be prohibited from installing sod on the Owner's Lot or portions thereof). Each Owner is required to immediately familiarize himself or herself with all present and from time to time with all anticipated or changed water use, watering restrictions, fines, and planting limitations, as relate or may relate to such Owner's Lot (including, but not necessarily limited to, landscaping and uses thereon). Further information regarding the foregoing may be obtained from

time to time from the Southern Nevada Water Authority, which currently maintains a public information website at "www.snwa.com". Each Owner releases Declarant and/or Association from any and all claims arising from or relating to drought or water conservation measures or restrictions, and/or the effects respectively thereof.

(n) The Units and other portions of the Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes and foxes), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard.

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

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

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

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

(s) The Board is empowered to establish "parking" and/or "no parking" areas within the Common Elements, and to establish Rules and Regulations governing such matters, as well as to reasonably enforce such parking rules and limitations on the Private Streets by all means which would be lawful for such enforcement by public authority on public streets, including the removal of any violating vehicle, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

(t) Declarant reserves the right to control private parking spaces during Declarant's regular business or marketing hours, and to tow unauthorized vehicles at the owner's expense, for as long as Declarant is conducting construction, marketing, or sales activities in or from the Community or any portion thereof.

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

(v) Each Purchaser acknowledges having received from Declarant: (a) information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, together with (b) a copy of the most recent gaming enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to any gaming uses or issues. Each Purchaser and Owner is hereby advised that the master plan and zoning ordinances, and gaming enterprise districts, are subject to change from time to time. If additional or more current information concerning such matters is desired, the Purchaser should contact the City of Las Vegas Planning Department. Each Purchaser and Owner acknowledges and agrees that its decision to purchase a Unit is based solely upon Purchaser's own investigation and not upon any information provided by any sales agent.

(w) Homeowners shall be required to comply with the Design Guidelines (if any), and shall be required to obtain prior written approval of both the Master Association Design Review Committee ("DRC"), and the Architectural Review Committee ("ARC") before adding, altering, modifying, expanding, or eliminating any Improvements.

(x) Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Unit. The Purchaser or Owner of a Unit may have seen proposed or contemplated residential and other developments which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. A Purchaser or Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions or any provisions in the Public Offering Statement or Purchase Agreement.

(y) Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "nuisances". Each Owner acknowledges and agrees that it is purchasing a Unit which is within a residential Community (and Master Community) currently being developed, and that the Owner will experience and accepts substantial level of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out.

(z) Declarant shall have the right (but not the obligation), at any time and from time to time, in its sole and absolute discretion, to: (a) design and/or to build different or varying product types or designs for new homes in the Community; (b) establish and/or adjust sales prices or price levels for homes and/or Lots; (c) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (d) unilaterally modify and/or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community; and the Annexable Area may, but need not necessarily, from time to time be annexed hereto.

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

(ab) The Unit and other portions of the Properties are or may be located adjacent to or nearby a school, and school bus drop off/pickup areas, and subject to levels of noise, dust, and other nuisance resulting from or related to proximity to such school and/or school bus stops.

(ac) Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control any and all entry gates within gated Neighborhoods (if any), and to keep such entry gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

(ad) Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally enter upon, and/or to control, restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, subject to applicable laws and Ordinances, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street.

(ae) Declarant reserves the right to correct or repair any Improvement, as set forth in Section 17.15 below.

(af) Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration. Declarant also reserves, to the extent not expressly prohibited by NRS Chapter 116, all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.089).

(ag) Each Purchaser and/or Owner understands, acknowledges, and agrees that Declarant has reserved certain rights, powers, authority and easements in the Declaration, and Master Declarant has reserved certain rights, powers, authority and easements in the Master Declaration; all or any of which may limit certain rights of the Association and Owners other than Declarant and/or Master Declarant, respectively.

(ah) LO Land Assets, LP ("LLA") currently owns certain real property in the City of Las Vegas, Clark County, Nevada. Declarant has the right to acquire and to annex portions of such real property from time to time to this Declaration and the Community. Accordingly, LLA has certain rights under a Collateral Assignment of Record, which provisions may limit certain rights of Declarant, the Association, and other Owners.

