

Recording Requested by, and
When Recorded Return to:

529294

Deserto Verde, LLC
11999 San Vicente Blvd, Suite 440
Los Angeles, California 90049
Attention: Julie A. Gilbert

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS FOR**

DESERT GREENS

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FOR
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THIS DECLARATION ("Declaration") is made by Deserto Verde, LLC, a Nevada limited liability company ("Declarant").

P R E A M B L E:

A. Declarant is the Owner of certain real property in the City of Pahrump, County of Nye, State of Nevada, which is more particularly described in Exhibit "A" and Exhibit "B" attached hereto and by this reference incorporated herein (collectively, the "Project").

B. Declarant intends to develop the property described in Exhibits "A" and "B" as a "planned community," as that term is defined in Section 116.110368 of UCIOA, and to develop and convey all the Property pursuant to a general plan for the maintenance, care, use and management thereof, and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Property as hereinafter set forth. The name of the planned community shall be Desert Greens and the Lot owners' association shall be known as Desert Greens 2001 Home Owners Association. The maximum number of Lots that the Declarant reserves the right to create within the planned community is three hundred twenty-four (324). However, Declarant makes no representation, warranty or guarantee that the Project will ultimately be developed as provided in the Plan of Development or pursuant to any other plan, description or map.

C. The Project is intended to be an age restricted development operated for occupancy primarily by persons 55 years of age or older, in compliance with the housing for older persons exemption under the federal Fair Housing Act.

D. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Property, to create a non-profit corporation (the "Association") under the laws of the State of Nevada to which shall be delegated and assigned the powers of (1) owning, maintaining and administering the Association Property for the private use of its Members and authorized guests, (2) administering and enforcing the Restrictions and (3) collecting and disbursing the Assessments and charges hereinafter created, and (4) all other powers described in this Declaration or authorized by law.

E. Declarant will cause or has caused the Association, the Members of which shall be the respective Owners of Lots in the Property, to be formed for the purpose of exercising such functions.

F. This Declaration is designed to create equitable servitudes and covenants appurtenant to and running with all of the Property.

G. On December 20, 2001 Deserto Verde, LLC caused the recordation of Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Desert Greens Planned Unit Development, as Document No. 526519, in the official records of Nye County, Nevada. Document No. 526519 is deemed to be superseded in its entirety, and rendered null and void upon the recordation of this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Desert Greens.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property general plan for the protection, maintenance, subdivision, improvement, sale and lease of the Property, or any

portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successive owners and each Owner and his or her respective successors-in-interest, and may be enforced by Declarant, the Association, or any Owner, subject to the terms and conditions herein.

ARTICLE 1 **DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified, and shall supersede and restate the definitions set forth in UCIOA Sections 116.11031 to 116.110393, when and where applicable.

Section 1.1. "Agency" shall mean the Nevada Department of Commerce, Real Estate Division, or any other such governmental agency which administers (a) the sale of subdivided lands pursuant to Chapter 119 of Nevada Revised Statutes ("NRS"), and (b) UCIOA, or any similar statutes or ordinances hereinafter enacted.

Section 1.2. "Age-Qualified Occupant" shall mean any natural person 55 years of age or older who Occupies a Residence.

Section 1.3. "Allocated Interests" means the liabilities for Common Expenses and the membership and votes in the Association allocated to each Lot.

Section 1.4. "Annexable Area" shall mean the real property which is or may in the future be owned by Declarant, all or any portion of which property may from time to time be made subject to this Declaration pursuant to the provisions of Article 2 hereof, including without limitation the property described on Exhibit B attached hereto and incorporated herein by reference.

Section 1.5. "Annexed Property" shall mean portions of the Annexable Area from time to time added to the Property covered by this Declaration.

Section 1.6. "Architectural Committee" shall mean the architectural and landscaping committee created pursuant to Article 9 hereto.

Section 1.7. "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee pursuant to Section 9.3 hereof.

Section 1.8. "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 1.9. "Assessment"** shall mean any or all of the Common Assessment, Capital Improvement Assessment, Initial Assessment, and Special Assessment.

Section 1.10. "Assessment, Capital Improvement" shall mean a charge against each Lot Owner and his Lot, representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Association Property which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 1.11. "Assessment, Common" shall mean the annual charge against each Lot Owner and his Lot, representing a portion of the total costs incurred by the Board or the Association in enforcing and administering this Declaration, including, but not limited to the cost of owning, maintaining, improving, repairing, replacing, managing and operating the Association Property, which are to be paid by each Lot Owner to the Association, as provided herein.

Section 1.12. "Assessment, Initial" shall mean a charge against each Lot Owner and his Lot, payable as set forth in Section 6.5.

Section 1.13. "Assessment, Special" shall have the meaning provided in Section 6.10..

Section 1.14. "Assessment Unit" shall mean the Assessment Units allocated to each Lot in accordance with Section 6.6.

Section 1.15. "Assessment Year" shall mean the calendar year or such other twelve (12) consecutive calendar month period selected by the Board for levying, determining and assessing of Common Assessments under this Declaration.

Section 1.16. "Association" shall mean the Desert Greens 2001 Home Owners Association, a Nevada non-profit corporation, its successors and assigns.

Section 1.17. "Association Budget" shall mean the budget adopted by the Association.

Section 1.18. "Association Property" shall mean all the real and personal property and Improvements, including the golf course and certain landscaping areas in the Property, which may be conveyed by Declarant, in Declarant's sole discretion, to the Association and which may be owned by the Association in fee simple, held by the Association as a leasehold interest, or over which the Association may have an easement or license for the use, care or maintenance thereof, including without limitation (i) the private streets, curbs, gutters, and the street lighting systems in the Property; (ii) the median islands and parkway landscaping along the private streets in the Property; (iii) the perimeter wall surrounding any portion of the Property; (iv) fencing which is part of the Association Property and any other fencing which is owned or maintained by the Association at the Association's election, (v) the parking spaces throughout the Property, including spaces designated for on-street parking; (vi) the irrigation system, including without limitation the water lines, meters, valves, and sprinkler heads located throughout the Association Property; (vii) Common Sewers; (viii) all sidewalks and walkways within the Property, excluding the walkway between the front door of each Residence and the street or driveway, and (ix) the Community Center.

Section 1.19. "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 1.20. "Board" shall mean the Board of Directors of the Association, elected in accordance with the Bylaws of the Association and this Declaration.

Section 1.21. "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 1.22. "Close of Escrow" shall mean the date on which a deed or other such instrument conveying a Lot in the Property is Recorded.

Section 1.23. "Common Expenses" shall mean the actual and estimated costs of: ownership, maintenance, improvements, management, operation, repair and replacement of the Association Property (including unpaid Special Assessments, Reconstruction Assessments, and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment); costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; the costs of all utilities, gardening, and other services benefiting the Association Property; the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Association Property and the Association; the costs of bonding the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Association Property, or portions thereof, including, without limitation, real Property taxes, if any, levied against the Association Property; all prudent reserves; and the costs of any other item or items designated by the Association for any reason whatsoever in connection with the management, maintenance or operation of the Association Property or the Association.

Section 1.24. "Common Sewers" shall mean the sanitary and storm sewers which are located throughout the Property which are designated by Declarant or the Association as Association Property in a document filed with the Association but shall not include the pipes and lines or connections which run from a Residence to the point of connection to the main sewer line or a collector sewer line or street or any pipes, lines, or connections which have been or will be dedicated to the Central Nevada Utility District.

Section 1.25. "Declarant" shall mean Deserto Verde, LLC, a Nevada limited liability company, its successors, or other Person to which it shall have assigned any rights hereunder by an express written assignment. Any such assignment may include only specific rights of the Declarant hereunder and may be subject to such conditions and limitations as Declarant may impose in its sole and absolute discretion.

Section 1.26. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Desert Greens as it may be amended from time to time, including, without limitation, Plats and Plans.

Section 1.27. "Developmental Rights" shall mean any right or combination of rights reserved to Declarant under this Declaration or by law to (a) add Annexable Area to the Property, (b) create Lots, Association Property, or Limited Common Elements within the Property, (c) subdivide Lots or convert Lots into Association Property or (d) withdraw real property from the Property.

Section 1.28. "Family" shall mean (1) a group of natural Persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of natural Persons not all so related who maintain a common household in a Residence on a Lot.

Section 1.29. "FHA" shall mean the Federal Housing Administration.

Section 1.30. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

Section 1.31. "FNMA" shall mean the Federal National Mortgage Association.

Section 1.32. "First Mortgage" shall mean a Mortgage with first priority over any other Mortgages on a Lot.

Section 1.33. "First Mortgagee" shall mean the holder of a First Mortgage.

Section 1.34. "GNMA" shall mean the Government National Mortgage Association.

Section 1.34.1. "Golf Course" shall mean the 9-hole golf course constructed on the Property which use shall be available to Members for a monthly fee or daily fee and will be owned and operated by Declarant if and until conveyed to the Association, in Declarant's sole and absolute discretion.

Section 1.34.2. "Household Pet" shall mean a dog or a cat only.

Section 1.35. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to dwelling units, buildings, outbuildings, walkways, sprinkler pipes, , swimming pools, jacuzzi spas and other recreational facilities, carports, roads, streets, driveways, excavation, grading or fill, entry monumentation, including the entry gate and signage identifying the Property, the paint on all exterior surfaces, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, flagpoles, signs, exterior air conditioning and water softener, solar fixtures or equipment, and satellite dishes or television antenna.

Section 1.36. "Lot" shall mean any Lot or parcel of land upon which one (1) Residence is, or will be, constructed and which is shown upon any Recorded subdivision map or Recorded parcel map of the Property, together with the Improvements, if any, thereon, but excepting any Association Property. The boundaries and identifying number for each Lot is as shown upon the Recorded subdivision map or Recorded parcel map containing such Lot.

Section 1.37. "Lot Owner" shall mean the Person or Persons, including Declarant, that is holder of fee simple interest of record in a Lot, excluding persons holding title as security for the performance of an obligation. Buyers under executory contracts of sale shall be deemed "Owners" for purposes hereof, so long as the Board has received written notification by certified mail, return receipt requested, of such valid, legally binding executory contracts of sale.

Section 1.38. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article 6 hereof.

Section 1.39. "Manager" shall mean the Person, firm or agent, whether an employee or independent contractor, employed by the Association pursuant to the Bylaws, and delegated certain duties, power or functions of the Association as limited by the Restrictions.

Section 1.40. "Member" shall mean every Person holding a membership in the Association, pursuant to Section 4.3 hereof.

Section 1.41. "Membership" shall mean a membership in the Association pursuant to Section 4.3 hereof.

Section 1.42. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage."

Section 1.43. "Mortgagee" shall mean a Person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.44. "Mortgagor" shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

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

Section 1.46. "Notice of Annexation" shall mean a Notice of Annexation as described in Section 2.3(b) hereof.

Section 1.47. "Notice of Lien" shall mean a notice of lien as described in Article 6 hereof.

Section 1.48. "NRS" shall mean the Nevada Revised Statutes, as amended or supplemented from time to time.

Section 1.49. "Occupy", "Occupies" or "Occupancy" shall mean, unless otherwise specified in the Restrictions, to actually reside in and to be physically present within a Residence, with the current intention to reside therein for an indefinite period of time, which shall require at a minimum being physically present overnight within the Residence for at least sixty nights in the subject calendar year, and while temporarily absent from the Residence, possessing the intent to return on a periodic basis.

Section 1.50. "Occupant" "Occupant" shall mean a natural person who Occupies a Residence.

Section 1.51. "Owner" See Section 1.37.

Section 1.52. "Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

Section 1.52.1. "Phase" shall mean each phase of the Property as is shown on Exhibit "C" attached hereto and incorporated herein

Section 1.53. "Plat" shall mean a map which is Recorded (and which includes the information required by and complies with the requirements of Sections 116.2105 and 116.2109 of UCIOA.)

Section 1.54. "Plan" shall mean drawings of Improvements which are filed with governmental agencies which issue permits, but need not be recorded.

Section 1.55. "Plan of Development" shall mean the plan for the development of the Property, as amended from time to time by Declarant in Declarant's sole discretion, a copy of which shall be on file in the office of the Association.

Section 1.56. "Project" shall mean the Property and the Annexable Area which Declarant intends to develop as a "Common Interest Community" as defined in Section 116.110323 of UCIOA.

Section 1.57. "Property" shall mean the Property described in Exhibit A attached hereto and incorporated herein by reference, which is hereby made subject to this Declaration, all shall in the future include such portions of the Annexable Area which are annexed to the Property subject to this Declaration and to the jurisdiction of the Association pursuant to Article 2 hereof.

Section 1.58. "Qualified Occupant" shall mean any of the following natural persons who Occupy a Residence:

- (a) Any Age-Qualified Occupant.
- (b) Any natural person 19 years of age or older who resides with an Age-Qualified Occupant in a Residence; and
- (c) Any natural person 19 years of age or older who Occupied a Residence with an Age-Qualified Occupant and who continues, without interruption, to Occupy the same Residence after termination of the Occupancy of said Age-Qualified Occupant.

Section 1.59. "Record", "Recorded", "Filed" and "Recordation" shall mean, with respect to any document, the recordation or filing of such document in the Office of the Nye County Recorder.

Section 1.59.1. "Recreational Facilities" shall mean any pool, spa, community building or similar recreational amenity which may be built or installed on the Property for common use by all Owners.

Section 1.60. "Residence" shall mean the residential dwelling on a Lot intended for use and occupancy by a Family.

Section 1.60.1. "Resident" shall mean any person who is physically residing in a home on a Lot.

Section 1.61. "Restrictions" shall mean this Declaration, the Articles, the Bylaws and the Rules and Regulations of the Association from time to time in effect.

Section 1.62. "Rules and Regulations" shall mean the Rules and Regulations adopted by the Board pursuant to Section 5.2 hereof, as they may be amended from time to time.

Section 1.63. "Special Declarant's Rights" shall mean any right or combination of rights hereby reserved by Declarant under this Declaration to (a) complete Improvements indicated on the Plan of Development or on Plats and Plans or in the Declaration, (b) exercise any Developmental Rights, (c) maintain sales offices, management offices, signs advertising the Property and model homes, (d) use easements through the Association Property for the purpose of making Improvements

within the Property or within real property which may be added to the Property, (e) make the Property subject to a master association, (f) merge or consolidate the Property with another common-interest community of the same form of ownership or (g) appoint or remove any officer of the Association or any member of the Board during any period of Declarant's Control.

Section 1.63.1. "Streets" shall mean all private streets and rights of way in the Property as shown on the Plan.

Section 1.64. "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions and reservation of easements or similar document supplementing this Declaration which may be Recorded pursuant to Article 2 of this Declaration.

Section 1.65. "UCIOA" shall mean the Uniform Common-Interest Ownership Act, as codified in Chapter 116 of the Nevada Revised Statutes, as amended.

Section 1.66. "VA" shall mean the U.S. Department of Veterans Affairs.

ARTICLE 2
DEVELOPMENT OF THE PROPERTIES; LAND CLASSIFICATION; ANNEXATION

Section 2.1. Subdivision and Development by Declarant . Declarant intends that the Property be developed for residential and other uses consistent with this Declaration. In addition, Declarant, at its option, may designate areas for maintenance, recreational or other purposes. Declarant (subject to the terms and conditions hereof) may record one or more Supplemental Declarations which will incorporate this Declaration therein by reference, and which may supplement this Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate. The provisions of any Supplemental Declaration may impose such further or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the requirements of the Property. This Declaration shall control in the event of any conflict between any Supplemental Declaration and the provisions of this Declaration, although such documents shall be construed to be consistent with one another to the extent possible. The inclusion in any Supplemental Declaration of conditions, covenants, land uses and limitations which are more restrictive or more inclusive than the restrictions contained in this Declaration shall not be deemed to constitute a conflict with the provisions of this Declaration.

Section 2.2. Conveyance of Association Property to Association . Declarant shall have the right, but not the obligation, from time to time to convey or cause to be conveyed to the Association as Association Property all or any portion of the Property located in the Property or the Annexable Area, including without limitation Property for open space, recreational and aesthetic use and other uses, in fee simple or by easement, license or other right or obligation thereto. All such conveyances of Association Property shall be free and clear of all monetary encumbrances and liens, but otherwise "As-Is" and subject to all other rights (including without limitation the right of the public to jointly use such Property), reservations, interests, obligations, easements, covenants, restrictions and conditions then of record and those reserved, authorized or otherwise provided for in this Declaration. All such Association Property shall be accepted by the Association upon transfer and thereafter shall be maintained by the Association at Association expense for the benefit of the Owners, subject to any restrictions set forth in the deed or other instrument transferring such Association Property to the Association; provided, however, that the Association shall not be obligated to maintain the Association Property until Common Assessments commence.

Section 2.3. Annexation of Annexable Area .

(a) **Annexation** . Declarant (subject to Section 2.3(b) below) may, but shall not be required to, at any time or from time to time, so long as Declarant owns any property in the Property or Annexable Area, annex any portion of the Annexable Area to the Property by Recording a Notice of Annexation of Property ("Notice of Annexation") with respect to the real property to be annexed ("Annexed Property"). Such property may be annexed hereunder upon the Recordation of a Notice of Annexation which, in addition to the requirements of Section 2.3(b) below, describes such real property and amends this Declaration, and is executed by Declarant and all other owners of such property and containing thereon any required approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if the FHA or the VA ceases to issue such written approvals. If the Notice of Annexation for a proposed annexation under this Section 2.3 is not Recorded prior to the seventh (7th) anniversary of the Recordation of this Declaration, then such annexation shall further require the vote or written consent of at least a majority of the voting power of the Association.

Upon the Recording of a Notice of Annexation which contains the provisions set forth herein (which Notice of Annexation may be contained within the Supplemental Declaration affecting any such Annexed Property), the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the 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 Property, and the rights, obligations, privileges, duties and liabilities of the Owners, lessees and occupants within the Annexed Property shall be the same as in the case of the Property originally affected by this Declaration. However, the voting rights attributable to the Units in the added territory shall not vest until annual assessments have commenced as to such Lots. Upon annexation of

any added territory, all Developmental Rights (as defined in NRS 116.11034) reserved with respect to such added territory shall be deemed to have expired.

Nothing in this Declaration shall be deemed to be a representation by Declarant that all or any particular portion (excluding the Property) of the Annexable Area shall be annexed to the Property or be made subject to this Declaration. Declarant makes no assurances that all or any particular portion of the Annexable Area shall be developed in any particular order or that if any portion of the Annexable Area is annexed that the remainder of the Annexable Area will also be annexed.

(b) **Notice of Annexation** . The Notice of Annexation referred to in Section 2.3(a) above shall be an amendment to this Declaration and shall contain at least the following provisions:

- (i) A reference to this Declaration, which reference shall state the date of Recordation hereof and the document number or other relevant Recording data of the Nye County Recorder;
- (ii) A statement that the provisions of this Declaration shall apply to the Annexed Property as set forth therein;
- (iii) A description of the Annexed Property;
- (iv) A description of the Association Property, if any, located in the Annexed Property; and
- (v) An identifying number for each new Lot created.

For so long as Declarant has the right to add the Annexable Area to the Property without the approval of the Association, each Notice of Annexation relative to real Property owned by Declarant shall be signed only by Declarant. From and after the date on which any annexation of Annexable Area requires the approval of the Association as herein provided, each Notice of Annexation must also be signed by at least two (2) officers of the Association, certifying that the vote of the requisite percentage of votes have been obtained.

(c) **Deannexation** . Declarant may unilaterally, for any reason, at any time and from time to time, delete any portion of the Property, from coverage of this Declaration and the jurisdiction of the Association or amend a Notice of Annexation covering such portion of the Property (such deleted portion of the Property, the "Deannexed Area"), so long as Declarant is the owner of all of such Property, and provided that (i) a notice of deletion of Property ("Notice of Deletion of Property") is Recorded in the same manner as the applicable Notice of Annexation was Recorded, (ii) there has been no Close of Escrow for the sale of any Lot in such Deannexed Area, (iii) the Association does not own any Association Property within the Deannexed Area, and (iv) VA and FHA, if necessary and as applicable, have approved such deannexation or amendment in writing; provided, however, that such written confirmation shall not be a condition precedent if the VA or the FHA ceases to issue such written confirmations. Each parcel in the Property is a separate portion of the Property which may be deannexed from the Property. No assurance is made regarding (1) the location and boundaries of the de-Annexable Area nor (2) the order, if any, in which portions of the Property may become subject to de-annexation. In the event Declarant deletes a portion of the Property from coverage of this Declaration and the jurisdiction of the Association, Declarant may, but shall not be obligated to, delete any further portion of the Property from the coverage of this Declaration and the jurisdiction of the Association. The deannexation shall be effective on the Recordation of the Notice of Deletion of Property, and such Deannexed Area described therein shall no longer be part of the Association or subject to this Declaration, as more fully set forth in the Notice of Deletion of Property.

Section 2.4. Expansion of Annexable Area . The Annexable Area may, from time to time, be expanded to include additional real Property, not as yet identified. Such Property may be added to the Annexable Area upon the Recordation of a document describing such real Property, executed by Declarant and all other owners of such Property; provided, however, that (i) in the event Declarant obtains VA or FHA approval of the Property, so long as the FHA or the VA continues to insure or guaranty Mortgages or has agreed to insure or guaranty Mortgages for Lots in the Property, then, to the extent required by the FHA or VA, prior to any expansion of the Annexable Area in accordance with this Section 2.4, plans for the development of the additional Property must be submitted to the VA and FHA and the VA and FHA must approve the development plan and so advise Declarant, and (ii) such addition is consistent with any applicable provisions of UCIOA.

Section 2.5. Contraction of Annexable Area . The Annexable Area may be contracted to delete such real Property effective upon the Recordation of a Notice of Deletion of Property which describes such real Property, and is executed by Declarant and all other owners of such real Property,

and declares 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 Person other than Declarant.

Section 2.6. Declarant's Right to Modify Plan of Development . Declarant makes no representations or warranties that the Property or the Project will be developed as provided in the Plan of Development or in accordance with any site plan, depiction, rendering, model or statement or representation of the Property or the Project or Improvements thereon. Nothing in this Declaration shall be construed to prevent, and Declarant hereby reserves the right, to amend and modify the Plan of Development and all such other materials, and any portion thereof, including without limitation the land use designations and classifications set forth therein.

ARTICLE 3

PERMITTED USE AND RESTRICTIONS OF USE OF ASSOCIATION PROPERTY; EASEMENTS; ASSOCIATION PROPERTY

Section 3.1. Lot Owner's Rights of Enjoyment . Every Lot Owner and, to the extent permitted by such Lot Owner, such Lot Owner's Family, guests, invitees, lessees, and contract purchasers who reside on such Lot Owner's Lot, shall have a right of ingress and egress and of use and enjoyment in, to, and over the Association Property which shall be appurtenant to, and shall pass with, title to every Lot, subject to this Declaration, including without limitation the following provisions:

- (a) The right of Declarant to designate additional Association Property pursuant to the terms of Article 2 hereof.
- (b) The right of the Association to reasonably limit the number of guests and invitees of Lot Owners using the Association Property and any facilities thereon.
- (c) The right of the Association to establish Rules and Regulations pertaining to the use of the Association Property, and to charge reasonable fees for the use of any recreational or other facility located on Association Property.
- (d) The right of the Association in accordance with its Articles, Bylaws and this Declaration, with the vote of at least sixty-seven percent (67%) of the voting power of the Association and a vote of a majority of the votes allocated to Lots not owned by Declarant, to (i) convey the Association Property or subject the Association Property to a security interest, subject to the provisions of Section 13.4 hereof and (ii) borrow money for the purpose of improving, repairing or adding to the Association Property and facilities and in aid thereof, and, subject to the provisions of Section 13.4 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 the mortgagee shall be subordinate to the rights of the Owners hereunder.
- (e) The right of the Association to suspend the voting rights and rights and easements of any Member, and the Persons deriving such rights and easements from any Member to use the Association Property for any period during which any Assessment against such Member's Lot remains unpaid and delinquent; for a period not to exceed thirty (30) days for any single non-continuing infraction of this Declaration or the published Rules and Regulations of the Association; and for the period of time during which any continuing infraction of this Declaration or the published Rules and Regulations of the Association is continuing. Any suspension of voting rights or right to use any Association Property shall be made only by the Board, after Notice and a Hearing as provided in the Bylaws.
- (f) Subject to the provisions of Section 13.4 of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any portion of the Association Property to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Association. Except for grants of easements, licenses, or rights-of-way in, on, or over the Association Property for purposes which do not have a substantial adverse effect on the use of such property pursuant to this Declaration, no such dedication, release, alienation or transfer shall be effective, unless previously approved by at least sixty-seven percent (67%) of the voting power of the Association and a certificate signifying such approval is executed by two (2) officers of the Association and Recorded. Recordation of such certificate shall constitute *prima facie* evidence that such approval has been given.

Notwithstanding the foregoing, Declarant may, at the time of conveyance of any real property to the Association, condition such conveyance on the obligation of the Association to convey fee title to a portion of such real property, or to grant easements through such real property, for roadway or other purposes to the City of Pahrump, Nye County or other governmental or public entity, agency or authority which has or will have responsibility for maintenance of such roadway or other use. Any such condition to conveyance of such real property to the Association shall be set forth in the deed to the Association or in another instrument Recorded concurrently with such deed.

Notwithstanding anything to the contrary in this Declaration, and without limiting the immediately preceding paragraph, the Board, subject to the provisions of Section 13.4, shall have unilateral authority to transfer or grant to any such governmental or public entities, agencies or authorities (including without limitation, public utility companies) such easements, licenses, permits or rights-of-way in, on or over Association Property for public utilities, roads and/or for other purposes consistent with the intended use of the Association Property or as provided in this Declaration or subsequent Supplemental Declarations and which (A) are reasonably necessary or useful for the proper use, maintenance or operation of the Property, are intended to benefit the Property and will not have any substantial adverse effect on the enjoyment of the Association Property by the Members, or (B) are required by any governmental or public entity, agency or authority pursuant to ordinances, regulations or conditions to the granting of approvals or entitlements to develop the Property.

(g) The reservation by Declarant (and its sales agents, prospective customers, guests and representatives) of an easement for the nonexclusive use of the Association Property and the facilities thereon, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves, which use shall not unreasonably interfere with the rights of enjoyment of the other Lot Owners as provided herein, as well as the exclusive right of Declarant to the use of a portion of the Association Property as a sales and information center. The rights of Declarant under this Section 3.1(g) shall terminate on the date Declarant no longer owns any portion of the Property or Annexable Area.

(h) The right of the Association by action of the Board to reconstruct, replace or refinish any Improvement or portion thereof upon the Association Property, in a manner compatible and harmonious with the original design, finish or standard of construction of such Improvement, or of the general Improvements, as the case may be; and subject to Section 13.4, if not in a manner compatible and harmonious with such original design, finish or standard of construction, only with the vote of at least a majority of a quorum at a meeting of the Association.

(i) The reservation by Declarant to an easement for encroachments over the Association Property created by construction and overhangs as designed or constructed by Declarant and for settling, shifting and movement of any portion of the Improvements thereon. A valid easement for such encroachments and for the maintenance thereof shall exist and is hereby created. Such encroachments shall not be considered to be encumbrances upon any part of the Association Property. Encroachments referred to herein include, but are not limited to, encroachments caused by: (i) error in the original construction of any Improvements constructed on the Association Property by Declarant; (ii) error in any Recorded Plat or map; (iii) settling, rising or shifting of the earth; or, (iv) changes in position caused by repair or reconstruction of any Improvement.

(j) The right of the Association to replace, refurbish, clean, reconstruct, repair or perform general maintenance on the Association Property and any Improvement construed by the Association which is located thereon, including without limitation any irrigation and/or drip system, trees or other vegetation on Association Property and to plant trees, shrubs and ground cover thereon, and the right of the Association to close or limit the use of such Association Property, or portions thereof, while maintaining and repairing the same.