(ai) Declarant did not author the Master Declaration and/or other Master Association Governing Documents, and Declarant does not control Master Declarant or Master Association, which are independent and unrelated legal entities. Accordingly, Declarant has no responsibility, obligation, or liability whatsoever to the Association or any Owner for: (1) the Master Declaration, or enforcement thereof; (2) the actions or omissions of Master Declarant or Master Association, and/or (3) the use, regulation, operation, maintenance, improvement, or repair, of Master Association Property.

**Section 16.3 Releases.** By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have understood, acknowledged and agreed to all of the disclosures and disclaimers set forth herein, and to release Declarant and the Association, and Master Declarant and the Master Association, and all of their respective officers, managers, agents, employees, suppliers, and contractors from any and all claims, causes of action, loss, damage or liability (including, but not limited to, any claim for nuisance or health hazard, property damage, bodily injury, and/or death) arising from or related to all and/or any one or more of the conditions, activities, occurrences, reserved rights, or other matters described in the foregoing Sections 16.1 and 16.2.

## **ARTICLE 17**

### **ADDITIONAL PROVISIONS**

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

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

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

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

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

(2) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after actual notice of such violation has been given to such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;

(3) notwithstanding the foregoing, each Owner shall have an unrestricted right of ingress and egress to his or her Unit by the most reasonably direct route over and across the relevant streets;

(4) no fine imposed under this Section may exceed the maximum amount(s) permitted from time to time by applicable provision of Nevada law for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2 and/or 5.3 above);

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

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

(d) Responsibility for Violations. Should any Resident violate any material provision of the Declaration, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident. Reasonable efforts first shall be made to resolve any alleged material violation, or any dispute, by

friendly discussion in a "good neighbor" manner, followed (if the dispute continues) by informal mediation by the ARC or Board (and/or mutually agreeable or statutorily authorized third party mediator). Fines or suspension of voting privileges shall be utilized only as a "last resort", after all reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed.

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

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

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

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

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

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

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

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



amendment fails to receive the number of votes and/or consent required in the preceding sentence, but, receives a majority of the total voting power of the Membership, then the Association, or any Owner, may file a petition with the Eighth Judicial District Court, Clark County, Nevada, seeking a Court order to amend the Declaration and to confirm the amendment as validly approved. Notwithstanding the foregoing or any other provision in this Declaration, Declarant may not amend this Declaration without the prior written consent of Master Declarant. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by at least sixty-seven percent (67%) of the Eligible Holders at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned (or pursuant to Court order as described above):

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers, and guarantors of first Mortgages as provided in Articles 7, 11, 12, 13, 14 and 19 hereof.

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

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

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

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

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

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

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed termination, amendment or amendments. Notwithstanding anything contained in this Declaration to the contrary, nothing contained herein shall operate to allow any Mortgagee to: (a) deny or delegate control of the general administrative affairs of the Association by the Members or the Board; (b) prevent the Association or the Board from commencing, intervening in or settling any litigation or proceeding; or (c) prevent any trustee or the Association from receiving and distributing any proceeds of insurance, except pursuant to NRS §§ 116.31133 & 116.31135.

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

Notwithstanding all of the foregoing, for so long as Declarant owns a Lot or Unit, Declarant shall have the right and power, but not the obligation, from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibits hereto, to make, and to process through appropriate governmental authority, minor revisions to the Plat deemed appropriate by Declarant in its discretion, and otherwise to ensure that the Declaration conforms with requirements of applicable law, as may be amended from time to time. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B") hereto, in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his or her successors and assigns, to unilaterally execute and Record an Annexation Amendment, adding said real property to the Community, in the manner provided for in NRS § 116.211 and in Article 15 above, and to make, and to process through appropriate governmental authority, any and all minor revisions to the Plat deemed appropriate by Declarant in its reasonable discretion, and each and every Owner, by acceptance of a deed to his or her Unit, covenants to sign such further documents and to take such further actions as to reasonably implement and consummate the foregoing.

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

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

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

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

Section 17.10 Priorities and Inconsistencies. Subject to Section 5.8 above, and Section 17.14 below: (a) the Governing Documents shall be construed to be consistent with one another to the extent reasonably possible; (b) if there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term or provision of this Declaration fails to comply with provision of NRS Chapter 116 applicable hereto); (c) in the event of any irreconcilable inconsistency between the Articles and Bylaws, the Articles shall prevail; and (d) in the event of any irreconcilable inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail.