(k) INTENTIONALLY OMITTED

(l) The easements and licenses of record within the Property as shown on the Official Plat which was Recorded in the Official Records of Nye County and any and all other easements and licenses contained in any Notice of Annexation or Supplemental Declaration;

(m) The easements, licenses, rights, covenants, conditions and restrictions created by this Declaration;

(n) The right of the Association to regulate the use of the Association Property and the facilities thereon through the Rules and Regulations and to reasonably restrict access to the Association Property, or portions thereof, not intended for use by the Members, or intended for limited

use by Members. The Rules and Regulations shall be implemented, in the discretion of the Board, in order to enhance the preservation of the Association Property, promote the safety and convenience of the users thereof, and otherwise serve the best interests of the Members.

(o) The power and right of the Association, upon (i) adoption of a resolution by the Board stating that in the Boards' opinion the then present use of a designated part of the Association Property and the facilities thereon is no longer in the best interests of the Owners and (ii) the approval of such resolution by a majority of the voting power of the Association at a meeting of the Association duly called for such purpose, to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the Improvements thereon in any manner deemed necessary by the Board to accommodate the new use); provided such new use (A) shall be for the benefit of the Owners and (B) shall be consistent with any deed restrictions (or zoning or other governmental or public ordinances or regulations) restricting or limiting the use of the Association Property.

Section 3.2. Delegation of Use . Any Lot Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Association Property to the members of his Family, his tenants, or contract purchasers who reside in his Lot, subject to this Declaration and reasonable regulation by the Board. Guests of a Lot Owner may use the Association Property and the facilities thereon only in accordance with the Restrictions, which may limit the number of guests who may use the Association Property and the facilities thereon. The Board may also promulgate Rules and Regulations limiting the use of the Association Property and facilities thereon to one co-owner and his immediate Family with respect to any Lot in co-ownership.

Section 3.3. Parking . Temporary guest or recreational parking shall be permitted within the Association Property only within spaces and areas clearly marked for such purpose, if any. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the parking areas of the Association Property, to create such other rules and regulations concerning parking as the Board deems necessary or appropriate, and to enforce these parking limitations and any rules and regulations by all means lawful for such enforcement on public streets.

Section 3.4. Easements for Vehicular and Pedestrian Traffic . In addition to the general easements for use of the Association Property reserved herein, there shall be, and Declarant hereby reserves for itself and all future Lot Owners within the Property, and their respective agents, employees, guests, invitees and successors, nonexclusive appurtenant easements for vehicular and pedestrian traffic over drives, streets or parking areas and walkways within the Association Property, subject to the parking provisions set forth in Section 3.3 above and Section 8.4 below.

Section 3.5. INTENTIONALLY OMITTED

Section 3.6. Easements for Emergency Access . Declarant hereby reserves for the City of Pahrump, Nye County, State of Nevada and other entities and organizations that operate vehicles for public safety purposes, including but not limited to paramedic and ambulance companies, an easement for access, ingress, and egress over and across the private streets and secondary access routes on the Property, to allow such vehicles complete access to the Property for emergency or other official purposes.

Section 3.7. Easement Right of Declarant Incident to Construction . An easement is reserved by and granted to Declarant, its successors and assigns, for access, ingress, and egress over, in, upon, under, and across the Association Property, 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 and development of the Property including without limitation, the exercise of Special Declarant's Rights and the discharge of Declarant's obligations under this Declaration and UCIOA. The easement created pursuant to this Section 3.7 is subject to the time limit set forth in Article 11 hereof.

Section 3.8. Easement Right of Declarant and Association Incident to Maintenance . An easement is reserved by and granted to Declarant, its successors and assigns including without limitation the Association, for access, ingress, and egress over, in, upon, under, and across the Association Property, and the Lots, for maintenance of any and all Association Property. 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 Family, guests, or invitees, to or of that Owner's Lot, or any recreational facility completed upon the Association Property.

Section 3.9. Easement for Drainage . Every Lot and each parcel of Association Property shall have an easement for drainage from such Lot or other parcel of Association Property across any

other Lot or parcel to permit the flow in the established drainage pattern over any Lot or any other portion of the Property so as to affect any other portion of the Property unless an adequate alternative provision and easement, previously approved in writing by the Architectural Committee, is made for proper drainage. Established drainage pattern shall mean the drainage which exists at the time the Lot, Association Property, or other Property, as the case may be, is conveyed to any Owner by Declarant or later grading changes which are shown on plans approved by the Architectural Committee, which may include drainage from the Association Property over any Lot, Association Property, or other portion of the Property.

Section 3.10. Easement for Snow Removal and Placement . Declarant hereby reserves to itself and the Association an easement within five(5) feet of any street or other Association Property upon all Lots for the placement of snow plowed or removed from the adjacent street or Association Property provided that this easement is intended to allow the berming and placement of snow plowed from a street or other Association Property immediately adjacent to a Lot in order to clear the street of snow for the safe passage of vehicles and pedestrians on the street or other Association Property.

Section 3.11. General Reservation of Easements. Declarant expressly reserves for the benefit of all of the Property and all Lot Owners reciprocal easements for access, ingress and egress for all Owners to and from their respective properties, for installation and repair of utility services; for encroachments of Improvements constructed by Declarant or authorized by the Architectural Committee over the Association Property, for drainage of water over, across and upon adjacent Lots, and the Association Property resulting from the normal use of adjoining property and for necessary maintenance and repair of any Improvement. Such easements may be used by Declarant, its successors, purchasers, the Association and all Owners.

Section 3.12. Waiver of Use . No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot or other Property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Association Property or by abandonment of his Lot or any other Property in the Property.

Section 3.13. Transfer of Title to Association Property Upon Dissolution of the Association . In the event of the dissolution of the Association, the Association Property shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies or to a nonprofit corporation, association, trust or other organization to be used, in any such event, for the common benefit of Owners for similar purposes for which the Association Property was held by the Association. To the extent the foregoing is not possible, the Association Property shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to the number of Assessment Units of each Owner, as determined in accordance with the provisions of Section 6.6 hereof.

Section 3.14. 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 his Lot. If any taxes or assessments may, in the opinion of the Association, constitute a lien on the Association Property, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Association Property and attributable to his property.

ARTICLE 4 **DESERT GREENS 2001 HOME OWNERS ASSOCIATION**

Section 4.1. Organization . The Association will be organized as a non-profit corporation under the provisions of the NRS no later than the date the first Lot in the Property is conveyed. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so that such provision shall be consistent with the provisions of this Declaration.

Section 4.1.1. "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 of Incorporation and Bylaws of the Association, 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.

Section 4.2. Board of Directors and Officers .

(a) The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board shall be composed of one (1) or more directors as provided in the Bylaws. In the performance of their duties, the officers and members of the Board are fiduciaries and are subject to the insulation from liability to the fullest extent provided for directors of corporations by the laws of the State of Nevada. The members of the Board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

(b) Subject to Section 4.2(c) and (d), Declarant shall be entitled to appoint and remove the officers of the Association and members of the Board until the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created; (ii) five (5) years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or (iii) five (5) years after any right to add new Lots was last exercised (the "Period of Declarant's Control"). Within thirty (30) days after Owners other than Declarant may elect a majority of the members of the Board, the Declarant shall deliver to the Association all property of the Owners and the Association held by or controlled by Declarant, including without limitation, that certain property set forth in NRS Section 116.31038. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the above-mentioned period, but in that event, Declarant may require for the duration of the Period of Declarant's Control, that any actions or decisions of the Association or Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(c) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board shall be elected by Owners other than Declarant.

(d) Not later than the termination of the Period of Declarant's Control, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners. The Board shall elect the officers. The members of the Board shall take office upon election.

(e) The Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by Declarant.

(f) If a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify such member for losses or claims, and undertake all costs of defense, unless it is proven that such member acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring on the Property. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

(g) An Owner of record, an officer, employee, agent or director of a corporate Owner of a Lot, a trustee or designated beneficiary of a trust that owns a Lot, a partner of a partnership that owns a Lot, and a fiduciary of an estate that owns a Lot and any officer, employee, agent or appointee of Declarant may be an officer or member of the Board. In all events where the person serving or offering to serve as an officer or member of the Board is not the record owner, such person shall file proof of authority in the records of the Association. Subject to the foregoing, the number, term, election and qualifications of the Board shall be fixed in the Articles and/or Bylaws. The Association, acting through the Board, unless specifically provided otherwise in the Restrictions, shall have (i) the right of enforcement of all the Restrictions, (ii) the right and responsibility for the proper and efficient management and operation of the Association Property and facilities thereon, including those powers and duties specifically listed in Article 5 hereof and elsewhere in the Restrictions and (iii) the right in all instances to act on behalf of the Association except as otherwise provided in the Restrictions or UCIOA. Action by or on behalf of the Association may be taken by the Board or any duly authorized

executive committee, officer, Manager, agent or employee without a vote of the Members, except as otherwise specifically provided in the Articles, Bylaws or this Declaration. Without approval of the requisite number of Lot Owners as required by this Declaration, the Board may not act on behalf of the Association to (i) amend this Declaration, (ii) terminate the Property as a common-interest community (as defined in UCIOA) or (iii) elect members of the Board or determine their qualifications, powers and duties or terms of office, but the Board may fill vacancies in its membership for the unexpired portion of any term, as more fully described in the Bylaws.

Section 4.3. Membership. Members of the Association shall be each Lot Owner (including Declarant) of one (1) or more Lots in the Property. Membership in the Association shall be subject to this Declaration, the Articles, the Bylaws, and the Rules and Regulations. All Memberships in the Association shall be appurtenant to the Lot owned by each Lot Owner and Membership in the Association held by Lot Owners shall not be assignable, except as provided herein or in the Bylaws. Ownership of a Lot shall be the sole qualification for a Membership in the Association. Except as provided herein, a Lot Owner's Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to the Lot, and then only to the purchaser of such Lot. In the event the Property is terminated as a common-interest community, Members in the Association shall consist of all owners of former Lots entitled to distributions of proceeds under UCIOA.

Any attempt to make a prohibited Membership transfer shall be void and will not be reflected on the books of the Association. A Member shall have the right to delegate, subject to and in accordance with this Declaration and the Bylaws, his rights of use and enjoyment of the Association Property to a lessee or tenant of his Lot; provided, however, that such Member shall not be entitled to the use and enjoyment of the Association Property during the term of such delegation. A Member who has sold his Lot to a contract purchaser under an installment land sale contract, shall be entitled to delegate to such contract purchaser his Membership rights, including his voting rights, in the Association. Any Lot Owner may give a revocable proxy as provided in the Bylaws, and may assign its right to vote and right to use Association Property to a lessee or tenant actually occupying a Lot, for the term of the lease, and any sale, transfer or conveyance of such Lot to a new Owner or Owners shall operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a contract purchaser, lessee or tenant as provided herein. Such delegation shall be in writing and shall be delivered to the Board before such Person may vote. However, the contract seller, lessor, or landlord shall remain liable for all charges and Assessments attributable to his Lot until fee title to the Lot is transferred. If the Lot Owner of any Lot fails or refuses to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. The Association may levy a reasonable transfer fee against new Lot Owners and their Lots (which fee shall be added to the Common Assessment chargeable to such new Lot Owner) to reimburse the Association for the administrative costs of transferring the Memberships to the new Lot Owners on the records of the Association. The initial transfer fee shall be \$100.00, which may be increased or decreased at any time in the discretion of the Board.

Section 4.4. Voting Rights. The Association shall have one (1) class of voting membership. Each Member shall be entitled to cast one (1) vote for each Lot owned by such Member for which assessments have commenced. Except as provided in Section 4.3 above, Voting Rights shall be appurtenant to the Lot and shall not be transferred, pledged or alienated in any way, except upon the transfer of title to the Lot, and then only to the purchaser of such Lot.

Section 4.5. Vote Distribution. All voting rights shall be subject to the Restrictions. No votes allocated to a Lot or other Property owned by the Association may be cast. When more than one Person holds an interest in any Lot (each such Person a "Co-Owner, and together "Co-Owners"), all such Co-owners shall be Members and may attend any meetings of the Association, but only one such Co-owner shall be entitled to exercise the vote to which the Lot is entitled. If only one (1) of several Co-Owners of a Lot is present at a meeting of the Association, that Co-Owner is entitled to cast all votes allocated to that Lot. Such Co-Owners may from time to time all designate in writing one of the Co-Owners 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 Lot shall be exercised as the majority of the Co-Owners of the Lot mutually agree. Unless the Board receives promptly a written objection from a Co-Owner, it shall be presumed that the voting Co-Owner is acting with the consent of his or her Co-Owners. No vote shall be cast for any Lot where the co-Owners present in person or by proxy owning

the majority interests in such Lot cannot agree to said vote or other action. All Co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations 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.

Section 4.6. Meetings . Meetings of the Members of the Association shall be held at least once each year, or more often if required by law. Special Meetings shall be held as provided in the Bylaws. Requirements for notice, quorum, voting, and proxies shall be as set forth in the Bylaws.

Section 4.7. Proxies . A Member entitled to vote or execute statements or consents shall have the right to do so by written proxy as provided in the Bylaws.

ARTICLE 5

FUNCTIONS OF THE ASSOCIATION

Section 5.1. Powers and Duties . The Association shall have all of the powers of a Nevada nonprofit corporation, including without limitation, those powers set forth in Section 116.3102 of the NRS, this Declaration or the Bylaws, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions. 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. Without in any way limiting the generality of the foregoing provisions, the Association, acting through the Board, shall specifically have:

(a) **Assessments** . The power and duty to levy Assessments on the Owners in portions of the Property in which Assessments have commenced and to enforce payment of such Assessments in accordance with the provisions of Article 6 hereof. However, all costs and expenses of activities, functions or services undertaken by the Association for the benefit of fewer than all of the Owners may, at the discretion of the Board, be assessed to the Owners benefited thereby, and such assessments shall be enforced in accordance with the provisions of Article 6 hereof. The Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder.

(b) **Repair and Maintenance of Association Property** . Except as otherwise expressly provided elsewhere in the Declaration, the Association shall be obligated to provide for the care, management, maintenance, and repair of the Association Property and Common Areas. This includes the power and duty to paint, plant, maintain, repair in a neat and attractive condition and to construct and replace, in accordance with standards adopted by the Architectural Committee, all Association Property and all Improvements thereon, in a safe, sanitary and attractive condition and in good order and repair, and to pay for utilities, gardening and other necessary services for the Association Property. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate. Notwithstanding the foregoing, the Association shall have no responsibility to provide the services referred to in this paragraph with respect to any Improvement or area which is accepted for maintenance by any state, local or municipal governmental agency or entity.

(c) **Utility Services** . The power and duty to obtain, for the benefit of the Association Property, any commonly metered water, gas and electric services, and the power, but not the duty (within the discretion of the Board) to provide for all refuse collection and cable or master television service (if any), as deemed necessary at the sole expense of the Association.

(d) **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 Association Property, and (ii) with the consent of sixty-seven percent (67%) of the voting power of the Association, fee title to parcels or strips of land which comprise a portion of the Association Property, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (A) roads, streets, walks, driveways, parkways, park areas 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. This Section 5.1(d) shall not be construed to limit the right or power of the Association under Section 3.1(f).

(e) **Manager** . The power but not the duty to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association and the power to delegate its powers to committees, officers and employees. Any such management agreement entered into prior to the expiration of the Period of Declarant's Control, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year, renewable by agreement of the parties for successive 1-year periods, and any such agreement shall be terminable by the Association, acting through the Board, at any time (a) for cause upon thirty (30) days written notice thereof, and (b) without cause or the payment of a penalty or termination fee upon ninety (90) days written notice.

(f) **Rights of Entry and Enforcement** . The power but not the duty to, after Notice and Hearing and upon reasonable notice, enter upon any portion of the Property, without being liable to the Owner or occupants thereof, except for damage caused by such entry, 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 any such area as required by the Restrictions. The cost of any such maintenance and repair shall be assessed against the Owner of such property as a Special Assessment. Such Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. The Association shall have the right, upon not less than twenty-four (24) hours prior written notice (except in emergencies, in which case no prior notice is required), to enter into any Lot for the purpose of enforcing this Declaration or any rules and regulations of the Association. Any damage to any Lot caused by the Association or its agents during any such entry into any Lot shall be repaired by and at the expense of the Association, unless such entry was necessitated by the negligence or misconduct of the Owner, Resident or guest of such Lot. The Association shall have the power but not the duty, after Notice and a Hearing, Record or cause to be Recorded against the Lot, a notice of non-compliance with the Restrictions, which notice shall be terminated only at such time as the violation is corrected or otherwise remedied to the satisfaction of the Board. The Association shall have the power but not the duty, after Notice and a Hearing, to Record or cause to be Recorded, a notice of non-compliance with the Restrictions, which notice shall be terminated only at such time as the violation is corrected or otherwise remedied to the satisfaction of the Board. The Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Restrictions. If an action is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees to be fixed by the court.

(g) **Other Services** . The power and duty to maintain the integrity of the Association Property and 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 in order to enhance the enjoyment of the Members of the Association Property or to facilitate the use of the Association Property by the Members.

(h) **Legal Services** . The power but not the duty, if deemed appropriate by the Board, to retain and pay for legal services necessary or proper in the operation of the Association Property, enforcement of the Restrictions, or in performing any of the other duties or rights of the Association.

(i) **Inspection of Books and Records** . The power and duty to authorize the verification of Membership, books of account and minutes of meetings of the Members and of the Board by making them available for inspection, examination, photocopying and audit by any Member of the Association, or by his duly appointed representative, at such Member's sole cost and expense, and at any reasonable time and for a purpose reasonably calculated to be in his interest as a Member, at the office of the Association or at such other place within or without the Property as the Board may prescribe. The Board shall establish reasonable rules with respect to: (i) notice to be given to the custodian of records by the Member desiring to make the inspection; (ii) hours and days of the week when such an inspection may be made; and, (iii) payment of the cost of reproducing copies of documents requested by a Member. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical Property owned or controlled by the Association. Any such director wishing to inspect the books, records and documents of the Association shall be permitted to do so during normal business hours upon written notice to the custodian of such records.

(j) **Records and Accounting** . The power and the duty to keep, or cause to be kept, true and correct books and records of account sufficiently detailed to enable the Association to comply with Section 116.4109 of UCIOA 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 regardless of the number of Members or the amount of assets of the Association as follows:

(i) A pro forma operating statement (budget) for each fiscal year shall be distributed as set forth in Section 6.6(c) hereof.

(ii) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

A. A balance sheet as of the end of the fiscal year.

B. An operating (income) statement for the fiscal year.

C. A statement of cash flow for the fiscal year. The annual report shall be prepared by an independent, certified, public accountant licensed in Nevada.

(k) **Taxes** . The power and duty to pay all taxes and assessments levied upon the Association Property and all taxes and assessments payable by the Association. Each Owner shall timely pay all taxes levied against his or her Lot and any personal property.

(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 Association Property** . 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 Association Property, 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 Lot Owners to provide services or to maintain and repair Improvements within the Property 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.

Section 5.1.1. Limitation on Rights . 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) Entering 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 utility 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.

(b) Paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(c) Commencing any legal action against Declarant, its partners or employees.

Section 5.2. Rules and Regulations . The Board may adopt, amend, repeal and enforce such Rules and Regulations as it deems proper for the use and occupancy of the Association Property, the implementation, administration and enforcement of this Declaration and the management and operation of the Association and the Property. Such rules and regulations may, along with other things, and without limitation: (i) regulate the use and parking of vehicles within the Property, subject to Article hereof; (ii) regulate the use of the Recreational Facilities and other Association Property; and (iii) prohibit noxious or offensive activities, nuisances, unsafe or hazardous activities or construction, emission of loud sounds or offensive odors and unsightliness. A copy of the Rules and Regulations, as

they may from time to time be adopted, amended or repealed, may be posted in a conspicuous place in the Association Property or may be mailed or otherwise delivered to each Person subject thereto. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with this Declaration, the Articles and the Bylaws, and the Rules and Regulations may not be used to amend any of such documents. In addition, if any Person has not yet received notice as required by this Section 5.2 but has actual knowledge of such Rules and Regulations, such Rules and Regulations shall be enforceable against such Person as though notice of such Rules and Regulations had been given pursuant to this Section 5.2.

Should any Resident violate any rule or regulation or any provision of this Declaration, or should any Resident's act, omission or neglect cause damage to Common Areas or Association Property, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Lot in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Area or Association Property, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident (as well as the Owner of the Lot in which the Resident resides).

Section 5.2.1. Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonable to be implied from the provisions of this Declaration, or given or implied by NRS 116.3102 or other applicable law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

Section 5.3. Safety. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY DESIGNED TO MAKE THE PROPERTY SAFER THAN THEY OTHERWISE MIGHT BE. THE ASSOCIATION, THE BOARD, THE ASSOCIATION'S MANAGEMENT COMPANY AND DECLARANT SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THE ABOVE PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTY, CANNOT OR WON'T BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS GUESTS, INVITEES, TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, ITS BOARD, COMMITTEES, AND ALL OTHER PERSONS INVOLVED WITH THE GOVERNANCE, MAINTENANCE AND MANAGEMENT OF THE PROPERTY AS WELL AS DECLARANT, ARE NOT INSURERS OF SAFETY OR SECURITY WITHIN THE PROPERTY. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER ASSUME ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PERSONS, LOTS AND THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, THE ASSOCIATION'S MANAGEMENT COMPANY AND DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ANY ENTRY, GATE, PATROLLING OF THE PROPERTY, ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY MEASURES RECOMMENDED, INSTALLED OR UNDERTAKEN WITHIN THE PROPERTY.

ARTICLE 6

FUNDS AND ASSESSMENTS

Section 6.1. Assessments . Declarant, for each Lot owned by Declarant, covenants and agrees, and each Lot Owner, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Association (1) the Initial Assessment if the Lot is purchased from Declarant (2) the Common Assessments for Common Expenses, (3) Capital Improvement Assessments and (4) Special Assessments, which Assessments shall be established and collected as hereinafter provided. All Assessments, together with interest thereon (not exceeding 18% per annum), late charges, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be (and each Owner hereby grants) a continuing lien, with power of sale, upon the Lot or other Property against which such Assessment is made or which is owned by the Owner against which such Assessment is made. The personal obligation for delinquent Assessments shall not pass to any new Owner unless expressly assumed by such new Owner.

Section 6.2. Maintenance Funds . The Board shall establish and maintain at least the following separate trust accounts (the "Maintenance Funds") with a Nevada bank or other recognized depository in the State of Nevada 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 Restrictions: (1) An operating fund (the "Operating Fund") for current expenses of the Association, (2) a reserve fund (the "Reserve Fund") for replacements, painting and repairs of the wall, streets, fences, landscaping and other Improvements within the Association Property, and (3) any other funds which the Board of Directors may establish, to the extent necessary under the provisions of the Restrictions. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the accounts with amounts deposited into any other account, provided that (i) the integrity of each individual account shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Maintenance Fund separately, and (ii) the portions of the Maintenance Funds attributable to the maintenance, repair and replacement of the Association Property shall not be commingled with any other portions of the Maintenance Funds. Except as permitted herein, each of the accounts shall be established as separate trust savings or trust checking accounts. The Maintenance Funds may be established as trust accounts at federally insured banking or lending institutions.

Section 6.3. Purpose of Assessments .

(a) All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the purposes authorized by the Restrictions, as they may be amended from time to time. Disbursements from the Reserve Fund shall be made by the Board only for the purposes specified in this Article 6. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein, other than those purposes for which disbursements from the Reserve Fund are to be used. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association earmarked for specified purposes authorized by the Restrictions.

(b) Except to the extent expressly provided by this Declaration and Section 116.31135 of UCIOA, the Association is responsible for maintenance, repair and replacement of the Association Property and each Owner is responsible for maintenance, repair and replacement of his Lot. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through his Lot reasonably necessary for such purposes. If damage is inflicted on the Association Property or on any Lot through which access is taken, the Owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair thereof.

Section 6.4. Damage to Association Property by Owners . Maintenance, repairs or replacements within the Association Property arising out of or caused by the willful or negligent act of an Owner, his family, guests, tenants or invitees shall be done at such Owner's expense and, after Notice and Hearing, a Special Assessment therefor shall be levied against such Owner; provided, however, that the liability of such Owner for such damage to the Association Property shall not be absolute, but shall only be that for which such Owner may be legally responsible under State law.

Section 6.5. Initial Assessments. Upon acquisition of record title to a Lot from Declarant, each Lot Owner shall contribute to the capital of the Association the Initial Assessment in an amount equal \$100.00 which amount may be adjusted from time to time for inflation at the discretion of the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association or to Declarant if Declarant has previously advanced such funds to the Association.

Section 6.6. Common Assessments.

(a) Each Common Assessment shall constitute an aggregate of separate Assessments for each of the applicable Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, Operating Fund and any other Maintenance Fund established by the Association. A sum sufficient to pay Common Expenses shall be allocated among the Lot Owners and their respective Lots based upon the number of Assessment Units chargeable to each such Owner and shall be assessed at least annually as Common Assessments against the Owners of Lots within the Association in accordance with the Association Budget.

(b) The Board shall adopt a proposed annual budget at least forty-five (45) days prior to the commencement of each fiscal year of the Association. The Budget shall include (a) the estimated Common Expenses to be incurred during the coming Assessment year, (b) a capital contribution to establish a reserve fund for repair and replacement of portions of the Common Elements and for costs of anticipated additional capital improvements to the Common Elements and shall otherwise meet the requirements of paragraph (b) of subsection 2 of NRS 116.3115, and (c) a statement disclosing any "In Kind" contributions by Declarant and any subsidies by the Declarant. The Budget shall be in reasonable detail, including all information required by law, including without limitation, NRS 116.31151. As Common Assessments commence with respect to additional Phases of Development annexed to the Property pursuant to Article 2 hereof, the Common Assessments shall be revised, pursuant to the formulas set forth below, to reflect the amended Association Budget. Within thirty (30) days after adoption of any Association Budget, the Board shall provide a summary of such Association Budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the Association Budget not less than fourteen (14) nor more than thirty (30) days after mailing of such summary. Unless at that meeting of Owners seventy-five percent (75%) of the voting power of the Association rejects the proposed Association Budget, the Association Budget is ratified whether or not a quorum is present. If the proposed Association Budget is rejected, the Association Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Association Budget proposed by the Board. Upon annexation and/or deannexation of a portion of the Property, the Common Assessments shall be revised pursuant to the formulas set forth below to reflect the modified costs to the Association.

(c) The Owner of each Lot shall be charged with one (1) Assessment Unit for each Lot owned by him. Each Lot Owner's proportionate share of the Common Assessment shall be a fraction, the numerator of which shall be the number of Assessment Units charged to such Lot Owner and the denominator of which shall be the total number of Assessment Units charged to all Lots subject to Assessment. If liabilities for Common Expenses are reallocated, Common Assessments and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

Section 6.7. Date of Commencement of Common Assessments . Unless otherwise determined by resolution of the Board of Directors, Common Assessments shall commence as to all Lots in the original Property on the first day of the month following close of escrow for the sale of the third (3rd) Lot in the Property. Common Assessments shall commence as to subsequent Phases upon the first day of the month following the first close of escrow for the sale of any Lot therein. Each such Lot shall thereafter be subject to its share of the then established Common Assessment as set forth herein. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year. The Board shall fix the amount of the Common Assessment to be levied against each Lot at least thirty (30) days in advance of each fiscal year. Written notice of any change in the amount of the Common Assessment shall be sent to every Lot Owner subject thereto, prior to the effective date of such change. The Common Assessment shall be payable in installments equal to 6/12 of the amount of the Common Assessment. All installments shall be collected in advance every six months by the Board, on such due dates as the Board shall determine from time to time in its sole and absolute discretion

From time to time the Board of Directors may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Property may be either (i) retained by the Association and used to reduce the following year's Common Assessment, or (ii) paid to each Lot Owner in proportion to their liability for Common Assessments. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Association Property, any amounts remaining in any of the Maintenance Funds shall be distributed proportionately to or for the benefit of the Members.