Section 17.11 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, none of Declarant, LLA, Association, ARC, Master Declarant, DRC, and/or Master Association and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former Association committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.12 Indemnity. Each Owner shall, to the maximum extent permitted by law, indemnify and hold free and harmless each and every one of: Declarant, LLA, Association, any director, or any officer, agent, employee, or committee representative, respectively of Declarant, LLA, or Association, and/or their respective partners, members, divisions, subsidiaries and affiliated companies (if any), and their and their respective employees, officers, directors, members, shareholders, agents, professional consultants and representatives, and all of their respective successors and assigns (collectively, "Indemnitees") from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any fault, act, or omission of the Owner, any contractor or subcontractor employed by the Owner, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with: (a) any work by or of the Owner within the Properties and/or the performance of the Owner's obligations with respect to any and all Improvements designed, installed, constructed, added, altered or remodeled by the Owner pursuant and subject to the Governing Documents, including, without limitation, any such loss, damage, injury or claim arising from or caused by or alleged to have arisen from or have been caused by (i) any use of the Lot, or any part thereof, (ii) any defect in the design, construction of, or material in, any structure or other Improvement upon the Lot, (iii) any defect in soils or in the preparation of soils or in the design and accomplishment of grading, including a spill of any contaminants or hazardous materials in or on the soil, (iv) any accident or casualty on the Lot or in the Properties, (v) any representations by Owner or any of its agents or employees, (vi) a violation or alleged violation by the Owner, its employees or agents, of any applicable law, (vii) any slope failure or subsurface geologic or groundwater condition, (viii) any work of design,

construction, engineering or other work with respect to the Lot or Properties provided or performed by or for the Owner at any time whatsoever, or (ix) any other cause whatsoever in connection with Owner's use of the Lot or the Properties, or Owner's performance under this Declaration, or any other Governing Document; or (b) the negligence or wilful misconduct of Owner or its agents, employees, licensees, invitees or contractors in the development, construction, grading or other work performed off the Properties by Owner pursuant to the Governing Documents and/or Master Association Documents, or any defect in any such work. Notwithstanding anything to the contrary contained in any of the documents referenced in the preceding sentence, Owner agrees and acknowledges that Indemnitees shall not be liable to Owner for any Liabilities caused by (i) any act or omission of Indemnitees with respect to the review of the Owner's Improvements and/or the drawings or specifications related to the Owner's Improvements, or (ii) any inspection or failure to inspect the construction activities of Owner by any of the Indemnitees, or (iii) any direction or suggestion given by any of the Indemnitees with respect to construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Owner's Improvements, or the failure to give any such direction or suggestion, or for any Liabilities which are covered by insurance or would be covered by insurance required to be maintained by the Owner, and Owner expressly waives any such Liabilities and releases Indemnitees therefrom. The covenants in this Section 17.12 and the obligations of each Owner, and shall be binding on the Owner until such date as any claim or action for which indemnification or exculpation may be claimed under this Section 17.12 is fully and finally barred (or, if applicable, fully and finally resolved, and any payment required thereby has been made in full).

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

Section 17.14 Compliance With NRS Chapter 116. It is the intent of Declarant that this Declaration and the Community shall be in all respects consistent with, and not in violation of, applicable provisions of NRS Chapter 116, as may be amended from time to time. In the event any provision of this Declaration is found to irreconcilably conflict with or violate any such applicable provision of NRS Chapter 116, such offending Declaration provision shall be automatically deemed modified or severed herefrom, to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of NRS Chapter 116. Notwithstanding the foregoing or any other provision set forth herein, if any provision of NRS Chapter 116 should, in the future, be removed or made less burdensome (in Declarant's sole judgment), then the future change in such provision shall be deemed to have been automatically made and reflected in this Declaration as of the effective date of such statutory change.

Section 17.15 Declarant's Right to Repair. Whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall conclusively be deemed to have agreed: (a) [notice] to promptly provide Declarant with specific written notice from time to time of any Improvement requiring correction or repair(s) for which the Owner/Association asserts Declarant is or may be responsible. (The notice must: 1) include a statement that the notice is being given to satisfy NRS 40.645, 2) specify with detail any defects or damages, and 3) describe the cause of the defect if known); (b) [inspection] following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant Improvement to determine the nature and extent of the defect and repairs that may be necessary; (c) [repair] if the Declarant elects to repair the Improvement, the Owner/Association shall reasonably permit entry by Declarant (and Declarant's contractors and

agents) upon the Unit or Common Element (as applicable) from time to time in connection therewith, to take steps to perform corrective or repair work. If the Owner/Association fails to provide Declarant with notice or fails to permit Declarant to inspect or repair at Declarant's election, then Declarant shall not be held responsible for any such corrective or repair work. The foregoing portion of this Section 17.15 shall not be deemed to modify or toll any applicable statute of limitation or repose, or any contractual or other limitation pertaining to such work.

## **ARTICLE 18**

### **ADDITIONAL PROVISIONS PERTAINING TO NEIGHBORHOODS**

Section 18.1 Designation of Neighborhoods and Neighborhood Common Areas. Declarant additionally reserves the right, in its sole discretion to designate Neighborhoods (and to unilaterally redesignate Neighborhood names, designations, and/or boundaries) and Neighborhood Common Areas, as set forth below, until the later of such time as Declarant no longer owns any property in the Properties, or no longer has the power to exercise any developmental right pursuant to this Declaration. Each Unit shall be located within a Neighborhood.

(a) "Neighborhood" shall mean a group of particular Units designated by Declarant as a specific neighborhood for purposes of sharing Neighborhood Common Area (and/or receiving other benefits or services which are not provided to other Units within the Community but outside of such Neighborhood), subject to sharing by Units within the Neighborhood of Neighborhood Expenses through supplemental periodic Neighborhood Assessments, if any, as established by the Board from time to time. Any and all Neighborhoods shall be subject to the Governing Documents; provided that a Neighborhood may (in the sole discretion of Declarant or in the business judgment of the Board), but need not necessarily, also be subject to Supplemental Neighborhood Rules and Regulations for such designated Neighborhood(s).

(b) "Neighborhood Assessments" shall mean those periodic assessments, which shall be supplemental to all Community Assessments, levied by the Board uniformly upon the Units within a particular Neighborhood to pay for the Neighborhood Expenses within such Neighborhood.

(c) "Neighborhood Common Area" shall mean a portion of the Common Elements which shall constitute Limited Common Elements allocated for the use and benefit of one or more Neighborhood(s) (but less than the entire Community) as designated by Declarant in its sole discretion, and may, but need not necessarily, include Neighborhood Private Streets. Neighborhood Common Area is available for the use and enjoyment of only the Owners within such Neighborhood. Neighborhood Common Area may vary by Neighborhood. Without limiting the preceding sentence, certain Neighborhoods may be gated, and other Neighborhoods may not be gated, all in Declarant's sole discretion. The level of maintenance of Neighborhood Common Area shall be determined from time to time by the Board, provided that the Owners of Units within a Neighborhood may request the Board to enhance the level of maintenance in such Neighborhood (at the sole cost of such Neighborhood and the Owners thereof), pursuant to Rules and Regulations governing same which may be established and/or revised by the Board from time to time in its reasonable business judgment.

(d) "Neighborhood Expenses" shall mean the expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, for maintenance, management, operation, repair, replacement and insurance of Neighborhood Common Area, or for the particular benefit of Owners of Units within a particular Neighborhood, as may be authorized

pursuant to this Declaration or in any applicable Supplemental Declaration authorized by Declarant in its sole discretion.

(e) "Neighborhood Private Streets" shall mean that certain portion of Neighborhood Common Area comprising private streets. Certain Neighborhood(s) may have Neighborhood Private Streets, but other Neighborhoods may not, all in Declarant's sole discretion.

(f) Declarant reserves the right from time to time to designate Neighborhoods and Neighborhood Common Area(s).

**Section 18.2 Neighborhood Common Areas.** Certain portions of the Common Elements from time to time may be designated by Declarant, in its sole discretion, as Neighborhood Common Area, which shall constitute Limited Common Elements allocated and reserved for the exclusive use or primary benefit of Owners and Residents within a particular Neighborhood. By way of illustration and not limitation, Neighborhood Common Area may, but need not necessarily, include Neighborhood entry features, entry gates, Neighborhood Private Streets, landscaping, and other Limited Common Elements within a particular Neighborhood. Certain Neighborhoods may be gated, and other Neighborhoods may be non-gated, all in Declarant's sole discretion. All costs associated with maintenance, management, operation, repair, replacement, and insurance of Neighborhood Common Area shall be a Neighborhood Expense, allocated uniformly and levied as Neighborhood Assessments among the Owners in the Neighborhood to which the Neighborhood Common Area is allocated.