Section 6.8.

(a) **Supplemental Common Assessments** . If the Board during such fiscal year, determines that the important and essential functions of the Association cannot be funded by the existing Common Assessment, the Board may levy one (1) or more supplemental Common Assessments to pay the cost of such functions.

(b) **Common Assessment Adjustments** . Notwithstanding any other provisions of this Section 6.8, upon the annexation of Annexable Area pursuant to Article 2 hereof, the Common Assessments shall be adjusted to reflect the additional Lots and any additional Common Expenses.

Section 6.9. Capital Improvement Assessments . The Board, with the vote of at least fifty-one percent (51%) of the voting power of the Association, may levy, in any fiscal year, a Capital Improvement Assessment applicable to only that fiscal year in which the vote is taken, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement upon the Association Property, including fixtures and personal property related thereto. The Association shall provide at least 21 calendar days written notice to each Lot Owner of a meeting at which a Capital Improvement Assessment is to be considered or action is to be taken on such Capital Improvement Assessment. All Capital Improvement Assessments shall be levied among the Lot Owners based upon the number of Assessments units (determined pursuant to Section 6.6) chargeable to each Lot Owner.

Section 6.10. Special Assessments . The Association shall have the power to levy Special Assessments against a particular Lot and such Lot's Owner to cover the costs, including overhead, interest, administrative and legal costs of :

(a) providing services to Lots upon request of an Owner for any special services which may be performed or offered by the Association, including without limitation landscape maintenance, cable television service, caretaker services and other services and facilities. Special Assessments for special services may be levied in advance of the provision of the requested service, and

(b) bringing the Lot into compliance with the restrictions or as a consequence of the conduct of the Owner or Occupants of the Lot, their agents, contractors, employees, licensees, or guests, including without limitation reasonable fines and penalties, provided the Association shall give the Lot Owner prior Notice and Hearing before levying any Special Assessment under this Section 6.10(b).

Section 6.10.1. Limitations on Common Assessment Increases . The Board shall not levy, for any fiscal year, an annual Common Assessment which exceeds the "Maximum Authorized Common Assessment" as determined pursuant to Section 6.10.1(b), below, unless first approved by the vote of Members representing at least a majority of the total voting power of the Association.

(a) **Maximum Authorized Common Assessment for Initial Year of Operation.** Until the first day of the fiscal year immediately following the fiscal year in which Common Assessments commence, the annual Maximum Authorized Common Assessment per Lot shall be Seven Hundred Twenty Dollars (\$720.00) prorated for the number of days remaining in said first fiscal year.

(b) **Maximum Authorized Common Assessment for Subsequent Fiscal Years.** Beginning with the fiscal year immediately following the fiscal year in which Common Assessments commence, the Maximum Authorized Common Assessment in any fiscal year shall not exceed one hundred twenty-five percent (125%) of the Maximum Authorized Common Assessment in effect for the immediately preceding fiscal year (i.e., the Maximum Authorized Common Assessment shall not be increased by more than twenty-five percent (25%) in any one fiscal year.

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

(a) Those portions of the Property dedicated to and accepted by the United States, the State of Nevada, Nye County, the City of Pahrump or any political subdivision of any of the

foregoing, or any public agency, entity or authority, for as long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) The Association Property owned in fee by the Association; and

(c) Those portions of the Property, including without limitation any Lots, used by Declarant as a model home, management office or sales facility; provided, however, that the exemption from the Assessments shall cease when such Property is no longer used by the Declarant for such purpose.

Section 6.12. Remedies of the Association . Any installment of an Assessment not paid within thirty (30) days after it is due, shall bear interest from the due date until paid at a rate established by the Board, not to exceed eighteen percent (18%) per annum. The Board may require a delinquent Owner to pay a late charge in addition to the interest described above to compensate the Association for increased bookkeeping, billing and other administrative costs. No such late charge shall exceed the maximum amount allowable by law. If any installment of an Assessment is not paid within thirty (30) days after it is due, the Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against his Lot or other Property owned by such Owner, or both. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Association Property or abandonment of his Lot. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board may mail notice to the Owner and to each first Mortgagee of the Owner's property which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default may be cured, and (4) that failure to cure the default on or before the date specified in the notice shall result in acceleration of the balance of the installments of the Assessment for the then current fiscal year, and may result in the sale of the Owner's property. The notice shall further inform the Owner of his 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 shall declare all of the unpaid balance of the Assessment levied against such Owner and the Owner's Lot immediately due and payable without further demand, and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law or this Declaration.

Section 6.13. Notices . The Association has a lien on a Lot for any assessment levied against that Lot or fines imposed against the Lot's Owner from the time the assessment or fine becomes due. Recording of this Declaration constitutes record notice and perfection of the lien. No action shall be brought to enforce any assessment lien herein, unless (1) a Notice of Delinquent Assessment is deposited in the United States mail, certified or registered, return receipt requested, postage prepaid, to the Owner of the Lot, (2) a Notice of Default and Election to Sell has been Recorded by the Association and (3) such Lot Owner has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for sixty (60) days from the later of the Recording of the Notice of Default and Election to Sell or the date of mailing the same to Owner (as required). Such Notices each must recite a good and sufficient legal description of such Lot, 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 6.11, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien plus fees, charges, late charges and fines), and the name and address of the Person authorized by the Association to enforce the lien by sale. Each Notice shall be signed and acknowledged by the president or vice president and secretary or assistant secretary of the Association. The Association or other Person conducting the sale shall also mail, within ten (10) days after the Notice of Default and Election to Sell is Recorded, a copy of such Notice by first-class mail to (i) each person who has requested Notice pursuant to NRS 107.090 or 116.31168, (ii) any Mortgagee who has notified the Association at least thirty (30) days before the Recordation of the Notice of Default and Election to Sell, of the existence of the Mortgage (iii) a purchaser of the Lot, if the Lot's Owner has notified the Association at least thirty (30) days before Recordation of such Notice, that the Lot is subject of a contract of sale and the Association has been requested to furnish the certificate described in NRS Section 116.4109 (2) and (iv) the Owner.

Section 6.14. Foreclosure Sale . The Association or other person conducting the sale shall also, after the expiration of the sixty (60) day period described in Section 6.12 and before selling the Lot (a) give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the Notice of Sale must be

mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the Lot's Owner or his successor in interest at his address if known, and to the address of the Lot, (b) mail, on or before the date of the first publication or posting, a copy of the Notice by first-class mail to (i) each person entitled to receive a copy of the Notice of Default and Election to Sell under NRS Section 116.31163 and (ii) a Mortgagee or purchaser of the Lot, if either of them has notified the Association, before the mailing of the Notice of Sale, of the existence of a Mortgage, lease or contract of sale, as applicable. Any such sale provided for above may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of Covenants Nos. 6, 7 and 8 of NRS Section 107.030 and 107.090, as amended, and UCIOA 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 Lot at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Section 6.15. Curing of Default . Upon the timely curing of any default for which a Notice of Lien was filed by the Association, and 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 and all other costs, the Association shall Record an appropriate Release of Lien. A certificate, executed and acknowledged by any two (2) members of the Board or the Manager stating the amount of the indebtedness secured by the liens upon any Property created hereunder, shall be conclusive upon the Association and the Owners 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 6.16. Cumulative Remedies and Attorneys Fees. 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, including without limitation, a suit to recover a money judgment for unpaid assessments, as provided above and/or the taking of a deed in lieu of foreclosure. A judgment or decree in any action brought under this Section 6.15 must include costs and reasonable attorneys fees for the prevailing party.

Section 6.17. Statement of Assessments . The Association upon written request and for a reasonable charge shall furnish to a Lot's Owner a statement setting forth the amount of unpaid and paid assessments against the Lot, which statement shall be in Recordable form. Such statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and every Lot's Owner.

Section 6.18. Mortgage Protection . Notwithstanding all other provisions hereof, no lien created under this Article 6, nor any breach of this Declaration, nor the enforcement of any provision hereof or of any Supplemental Declaration hereto shall defeat or render invalid the rights of the Beneficiary under any Recorded First Mortgage upon any of the Property made in good faith and for value; provided that (i) such First Mortgage is Recorded prior to any notice of lien or notice of noncompliance Recorded pursuant to this Declaration, and (ii) after such Beneficiary or other Person obtains title to such Property by judicial foreclosure or by means of the powers set forth in such First Mortgage, such Property shall remain subject to the Restrictions and the payment of all installments of Assessments, accruing subsequent to the date such Beneficiary or other Person obtains title. 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 personal obligation for the payment of such unpaid assessments.

Section 6.19. Priority of Assessment Lien . The assessment lien, including without limitation interest, costs and attorney's fees, shall be prior to all other liens and encumbrances on a Lot except (a) liens and encumbrances Recorded before the Recordation of this Declaration, (b) a bona fide First Mortgage on the Lot Recorded before the date on which the assessment sought to be enforced became delinquent and (c) liens for real estate taxes and other governmental assessments or charges against the Lot. The assessment lien is also prior to all First Mortgages to the extent of Common Assessments based on the periodic budget adopted by the Association 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 sale or transfer of any Lot shall not affect the Assessment lien. However, subject to the foregoing, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessment as to payments which became due prior

to such sale or transfer. Such unpaid share of Common Expenses and Assessments shall be deemed to become expenses collectible from all of the Property subject to Assessments hereunder, including the Property belonging to such Person and his successors and assigns. No sale or transfer shall relieve such Property from lien rights for any Assessments thereafter becoming due.

Section 6.20. Declarant's Subsidy; Obligation for Common Expenses and Assessments

Until the commencement of Common Assessments as provided in Section 6.7, Declarant shall pay all Common Expenses. Declarant shall be entitled to reimbursement for, or a credit against and a deduction from, any assessments payable by Declarant the reasonable value of "in-kind" contributions to the Association, including without limitation materials and management, accounting, administrative and other services. Declarant shall be entitled, but shall not be obligated, from time to time to pay all or any portion of the Common Expenses as a subsidy, which at Declarant's election, may be treated as a loan to the Association or an advance against future assessments payable by Declarant. The amount of any such subsidy shall be disclosed in the Association Budget. The payment of such subsidy shall not create any obligation of Declarant to continue payment of such subsidy in the future.

**ARTICLE 7
AGE RESTRICTIONS**

Section 7.1. Age Restricted Community. Desert Greens is intended to provide housing primarily for persons 55 years of age or older under the housing for older persons exemption established by the Federal Fair Housing Act, 42 U.S.C. § 3601 et. seq. and all regulations promulgated thereunder, as currently in effect or hereafter amended. The Property shall be operated as an age restricted community in compliance with all applicable Nevada and federal laws relating thereto, including without limitation the Fair Housing Act ("Housing Laws").

Persons under 19 years of age may stay overnight in a Residence for up to 60 days during a calendar year, but shall not reside in or otherwise Occupy any Residence. Subject to Section 7.3 hereof, each Residence, if Occupied, shall be Occupied by an Age Qualified Occupant; provided, however, that once a Residence is Occupied by an Age-Qualified Occupant, other Qualified Occupants of that Residence may continue to Occupy the Residence, regardless of the termination of Occupancy by said Age-Qualified Occupant. Notwithstanding the above, to the extent required by the Housing Laws, at all times at least 80% of the Residences within the Property shall be Occupied by at least one natural person 55 years of age or older.

Section 7.2. Facilities, Policies and Procedures The Association shall provide, or contract for the provision of, any facilities and services designed to meet the physical and social needs of older persons as may be required under the Housing Laws to obtain the housing for older persons' exemption. The Board shall establish rules, policies and procedures from time to time as it deems necessary in its discretion to maintain its status as an age restricted community under the Housing Laws, which may include without limitation:

1. The requirement that any or all Occupants, purchasers and tenants of any Lot complete certifications, surveys and affidavits and provide evidence acceptable to the Board of age, occupancy and other matters. The Board may require that such certifications, surveys, affidavits and evidence be provided prior to the occupancy, purchase or lease of such Lot and periodically thereafter as the Board may require;
2. The application to and approval of the Board of compliance with this Article 7 by a) any purchaser of any Lot, prior to and as a condition to the sale of any Lot, b) any new Occupant of a Residence, prior to and as a condition to Occupancy by such person, and c) any tenant under any lease of a Residence, prior to and as a condition to such lease or tenancy.
3. The notification in writing to the Board of any change in Occupancy of a Residence by an Age-Qualified Occupant.

The Board, at its election, may also establish rules, policies and procedures applicable to Persons 18 years of age and under, including without limitation, restrictions, limitations and requirements regarding their use of Association Property, maximum periods of time that they can be present within the Project, and other reasonable limitations, restrictions and requirements deemed necessary or appropriate by the Board. The Board, acting on behalf of the Association, shall have any

and all remedies available at law or equity to enforce the provisions of this Article 7 and to ensure compliance with the Housing Laws, including without limitation, the right to refuse approval of a new purchaser of a Lot and to prevent the transfer of title to such purchaser, the right to refuse approval of a new Occupant and to prevent Occupancy by or evict such person, and the right to refuse approval of a new tenant under a lease of a Residence and to prevent Occupancy by or to evict such new tenant. Any Owner violating this Article 7 or the Rules and Regulations, policies or procedures contemplated herein shall indemnify and hold harmless the Association and Declarant from all claims, liabilities, costs and expenses, including attorney's fees, incurred in connection with such violation or the enforcement hereof.

Section 7.3. Sales by Declarant . Notwithstanding anything to the contrary in this Article 7, Declarant reserves the right to sell Lots to persons between the ages of 50 and 55, inclusive, which Owners shall be entitled to Occupy the residence located on such Lot, provided that no such sales or Occupancy shall cause or constitute a violation or loss of the housing for older persons exemption under the Housing Laws.