**Section 18.3 Designation of Neighborhood Common Areas.** Any Neighborhood Common Area initially shall be designated as such from time to time in: (a) a separate instrument Recorded by Declarant in its sole discretion; or (b) in the deed conveying such Neighborhood Common Area to the Association; or (c) on the relevant Recorded subdivision plat; provided, however, that any such designation shall not preclude Declarant from later assigning use of the same Neighborhood Common Area to additional Units and/or Neighborhood(s), so long as Declarant has a right to subject additional property to this Declaration pursuant to Article 15, above. Thereafter, allocation of Neighborhood Common Area may be reassigned upon written approval of the Board and the affirmative vote of a majority of the votes within the Neighborhood(s) affected by the proposed reallocation. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Article 15 above, any such allocation or reallocation shall also require Declarant's prior written consent, in its sole discretion.

**Section 18.4 Use of Neighborhood Common Area.** Subject to all of the other provisions of this Declaration (including, without limitation, the easements, use restrictions, maintenance and repair obligations, and architectural and landscaping control provisions), Neighborhood Common Area (which, by way of illustration and not limitation, may but need not necessarily include Neighborhood Private Streets including Neighborhood entry gates) is exclusively allocated to and reserved for the exclusive use of Owners and Residents of Units within the Neighborhood to which the Neighborhood Common Area is allocated.

**Section 18.5 Maintenance, Repair, and Replacement of Neighborhood Common Area.** Costs of management, operation, maintenance, repair, replacement and insurance of Neighborhood Common Area shall be a Neighborhood Expense assessed as Neighborhood Assessments to the Owners of Units in the Neighborhood(s) to which the Neighborhood Common Areas are allocated.

Section 18.6 Allocation and Budgeting of Neighborhood Expenses. As part of the annual Budget process set forth in, and, subject to the provisions of Section 6.4 above, the Board shall cause to be prepared and delivered, to each Owner of a Unit in a Neighborhood, a supplemental budget covering the estimated Neighborhood Expenses for a Neighborhood (which shall also include a reasonably prudent allocation for reserves for capital repairs and replacement of Neighborhood Common Area). The Association is hereby authorized to levy Neighborhood Assessments uniformly against all Units in the Neighborhood subject to assessment, to fund Neighborhood Expenses. Such Neighborhood budget and Neighborhood Assessments promulgated by the Association shall become effective unless disapproved by Owners of seventy-five percent (75%) of the affected Units in the Neighborhood; however, there shall be no obligation to call a special meeting of the Owners of Units in such Neighborhood. If the proposed budget for a Neighborhood is disapproved, or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board may revise the budget for any Neighborhood, and the amount of any Neighborhood Assessment from time to time during the year, subject to notice and the right of the Owners of Units in the affected Neighborhood to disapprove the revised budget as set forth above.

## **ARTICLE 19**

### **ADDITIONAL PROVISIONS PERTAINING TO NEIGHBORHOOD PRIVATE STREETS**

Section 19.1 Neighborhood Private Streets. As set forth in Article 18 above, certain Neighborhoods may have Neighborhood Private Streets (and private entry gate(s)), as Neighborhood Common Area or Limited Common Elements within each such Neighborhood, subject to additional Neighborhood Assessments. With regard to such Neighborhood Private Streets within a particular Neighborhood, the following provisions shall additionally apply and shall be cumulative with the other provisions of this Declaration, including, but not limited to, the provisions of Article 18 above.

Section 19.2 Neighborhood Easement. With regard to a designated Neighborhood, each Owner therein shall have a non-exclusive right and easement of ingress and egress and of use and enjoyment in, to and over the Neighborhood Common Area within such Neighborhood, including, but not limited to, the Neighborhood Private Streets within such Neighborhood, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject in like manner to the matters set forth in Section 2.1 above.