ARTICLE 8

GENERAL RESTRICTIONS

Subject to the exemptions of Declarant as set forth herein, all real Property within the Property shall be held, used and enjoyed subject to the following limitations and restrictions:

Section 8.1. Antennae . No exterior radio antenna, "C.B." antenna, satellite dish antenna that exceeds 18 inches in diameter or other antenna of any type shall be erected or maintained on any portion of the Property, except in accordance with and subject to the Rules and Regulations concerning antenna adopted by the Board, as the same may be amended from time to time. However, a master antenna or cable television antenna may, but need not, be provided by Declarant, or the Association for use within the Association Property. Declarant may grant easements for maintenance of any such master or cable television service.

Section 8.2. Insurance Rates . Nothing shall be done or kept in the Property which will increase the rate of insurance on the Association Property, nor shall anything be done or kept in the Property which would result in the cancellation of insurance on the Association Property or which would be in violation of any law.

Section 8.3. No Further Subdivision . Except as expressly authorized in a Supplemental Declaration, no Lot may be further subdivided or partitioned, including without limitation any division into timeshare estates or timeshare uses, without the prior written approval of the Board; provided, however, that nothing in this Section shall be deemed to prevent, or require the approval of the Board for: (1) selling a Lot or (2) transferring or selling any Lot to more than one (1) person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property; or (3) the leasing or renting by any Owner of all of his Lot, provided that any such lease or rental shall be subject to this Declaration.

Section 8.4. Animals . No animals, livestock, fowls, reptiles, poultry, fish or insects of any kind ("animals") shall be raised, bred or kept, on any Lot or other area within the Property, except that a reasonable number of household pets 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 local ordinance or any other provision of the Restrictions, and 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 of Directors may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal or animals which constitutes, in the opinion of the Board, a nuisance to other Owners or occupants of the Property. All animals within the Property 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. No animals shall be allowed within the Common Areas or Association Property except pursuant to Rules and Regulations attached hereto or promulgated by the Board. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all other Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or Property caused by any animals brought or kept upon the Property by

such Owner or by members of his Family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Association Property.

Section 8.5. Nuisances . No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Property, and no odor shall be permitted so as to render the Property or any portion thereof unsanitary, unsightly, or offensive. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to the occupants thereof. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb other Owners or their tenants shall be located, used or placed on any portion of the Property without the prior written approval of the Board. No motorcycles, dirt bikes or other mechanized vehicles or bicycles of any type may be operated upon any portion of the Association Property not improved as a street without the prior written approval of the Board, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a portion of the Property and its contents, shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

No waste shall be committed in any Lot or Common Area.

Section 8.6. Maintenance and Repair; Obligations . Each Lot Owner shall maintain, repair and replace his Lot and all Improvements thereon in first-class condition and repair and in a neat and attractive condition. Each Owner shall do all replanting, redecorating and painting of the home which may at any time be necessary to maintain the attractive appearance and condition of his or her Lot. If any Owner shall permit any portion of the Lot or any Improvement located thereon, which is the responsibility of such Owner to maintain (including without limitation the Residence, the walkways leading from the street to the front door and the Front and Rear Yard Landscaping), to fall into disrepair, the Board, after consulting with the Architectural Committee, and after affording such Owner Notice and Hearing, shall have the right but not the obligation to correct such condition, and to enter upon such Property for the purpose of doing so, and the Lot Owner of such Lot shall promptly reimburse the Association for the cost thereof. Such cost shall be a Special Assessment enforceable in the manner set forth in this Declaration, and the Owner 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 such Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

Section 8.7. Drainage . There shall be no interference with the established drainage pattern over any Owner's Property so as to affect any other property, unless an adequate alternative provision, previously approved in writing by the Architectural Committee, is made for proper drainage. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time the Lot, Association Property, or other property, as the case may be, is conveyed to any Owner by Declarant or later grading changes which are shown on Plans approved by the Architectural Committee, which may include drainage from the Association Property over any Lot, Association Property, or other property.

Section 8.8. Water and Sewer Systems . No individual water supply system, or sewage disposal system shall be permitted in the Property.

Section 8.9. No Hazardous Activities . No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Property which are or might be unreasonably unsafe or hazardous to any Owner, Person, or property in the Property.

Section 8.10. No Temporary Structures . Unless approved in writing by the Board in connection with the construction of authorized Improvements, no tent, shack, shed other temporary building, Improvement or structure shall be placed upon any portion of the Property.

Section 8.11. No Mining and Drilling . The Property shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, geothermal heat, minerals, rocks, stones, gravel or earth, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any portion of the Property or within five hundred (500) feet below the surface of the Property.

Section 8.12. Residential Uses; Leases . All Lots shall be improved and used solely for residential use; provided, however, that this provision shall not preclude Declarant's activities described

herein or any Owner in the Property from renting or leasing all of his Property by means of a written lease or rental agreement, subject to the Restrictions. No such lease or rental shall be for a term of less than six (6) months. No portion of the Property 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, storage, vending, or other such nonresidential purposes; except Declarant, its successors and assigns, may use any portion of the Property owned by them for a model home site, management, display and sales office and other uses, as provided herein. The provisions of this Section 8.12 shall not preclude professional administrative occupations or senior day care activities without external evidence thereof, for so long as such occupations are conducted in conformance with all applicable governmental ordinances, and are merely incidental to the use as a Residence.

Section 8.13. Improvements .

(a) No Lot shall be improved except with one (1) Residence designed to accommodate a Family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a Residence. No basketball backboard or other sports apparatus shall be constructed or maintained on the Property without the prior written approval of the Architectural Committee. No patio cover, wiring, air conditioning or solar fixture, water softener or other structures, equipment or devices shall be installed on the exterior of a Residence or be allowed to protrude through the walls or roof of the Residence, without the prior written approval of the Architectural Committee.

(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 Property.

(c) Solar screens and window treatment other than draperies, curtains or blinds (horizontal or vertical) is subject to the prior written approval of the Board. Aluminum foil and similar material shall not be permitted in any exterior windows. Window tinting shall require the prior written approval of the Board, and shall be properly installed and maintained so as not to become damaged, scratched, discolored or otherwise unsightly.

(d) No Owner shall make any alterations, repairs or additions to his or her Lot or the improvements thereon which would affect the exterior appearance thereof, without the prior written approval of the plans and specifications thereof by the Board. The Board shall grant its approval only in the event that the proposed work will benefit and enhance the Property in a manner generally consistent with the plan of development thereof. The Board's approval or disapproval shall be in writing. In the event that the Board fails to approve or disapprove within forty-five (45) days after the appropriate plans and specifications have been submitted to the Board, such improvements shall be deemed disapproved. Neither the Board nor the Architectural Committee, established by the Board, shall be responsible for reviewing plans or designs, nor shall their approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

(e) Nothing shall be done in or to any part of the Property which will impair the structural integrity of any part of the Property except in connection with the alterations or repairs specifically permitted or required hereunder.

(f) No improvement or alteration of any portion of the Common Areas shall be permitted without the prior written consent of the Board. The foregoing provisions shall not apply to the initial construction activities of Declarant.

Section 8.14. Landscaping .

(a) **Front Yards** . The landscaping and irrigation system in the Front Yard shall be installed, maintained, repaired, replaced and reconstructed by the Owner.

(b) **Front and Rear Yards** . Within one hundred eighty (180) days after the Close of Escrow for the sale of a Lot, if not previously installed by the Declarant, the Owner of such Lot shall install landscaping on the portion of the yard area bordered by the Residence, and the front, rear and side Property lines of the Lot (the "Yard Landscaping") in accordance with plans and specifications approved by the Architectural Committee in accordance with Article 9 hereof and shall thereafter maintain such Improvements in first-class condition and repair. No plants or seeds infected with insects or plant diseases, shall be brought upon, grown or maintained upon any part of the Property. The Board may adopt Rules and Regulations proposed by the Architectural Committee to regulate landscaping permitted and required in the Property. If an Owner fails to install and maintain Yard

Landscaping in conformance with such Rules and Regulations, or shall fail to maintain the Yard Landscaping, the Board, upon thirty (30) days prior written notice to such Owner, shall have the right either to seek any remedies at law or in equity which it may have or to correct such condition and, after Notice and Hearing, to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof and all associated costs incurred by the Association in connection therewith. Such cost shall be a Special Assessment enforceable in the manner as set forth in this Declaration.

Section 8.15. Parking and Vehicular Restrictions . No Owner (excluding Declarant) shall park, store or keep on any street, residence driveway or other area within the Property any large commercial vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, delivery truck or panel van); any recreational vehicle (including, but not limited to, any camper unit, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft, recreational vehicle; or any inoperable vehicle or any other similar vehicle or any unlicensed or unregistered vehicle. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board. In addition, no Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. No vehicle may be parked on the street or in any designated parking spot for more than seventy-two (72) consecutive hours. All motor vehicles, boats, trailers, campers, motor homes and all other vehicles shall be parked in carports; provided, however, that registered vehicles may be parked in the driveway on a Lot for reasonable periods, which may be established in the Rules and Regulations and revised from time to time in the Board's sole discretion . No Owner shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Property. No vehicle shall be left on blocks or jacks. Parking spaces shall be used exclusively for the parking of passenger vehicles and motorcycles. Reserved parking spaces shall be used solely and exclusively for the parking of vehicles. Up to two vehicles may be parked on each lot to the extent space is available therein. Recreational vehicles shall be parked only in recreational parking areas, if and when such areas are appropriated for said purpose by the Board, and shall not be used as permanent or temporary residences. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any City or County ordinance. In the event of a violation of any provision of this Section 8.15, the Association shall have the authority to take any and all action permitted by law which the Association deems appropriate, including without limitation, the right to remove vehicles from the Property at the owner's expense. The Association shall have the power to establish rules and regulations concerning all aspects of parking within the Property not inconsistent with this Declaration.

The Board will establish recreational vehicle parking areas within the Property. The Board shall charge a fee for use of such parking area, and to otherwise regulate their use as the Board may see fit in its reasonable discretion. No recreational vehicle, including (without limitation) any boat, trailer, motor home, camper, tent trailer, watercraft, snowmobile or similar vehicle shall be stored or kept anywhere on the Property except in a designated recreational vehicle parking area, subject to the foregoing provisions. In addition, the Board may adopt rules and regulations relative to the parking areas.

Section 8.16. Signs . No sign, poster, billboard, advertising device or other display of any kind shall be displayed so as to be visible from any portion of the Property without the approval of the Architectural Committee, except signs which may not exceed twelve (12) inches by eighteen (18) inches which may be displayed on each Lot or from portions of the Property advertising the Lot or the Property for sale or lease. This Section 8.16 shall not apply to signs, billboards, advertising device or other display erected, installed, and maintained by the Declarant in connection with its construction or sales activities related to the Property. The Architectural Committee, in its sole discretion, shall be entitled to preclude any and all "For Rent", "For Lease" and similar signs anywhere in the Property.

Section 8.17. Flag Restrictions . No flag of any kind shall be displayed to the public view on any portion of any Lot, except as approved by the Architectural Committee, and provided further that one U.S. and one Nevada State flag no larger than 3' by 5' each may be displayed on each Lot on legal holidays without approval of the Committee. No freestanding flagpoles shall be allowed on any Lot.

Section 8.18. Unightly Articles . No unsightly articles, including without limitation, clotheslines, inoperable vehicles, tools, household effects, machinery, storage containers, bags, trash or other items shall be permitted to remain on any portion of the Property so as to be visible from any

street or from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to the view of neighboring portions of the Property only when set out in the areas designated for trash collection for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles commercially designed therefor, such that they do not create a fire hazard and except as specifically authorized in writing by the Association (and subject to applicable ordinances and fire regulations).

Section 8.19. View Obstructions . Subject to the provisions of Article 9 hereof, no vegetation, Improvement, or other obstruction shall be planted, constructed, or maintained in the Property by any Owner (excluding Declarant), in such location or of such height as to unreasonably obstruct the view from any other part of the Property. Subject to the provisions of Section 8.3, each Owner (excluding Declarant) shall be responsible for periodic trimming, pruning and thinning of all hedges, shrubs and trees located on his Lot which is subject to his control or maintenance, so as to not unreasonably obstruct the view of adjacent Owners. If an Owner fails to perform necessary trimming, pruning or thinning, the Association shall have the right, after Notice and Hearing, to enter upon the Owner's Lot for purposes of performing such work. Notwithstanding anything to the contrary herein, each Owner, by accepting a deed to a portion of the Property, hereby acknowledges that any construction, installation or landscaping by Declarant may impair the view of such Owner, and hereby consents to such impairment. Declarant makes no representation or warranty that any view from any Lot will be maintained, preserved or will not be obstructed.

Section 8.20. Maximum Occupancy . Residences shall not be Occupied by more than two Persons per bedroom in the Residences.

Section 8.21. Persons Bound . All provisions of the Restrictions shall apply to all Occupants, guests, tenants, contractors and invitees of any Lot. Every Owner shall cause all Occupants, guests, tenants, contractors and invitees of his or her Lot to comply with the Restrictions and shall be responsible for all violations and losses caused by such Persons notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

Section 8.22. Variances . The Board may, in its sole discretion, grant variances to the provisions of this Article 8. No variance granted shall constitute a waiver or restrict enforcement of any other provision hereof, or constitute a precedent for granting another variance.

Section 8.23. Storage . Nothing shall be kept or stored in the Association Property or Common Areas, and nothing shall be altered, or constructed or planted in, or removed from the Association Property or Common Areas, without the written consent of the Board.

ARTICLE 9

ARCHITECTURAL AND LANDSCAPING CONTROL

Section 9.1. Members of Architectural Committee . The Architectural and Landscaping Committee, sometimes referred to in this Declaration as the "Architectural Committee", shall consist of three (3) members; provided, however, that such number may be increased or decreased by resolution of the Board of Directors. Declarant shall have the right to appoint and remove two (2) (or such greater number as shall constitute a majority) of the members of the Architectural Committee until such right terminates as provided in Section 9.2 hereof. The Board shall have the right to appoint all members of the Architectural Committee not appointed by the Declarant. Members of the Architectural Committee may be removed at any time without cause by the Person appointing such member as provided herein. Unless changed by resolution of the Board, the address of the Architectural Committee for all purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board pursuant to the Bylaws.