Section 19.3 Easements for Parking on Neighborhood Private Streets. Subject to the parking and vehicular restrictions set forth elsewhere in this Declaration, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Neighborhood Common Area of a designated Neighborhood, and to establish Rules and Regulations governing such matters, as well as to reasonably enforce such parking rules and limitations by all means which would be lawful for such enforcement on public streets, including the removal of any violating vehicle, by those so empowered, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Neighborhood Common Area of a designated Neighborhood, such parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

Section 19.4 Easements for Vehicular and Pedestrian Traffic. In addition to the other easements reserved in this Declaration, there are hereby reserved to Declarant and all future Owners within a designated Neighborhood, and each of their respective agents, employees,

guests, invitees and successors, non-exclusive, appurtenant easements for vehicular and pedestrian traffic over the private main entry gate areas and all Neighborhood Private Streets and common walkways within the Limited Common Elements within such designated Neighborhood, subject to parking, vehicular, and/or use provisions and restrictions set forth elsewhere in this Declaration.

**ARTICLE 20**  
**MASTER DECLARATION; MASTER ASSOCIATION DOCUMENTS**

Section 20.1 Master Declaration. Any provision in this Declaration shall be in addition to, and cumulative with, the provisions set forth in the Master Declaration. In the event of any express conflict, the Master Declaration shall prevail, although the documents shall be construed to be consistent with one another to the extent possible. Inclusion in this Declaration of covenants, conditions, restrictions, land uses, and limitations which are more restrictive or more inclusive than the restrictions set forth in the Master Declaration shall not be deemed to constitute a conflict with the provisions of the Master Declaration. The developmental rights and special Declarant's rights set forth in Article 14 above shall be in addition to, and cumulative with, any applicable developmental rights and special declarant's rights reserved by the Master Declarant under the Master Declaration, and, in the event of any irreconcilable conflict, the Master Declaration shall prevail.

Section 20.2 Master Association. Notwithstanding any other provision in this Declaration:

(a) The Community is part of a master planned community known as Providence and is subject to the terms and conditions of the Master Declaration and other Master Association Documents. Owners and Residents subject to this Declaration are also subject to and must comply with the Master Declaration and the Master Association Documents. All assessments, capital contributions and transfer fees, and any other amounts payable to the Master Association pursuant to the Master Association Documents shall be in addition to any assessments and other amounts due to the Association pursuant to this Declaration. Each Owner subject to this Declaration and the Association acknowledge and agree that the Master Association shall not be responsible for the maintenance, repair or replacement of the Common Elements unless specifically provided for in a Recorded instrument executed by the Master Declarant and/or the Master Association.

(b) No provision contained in this Declaration shall rescind, modify or amend any previous agreement(s) between Declarant and Master Declarant, whether such agreements are Recorded or not Recorded, with respect or related to the creation and development of Units and Common Elements in the Community.

Section 20.3 Protection of Master Declarant and Master Association. Notwithstanding the foregoing, or any other provision in this Declaration, no provision for the benefit of or affecting the Master Declarant and/or Master Association can be amended, altered, suspended, or superseded without the express prior written consent of Master Declarant and/or Master Association (as applicable, in their respective sole discretion), which consent must be acknowledged in a Recorded document (and any purported amendment in the absence of such prior written consent shall be null and void).



IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first written above.

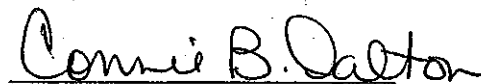
DECLARANT:

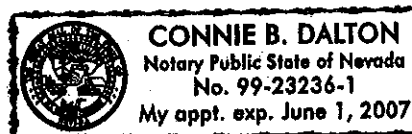
**MERITAGE HOMES OF NEVADA, INC.,**  
an Arizona corporation  
dba **MERITAGE HOMES**

By:   
Robert M. Beville, President

STATE OF NEVADA )  
                          ) ss.  
COUNTY OF CLARK )

This Supplemental Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for NORTHERN TERRACE was acknowledged before me on this 27<sup>th</sup> day of October, 2006, by ROBERT M. BEVILLE, as President of MERITAGE HOMES OF NEVADA, INC., an Arizona corporation, doing business as MERITAGE HOMES.

  
NOTARY PUBLIC  
(SEAL)



CONSENT BY LLA

LO LAND ASSETS, LP, a Delaware limited partnership ("LLA") (formerly known as LM CLIFF'S EDGE, LLC, a Delaware limited liability company) hereby consents to this Declaration solely in LLA's capacity as the current owner of the Original Property and the Option Property. It is contemplated that title to each Lot in the Option Property/Annexable Area shall be conveyed from LLA to Declarant prior to or concurrently with Close of Escrow therefor from Declarant to a Purchaser. LLA shall have no liability and no responsibility whatsoever under or related to the Declaration and/or other Governing Documents of the Association, except to the extent, if any, expressly set forth in this Declaration or in the Option Agreement or in the Collateral Assignment referenced herein.

LO LAND ASSETS, LP,  
a Delaware limited partnership  
By: **LE LAND ASSETS, LLC,**  
a Delaware limited liability company, Its General Partner

By: *Susan D. Vavak*

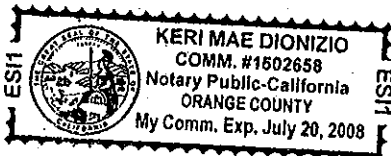
Printed Name: Susan D. Vavak  
Vice President

Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.

On October 24, 2006, before me, Keri Mae Dionizio,  
Notary Public, personally appeared Susan D. Vavak,  
personally known to me (or 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.



*Keri Mae Dionizio*  
NOTARY PUBLIC  
(SEAL)

**EXHIBIT "A"**

**ORIGINAL PROPERTY**

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF LAS VEGAS,  
COUNTY OF CLARK, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

**Lot Four Hundred One (401) of Block A, of NORTHERN TERRACE AT PROVIDENCE UNIT 4**, as shown by final map thereof on file in **Book 133** of Plats, **Page 01**, in the Office of the County Recorder of Clark County, Nevada;

TOGETHER WITH a non-exclusive easement of ingress and egress over and across the entry area and Private Streets therein, and a non-exclusive easement of use and enjoyment of the other Common Elements thereof (subject to and as set forth in the foregoing Declaration, as the same from time to time may be amended and/or supplemented by instrument recorded in the Office of the County Recorder of Clark County, Nevada).

**EXHIBIT "B"**

**ANNEXABLE AREA**

**[ALL, OR ANY PORTIONS OF WHICH, FROM TIME TO TIME MAY, BUT NEED NOT NECESSARILY, BE ANNEXED BY DECLARANT TO THE PROPERTIES]**

*Certain real property presently owned or to be acquired from time to time by Declarant and generally bounded by Grand Teton (to the north), Shaumber (to the west), Egan Crest Drive (to the east), and Farm Road (to the south), City of Las Vegas, Clark County, Nevada; said property to be further described from time to time by instrument(s) recorded by Declarant in the Office of the County Recorder of Clark County, Nevada; including, but not limited to:*

1. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 1**, as shown by final map thereof on file in **Book 131** of Plats, **Page 038**, in the Office of the County Recorder of Clark County, Nevada;
2. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 2**, as shown by final map thereof on file in **Book 133** of Plats, **Page 60**, in the Office of the County Recorder of Clark County, Nevada;
3. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 3**, as shown by final map thereof on file in **Book 133** of Plats, **Page 87**, in the Office of the County Recorder of Clark County, Nevada;
4. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 4**, as shown by final map thereof on file in **Book 133** of Plats, **Page 01**, in the Office of the County Recorder of Clark County, Nevada; **EXCEPTING THEREFROM** the Original Property as set forth on the foregoing Exhibit "A";
5. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 5**, as shown by final map thereof on file in **Book 133** of Plats, **Page 73**, in the Office of the County Recorder of Clark County, Nevada;
6. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 6**, as shown by final map thereof on file in **Book 133** of Plats, **Page 06**, in the Office of the County Recorder of Clark County, Nevada;
7. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 7**, as shown by final map thereof on file in **Book 133** of Plats, **Page 72**, in the Office of the County Recorder of Clark County, Nevada;
8. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 8**, as shown by final map thereof on file in **Book 133** of Plats, **Page 89**, in the Office of the County Recorder of Clark County, Nevada;
9. All of the real property in **NORTHERN TERRACE AT PROVIDENCE UNIT 9**, as shown by final map thereof on file in **Book 133** of Plats, **Page 65**, in the Office of the County Recorder of Clark County, Nevada;

\* \* \*

**[ADDITIONAL SUBDIVISION MAP DESCRIPTION(S) TO BE SUPPLIED FOLLOWING RECORDATION FROM TIME TO TIME OF RELEVANT FINAL MAP(S)].**

**[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY ADD TO AND/OR MODIFY OF RECORD ALL OR ANY PARTS OF THE FOREGOING DESCRIPTIONS]**

\* \* \*