Section 9.2. Rights of Appointment .

(a) **By Declarant** . Declarant shall have the right to appoint a majority of the members of the Architectural Committee until the earlier to occur of the following:

- (i) Such time as Declarant no longer owns any property in the Property or the Annexable Area; or
- (ii) Seven (7) years from the Recordation of this Declaration; or

(iii) Such time as Declarant shall expressly relinquish such right to the Board in writing.

(b) **By the Board** . The Board shall have the right to appoint and remove those members of the Architectural Committee which Declarant is not authorized to appoint until such time as Declarant's rights of appointment shall have expired, and thereafter the Board shall have the right to appoint and remove all members of the Architectural Committee. Architectural Committee members appointed by the Board shall serve for a term of one (1) year or until their respective successors are appointed.

(c) **Notice of Appointment** . Whenever an Architectural Committee member is appointed or removed while both Declarant and the Board have rights of appointment, written notice of such appointment or removal shall be given by the appointing party to the other party.

(d) **Vacancies** . Until such time as Declarant no longer has a right of appointment, in the event of a vacancy on the Architectural Committee, the vacancy shall be filled by appointment by the Board or the Declarant, whichever appointed the member whose position is vacant. After the time when the Declarant no longer has the right of appointment, a vacancy on the Architectural Committee shall be filled by appointment by the Board.

Section 9.3. Review of Plans and Specifications . Subject to Article 11 of this Declaration, no construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of an Improvement in the Property or other activity within the jurisdiction of the Architectural Committee pursuant to this Declaration (collectively "Construction Activities") shall be commenced or maintained by any Owner, until the plans and specifications therefor showing such matters as may be required by the Architectural Committee, including without limitation the nature, kind, shape, height, width, setbacks, the type of roof (if applicable), the type of siding (if applicable), color, materials and location of the same, shall have been submitted to the Architectural Committee pursuant to procedures established by the Architectural Committee and approved in writing by the Architectural Committee, subject to, and as provided by, the following:

(a) **Declarant** . Declarant need not seek approval of the Architectural Committee with respect to any of its activities.

(b) **Procedures and Review** . The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as are specified in this Declaration or are from time to time assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that (a) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area or the Property as a whole, (b) the Improvements described therein will be consistent with, compliment and will be in harmony with the remainder of the Property, (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Association Property or the enjoyment thereof by the Members, (d) the upkeep and maintenance thereof will not become a burden on the Association, and (e) the Construction Activities are consistent with the Plan of Development, as the same may be amended from time to time.

(c) **Conditional Approvals** . The Architectural Committee may approve proposals or plans and specifications for any Improvement subject to reasonable conditions it may impose including without limitation: (1) the agreement by the person (referred to in this Section as "Applicant") submitting the same to furnish to the Architectural Committee a bond or other security acceptable to the Architectural Committee in an amount reasonably sufficient to (i) 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 (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 Property or damage to the Association Property as a result of such work, (2) such changes therein as it deems appropriate, (3) the agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the Improvement, (4) the agreement of the Applicant to reimburse the Association for the cost of maintenance, and (5) any other reasonable requirements or conditions as the Architectural Committee shall deem appropriate. Further, the Architectural Committee may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

(d) **Plans and Specifications** . The Architectural Committee 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 description or samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the Applicant at the address furnished by the Applicant, within forty-five (45) days after the date of receipt issued by the Architectural Committee for the final materials required by the Architectural Committee. Any application submitted pursuant to this Section shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been delivered to the Applicant within forty-five (45) days after the date of receipt by the Architectural Committee of all required materials.

(e) **Rules and Regulations** . The Architectural Committee shall have the power and authority to issue such rules and regulations as it deems necessary and appropriate concerning standards and requirements for Construction Activities, including, without limitation, requirements for placement and coverings for director broadcast satellite antenna and antenna designed to receive video programming services via multipoint distribution services. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform, or that it may be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alterations or additions contemplated or the cost of architectural or other professional fees incurred by the Association in reviewing plans.

Section 9.4. Meetings of the Architectural Committee . The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate an Architectural Committee 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 Architectural Committee, except the granting of variances pursuant to Section 9.8. In the absence of such designation, the vote of a majority of the members of the Architectural Committee, or the written consent of a majority of the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

Section 9.5. No Waiver of Future Approvals . The approval of the Architectural Committee 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 Architectural Committee, 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 9.6. Compensation of Members . The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

Section 9.7. Correction of Defects . Inspection of work and correction of defects therein shall proceed as follows:

(a) The Architectural Committee or its duly appointed representative may at any time inspect any Improvement for which approval of plans is required under this Article. However the Architectural Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work of Improvement has been completed and the respective Owner has given written notice to the Architectural Committee of such completion. The Architectural Committee's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Improvement have not previously been submitted to and approved by the Architectural Committee. If, as a result of such inspection, the Architectural Committee finds that such Improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Architectural Committee, it shall notify the Owner in writing of failure to comply with this Article 9 within sixty (60) days from the inspection, specifying the particulars of noncompliance. The Architectural Committee 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 Architectural Committee shall notify the Board in writing of such failure. Upon Notice and Hearing as provided in the Bylaws, the Board shall determine whether there is a noncompliance 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 may remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses 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 such Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise 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 Architectural Committee fails to notify the Owner of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of such written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with such approved plans.

(d) All construction, alteration or other work shall be performed as promptly and diligently as reasonably possible and in accordance with all deadlines and other requirements of the Declaration.

Section 9.8. Variances . The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic, environmental, or other considerations may require. Such variances must be approved by the Board, evidenced in writing, signed by at least a majority of the members of the Architectural Committee, and shall become effective upon such approval and execution. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental 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 and regulations affecting his use of the premises, including but not limited to zoning ordinances and Lot setback lines or requirements imposed by the County or other governmental authority.

Section 9.9. Certain Exceptions . The Architectural Committee may also exempt certain types or classes of Improvements from the provisions of this Article 9 under written guidelines or rules promulgated from time to time by the Architectural Committee if, in the exercise of the Architectural Committee's sole judgment, approval of such types or classes of Improvements is not required to carry out the purposes of this Declaration.

Section 9.10. Non-Liability for Approval of Plans . The Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety, conformance with building or other codes, or conformance with zoning or other ordinances, rules or laws. The Architectural Committee'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 Architectural Committee, 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 Architectural Committee, 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 or any proposals, plans and specifications and drawings, whether or not defective, (b) the construction or

performance of any work whether or not pursuant to the approved proposals, plans and specifications and drawings, or (c) the development or manner of development of any of the Property.

Section 9.11. Amendment . Until such time as Declarant no longer is the owner of any portion of the Property or the Annexable Area, this Article shall not be amended without Declarant's written consent set forth on the amendment.

ARTICLE 10

DAMAGE, DESTRUCTION OR CONDEMNATION OF ASSOCIATION PROPERTY

Damage to, destruction of or condemnation of all or any portion of the Association Property shall be handled in the following manner:

Section 10.1. Damages by Owner . To the extent permitted by law, each Owner shall be liable to the Association for any damage to Association Property not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Owner, or any conduct of Owner or his guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Association Property from the Owner, or his or their respective Family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as provided in the Bylaws, to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of any portion of the Property, the liability of the Owners thereof shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment and may be enforced as provided herein.

Section 10.2. Repair or Replacement of Damaged or Destroyed Portion of the Properties .

(a) Any portion of the Property for which insurance is required to be maintained by the Association, which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (1) The Association is terminated, in which case the provisions of NRS 116.2118, 116.21183, and 116.21185 apply;
- (2) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or
- (3) Eighty percent (80%) of the Lot's Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves and not otherwise paid by an Owner is a Common Expense. (b)

If the Property is not repaired or replaced, the proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Property and the remainder of the proceeds must be distributed to Owners of Lots that are not rebuilt or to Mortgagees, as their interests may appear, in proportion to the liabilities of all the Lots for Common Expenses. If the Owners vote not to rebuild any Lot, that Lot's Allocated Interests shall be automatically reallocated upon the vote as if the Lot had been condemned and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations.

Section 10.3. Condemnation . If at any time all or any portion of the Association Property, or any interest therein, is taken for any public or quasi-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 appropriate 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. The Board of Directors immediately upon having knowledge of any taking by eminent domain of the Association Property, or any portion thereof, or any threat thereof, shall promptly notify all Lot Owners and all holders of First Mortgages on Lots.

Section 10.4. Notice to Owners and Listed Mortgagees . The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Association Property shall promptly notify all Lot Owners and holders and guarantors of first Mortgages on Lots who have filed with the Association a written request for such notice at least thirty (30) days before such damage or destruction.

ARTICLE 11

INTEREST AND EXEMPTION OF DECLARANT

Section 11.1. Interest of Declarant . Declarant has created a Plan of Development for the development of the Property which includes modern master planning objectives which have been formulated for the common good and enhancement of property values within the Property. Each Owner of any portion of the Property acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest to be protected with regard to assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations Recorded pursuant to this Declaration. Notwithstanding any other provisions of the Restrictions, until such time as (i) Declarant is no longer entitled to add Annexable Area to the Property without the consent of the Association pursuant to Section 2.3, or (ii) Declarant no longer owns any portion of the Property or the Annexable Area, whichever occurs later, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant:

- (a) Any amendment of this Declaration, the Bylaws, the Articles or the Rules and Regulations;
- (b) The annexation to the property of real property owned by Persons other than Declarant;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Association Property; or
- (d) Any material reduction of Association maintenance or other services.

Section 11.2. Exemption of Declarant . Nothing in the Restrictions shall limit and no Owner or the Association shall do anything to interfere with the right of Declarant to subdivide or resubdivide any portion(s) of the Property in any order, at any time and from time to time, or the right of Declarant to complete excavation and grading and construction of Improvements to and on any portion of the Property owned by Declarant, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Property so long as any portion of the Property or the Annexable Area is owned by Declarant. Declarant may, but shall not be obligated to, subdivide or resubdivide any remaining portion(s) of the Property. Such right shall include, but shall not be limited to, carrying on by Declarant of grading work and erecting, constructing and maintaining on the Property such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant, at any time prior to acquisition of title to a portion of the Property by a purchaser from Declarant to establish on that portion of the Property additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant shall have the right to use all and any portion of the Association Property for (i) access of Declarant and Declarant's agent, invitees and licensees to the sales facilities of Declarant and (ii) maintaining signs advertising the Property. Declarant may use any structures or Lots owned by Declarant in the Property as model home complexes, real estate sales offices, or management offices. Declarant may maintain signs advertising the planned community or the model homes. Such signs may be located on Declarant's Property, Association Property, or any Lot with the consent of such Lot's Owner. All or any portion of the Special Declarant's Rights hereunder and elsewhere in these Restrictions may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Property by an express Recorded written assignment, executed by the transferee, which specifies the Special Declarant's Rights so assigned. Notwithstanding any other provision of this Declaration, the prior written approval of

Declarant as developer of the Property, will be required before any amendment to this Article 11 shall be effective.

Section 11.3. Reservation and Exercise of Developmental Rights and Special Declarant's Rights . Declarant hereby reserves all Developmental Rights and Special Declarant's Rights as to the Property and the Project and each portion thereof, which rights may be exercised at different times and in any order elected by Declarant; provided, however, that Declarant reserves no Developmental Rights as to Association Property after transfer to the Association. The rights and reservations of Declarant referred to in this Section 11.3, including, without limitation, Developmental Rights and Special Declarant's Rights, shall terminate on the fifteenth (15th) anniversary of the Recordation of this Declaration; provided, however, that if Declarant still owns any portion of the Property or Annexable Area on such fifteenth (15th) anniversary date, such rights and reservations shall continue for one (1) successive period of ten (10) years. Declarant makes no assurances that all or any particular one of Declarant's Developmental Rights or Special Declarant's Rights shall be exercised.

Section 11.4. Water Rights . Declarant hereby reserves with the same force and effect as a reservation in each deed to the Property, all ownership, right, title and interest in any and all water, water rights and ditch rights appurtenant to or serving the Property and all portions thereof, including without limitation storm water runoff and effluent used, located or produced within the Property, and all right to appropriate, collect and use the same, together with easements to construct, maintain, replace and repair all equipment, facilities, pumps, pipes, ditches and other apparatus necessary, convenient or appropriate to collect, carry, use or transport such water, water rights, runoff and effluent. The rights reserved or created by this Section shall survive termination of this Declaration.

ARTICLE 12 **INSURANCE**

Section 12.1. Duty to Obtain Insurance; Types . Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Board shall cause to be obtained and maintained (a) adequate blanket public liability insurance (including medical payments), with such limits as the Board in its discretion considers prudent, but no less than \$1 million covering all claims for personal injury and property damage arising out of a single occurrence, covering all occurrences commonly insured against for death, bodily injury and Property damage arising out of or in connection with the use, ownership or maintenance of the Association Property, (b) fire and casualty insurance with extended coverage, insuring against all risks of direct physical loss commonly insured against, without deduction for depreciation, in an amount not less than the current replacement cost of the Association Property and Improvements at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from fire and casualty policies. If the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. Such insurance shall be maintained for the benefit of the Association, the Owners and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements as set forth herein. Such insurance shall, to the extent reasonably available, name each Owner as an insured Person under such policy with respect to liability arising out of his interest in the Association Property or Membership in the Association. The Board shall purchase such other insurance as necessary, including, but not limited to, errors and omissions, directors, officers and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation, and such other risks as shall customarily be covered with respect to Projects similar in construction, location, and use. Fidelity bond coverage, as set forth below, must be obtained, if reasonably available, by or on behalf of the Association, for any Person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, and employees of the Association, whether or not such Persons are compensated for their services, and employees of the Manager, whether such Manager is an employee or an independent contractor. The aggregate amount of such fidelity bonds shall not be less than an amount equal to one-fourth (1/4) of the sum of the Common Assessments and Capital Improvement Assessments on all Lots. Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond, meeting the insurance and fidelity bond requirements established by FHA, VA, FHLMC, FNMA, GNMA or any

similar entity, so long as any of them is an Owner of a Lot or holder or insurer of a Mortgage on a Lot, except to the extent such coverage is not available or has been waived in writing by the FHA, VA, FHLMC, FNMA, GNMA or such other similar entity, as applicable. Certificates of insurance shall be issued to each Owner and Mortgagee upon written request.

Section 12.2. Waiver of Claims Against Association . As to all policies of insurance maintained by or for the benefit of the Association and the Lot Owners, the Association and the Lot Owners hereby waive and release all claims against one another, the Board of Directors, and Declarant to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of such persons, except as may be provided elsewhere in this Declaration.

Section 12.3. Notice of Expiration Requirements . If available, all of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not expire nor be canceled, terminated, or materially modified without at least thirty(30) days prior written notice to the Board and Declarant, and those Beneficiaries or guarantors of first Mortgages and Lot Owners who have 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. Fidelity bond coverage shall not be canceled or substantially decreased unless each FNMA servicer servicing first Mortgages held by FNMA on Lots and the insurance trustee, if any, appointed pursuant to Section 12.5 have received ten (10) days written notice of such cancellation or decrease in fidelity bond coverage.

Section 12.4. Insurance Premiums . Insurance premiums for any insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Common Assessments levied by the Association and collected from the Lot Owners. That portion of the Common Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Operating Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

Section 12.5. Trustee for Policies . The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 12.1 shall be paid to the Board as Trustees and not to any Mortgagee. The Board shall hold any proceeds in trust for the Association, Owners and Mortgagees as their interests may appear. The Board shall have full power to receive the proceeds and to deal therewith as provided herein. Subject to the provisions of Section 10.2, insurance proceeds shall first be used by the Association for the repair or restoration of the damaged property for which the insurance was carried, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation to the extent they desire, of first Mortgagees of Lots who have filed written requests within ten (10) days of receipt of notice of any damage or destruction. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. Notwithstanding the foregoing, there may be named as an insured a representative chosen by the Board, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

Section 12.6. Actions as Trustee . Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Lot Owners, shall have the exclusive right to bind such parties in 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. Any settlement of a loss claim shall be adjusted with the Association in a manner satisfactory to the First Mortgagees of Lots holding seventy-five percent (75%) of the First Mortgages who have filed requests under Section 12.3. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees of Lots who have requested the same in writing.

Section 12.7. Annual Insurance Review . The Board shall review the insurance carried by or on behalf of the Association, at least annually, for the purpose of determining the amount of the

casualty and fire insurance referred to in Section 12.1 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Association Property, except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, from time to time as determined by the Board.

Section 12.8. Required Waiver . All policies of insurance shall provide to the extent reasonably available, for waiver of the following rights to the extent that the respective insurers would have the rights without such waivers:

- (a) subrogation of claims against the Lot Owners, the Lot Owner's Family and tenants of the Lot Owners;
- (b) any defense based upon co-insurance;
- (c) any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) 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;
- (e) any right of the insurer to repair, rebuild, or replace, and, if the 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;
- (f) notice of the assignment by any Owner of his interest in the insurance by virtue of a conveyance of any Lot;
- (g) any right to require any assignment of any mortgage to the insurer; and
- (h) any right to void the policy or condition recovery under the policy due to an act or omission by any Owner unless such Owner was acting within the scope of his authority on behalf of the Association.

Section 12.9. Other Insurance to be Maintained by Owners . Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements constructed on such Lots shall be the responsibility of the Owner thereof. To the extent reasonably available, policies maintained by the Association shall provide that if at any time of a loss under such policy(ies), there is other insurance in the name of an Owner covering the same risk covered by such policy, the Association's policy provides primary insurance.

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 for damage to person or property occurring inside his or her individual Unit or elsewhere upon the Property. 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.

ARTICLE 12.1 CONVERSION TO REAL PROPERTY

Section 12.1.1. Conversion to Real Property . Upon installation of the manufactured home the seller shall have the home converted to real property in accordance with the requirements of NRS 361.244.

ARTICLE 13 MISCELLANEOUS

Section 13.1. Term . The covenants and restrictions of this Declaration shall run with and bind the Property, 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, successors and assigns,

for a term of fifty (50) years from the date this Declaration is Recorded, after which time such covenants, conditions, reservation of easements, equitable servitudes and restrictions shall be automatically extended for successive periods of ten (10) years, unless and until a Declaration of Termination meeting the requirements set forth in Section 13.3 has been Recorded.

Section 13.2. Amendments . Notwithstanding anything to the contrary contained herein, except to the extent expressly permitted or required by UCIOA or by 13.2(a), no amendment to this Declaration may (i) change the boundaries of any Lot, (ii) change the Allocated Interests of a Lot or (iii) change the uses to which any Lot is restricted, in the absence of unanimous consent of the Lots' Owners affected and the consent of a majority of the Owners of the remaining Lots.

(a) **By Declarant** . Prior to the conveyance of the first Lot to an Owner, the provisions of this Declaration may be amended or terminated by Recordation, in the manner provided in NRS Section 116.2117(3), of a written instrument signed by Declarant setting forth such amendment or termination.

Notwithstanding anything in this Section 13 to the contrary, Declarant reserves the right to amend all or any part of this Declaration, the Bylaws or the Articles to such extent and with such language 1) as may be requested by the FHA, VA, FHLMC, GNMA or FNMA 2) as requested by any other federal, state or local governmental agency which requests or requires such an amendment 3) as may be required by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or other Property and 4) as may be necessary to comply with any federal, state or local laws, including without limitation, UCIOA and the Housing Laws. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the Declarant, specifying reasons for such amendment. No vote of the members shall be required to effectuate such amendment.

(b) **By Members** . The provisions of this Declaration, including any Plats or Plans, may be amended only 1) with the written consent of Declarant so long as Declarant owns any Property in the Property or Annexable Area, and 2) upon Recordation of a Certificate, prepared, executed, Recorded and certified on behalf of the Association by any officer of the Association authorized to do so by the Bylaws, setting forth the amendment and certifying that such amendment has been approved by sixty-seven percent (67%) of the voting power of the Association and the requisite percentage of holders of First Mortgages, in the case of those amendments which this Declaration requires to be approved by First Mortgagees, and such an amendment shall be effective upon Recordation.

(c) **Approval of First Mortgagees** . Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by the record holders of sixty-seven percent (67%) of the First Mortgages who have filed with the Association at least thirty (30) days before such amendment a written request for notice of amendments, based upon one (1) vote for each Mortgage owned:

(1) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to holders and guarantors of First Mortgages on Lots as provided in Articles 6, 10, 11, 12, and 13 hereof.

(2) Any amendment which would or could result in an encumbrance being canceled by forfeiture, or in the individual Lot not being separately assessed for tax purposes.

Any approval by a holder, insurer or guarantor of a First Mortgage required under this Section 13.2(c), or required pursuant to any other provisions of this Declaration, shall be given in writing; provided that prior to any such proposed action, the Association or Declarant, as applicable, may give written notice of such proposed action to any or all holders, insurers and guarantors of First Mortgages who have approval rights with respect thereto, and for thirty (30) days following the receipt of such notice, such holder, insurer or guarantor of a First Mortgage shall have the power to disapprove such action by giving written notice to the Association or Declarant, as applicable. If no written notice of disapproval is received by the Association or Declarant, as applicable, within such thirty (30) day period, then the approval of such holder, insurer or guarantor shall be deemed given to the proposed action, and the Association or Declarant, as applicable, may proceed as if such approval was obtained with respect to the request contained in such notice.

A certificate, signed and sworn to by two officers of the Association that sixty-seven percent (67%) of the voting power of the Association has voted for any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires a written consent of Declarant, or any of the record

holders of First Mortgages shall include a certification that the requisite approval of Declarant or such holders of First Mortgages has been obtained or waived. The Association shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

(3) Any amendment which would necessitate an encumbrancer after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid assessment or assessment accruing after such foreclosure.

(4) Any amendment relating to the insurance provision or to the application of insurance proceeds as set out in Section 12.5 hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(5) Any amendment which would or could result in termination or abandonment of the Property or partition or subdivision of a Lot, in any manner inconsistent with the provision of this Declaration.

(6) Any amendment concerning:

- (i) Voting rights;
- (ii) Boundaries of any Lot
- (iii) Leasing of Lots;
- (iv) Reserves for maintenance, repair, and replacement of Common Areas;
- (v) Responsibility for maintenance and repairs;
- (vi) Reallocation of obligations of any Unit(s) for purposes of levying assessments;
- (vii) Convertibility of Lots into Common Areas or vice versa;
- (viii) Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project, except for Annexation Amendments adding portions of the Annexable Area in the manner provided in Article below;
- (ix) Imposition of any restrictions on a Lot Owner's rights to sell or transfer his or her Lot.
- (xii) A decision by the Association to establish self-management;
- (xiii) Restoration or repair of the Property (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (xiv) Any provisions that expressly benefit mortgage holders, insurers, or guarantors; and
- (xv) Any material amendment as defined in Section 601.02 of the FNMA Lending Guide (as amended from time to time).

Section 13.3. Termination of the Common Interest Community .

(a) Except in the case of a taking of all the Lots by eminent domain, the Common Interest Community and the obligations created by this Declaration may be terminated only by agreement of Lots' Owners to whom at least eighty percent (80%) of the votes in the Association are allocated, and, so long as Declarant owns any portion of the Property or the Annexable Area, the approval of Declarant.

(b) An agreement to terminate must be evidenced by the execution of any agreement to terminate, or ratifications thereof, in the same manner as a deed, by the requisite number of Lots' Owners. The agreement must specify a date after which the agreement will be void unless it is recorded before that date. An agreement to terminate and all ratifications thereof must be Recorded in every county in which a portion of the Property is situated and is effective only upon Recordation.

(c) Upon termination, the Association, on behalf of the Lots' Owners, may contract for the sale of real property in the Property, but the contract is not binding on the Lots' Owners until approved pursuant to Sections 13.3 (a) and (b). If any real Property is to be sold following termination, title to that real property, upon termination, vests in the Association as trustee for the holders of all interests in the Lots. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and all the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Lots' Owners and Mortgagees as their interests may appear.

(d) If the real property constituting the Property is not to be sold following termination, title to the Association Property vests in the Lots' Owners upon termination as tenants in common in proportion to their respective interests and liens on the Lots shift accordingly.

(e) Following termination, the proceeds of any sale of real property, together with the assets of the Association, are held by the Association as trustee for Lots' Owners and holders of liens on the Lots as their interests may appear.

Section 13.4. Mortgagee Protection . Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust upon any portion of the Property made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a notice of lien Recorded pursuant to Article 6, provided that after the foreclosure of any such Deed of Trust such Property shall remain subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce VA, FHA, FHLMC, GNMA, and FNMA to participate in the financing of the sale of portions of the Property, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

(a) Each holder, insurer and guarantor of a First Mortgage encumbering any Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Association of (i) any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under the Declaration, the Articles or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default; (ii) any condemnation or casualty loss which affects either a material portion of the project or the Lot securing its Mortgage; (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action requiring the consent of a specified percentage of eligible Mortgagees.

(b) Every Owner, including every First Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the 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 Restrictions.

(c) Subject to the provisions of Article 6, each First Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot pursuant to judicial foreclosure or the powers provided in such Mortgage shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee, except for Common Assessments which became due during the six (6) months immediately prior to the date of filing of the Notice of Default described in Section 5.11 above.

(d) When professional management has been previously required by a holder or guarantor of a First Mortgage and the Board has elected to retain such professional management, any decision to undertake self-management by the Association shall require the prior approval of a majority of the voting power of the Association and the holders of fifty-one percent (51%) of the First Mortgages on Lots.

(e) Unless at least sixty-seven (67%) of the First Mortgagees have given their prior written approval, neither the Association nor the Owners shall:

(i) Subject to any provisions of the Nevada non-profit corporation law to the contrary, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property or the Improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for public utilities or conveyance of title for roadway purposes to a governmental entity or for other public purposes consistent with the intended use of such Property by the Association shall not be deemed a transfer within the meaning of this clause);

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

(iii) By act or omission impair, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the dwelling units on the Lots, the exterior maintenance of the dwelling units on the Lots or the upkeep of lawns and plantings on Association Property.

(iv) Fail to maintain fire and extended coverage insurance on insurable Association Property on a current replacement cost basis in the amount set forth in Section 12.1;

(v) Use hazard insurance proceeds for losses to any Association Property for other than the repair, replacement or reconstruction of such Improvements; provided, however, if there are excess proceeds, then such proceeds shall be used as provided in Section 12.5; or

(vi) Amend this Declaration or the Articles or Bylaws in such a manner that the rights of any First Mortgagee will be adversely affected.

(f) All holders, insurers and guarantors of First Mortgages on Lots upon written request, 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 audited annual financial statement (without expense to the holder 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.

(g) All holders, insurers and guarantors of First Mortgages of Lots who have a written request on file with the Association shall be given (i) thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Property following a decision of the Owners to assume self-management of the Property; and, (ii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Association Property where the cost of the reconstruction exceeds Seventy-Five Thousand Dollars (\$75,000), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings for acquisition of any portion of the Property.

(h) 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 Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities, or any other contract or lease between the Association and Declarant or an affiliate of Declarant, or any contract or lease that is not in good faith or was unconscionable to Lot Owners at the time entered into under the circumstances then prevailing, which is entered into before a Board elected by Lot Owners is in place, shall be terminable by the Board elected by the Lot Owner, without penalty upon 90 days notice to the other by the Association.

(j) The Board shall secure and cause to be maintained in force at all times a fidelity bond for any Person or entity handling funds of the Association, including but not limited to, employees of any professional Manager.

(k) Any agreement for the leasing or rental of a Lot shall provide that the terms of such agreement shall be subject in all respects to the provisions of the Restrictions.. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of the Restrictions shall be a default under the agreement.

(l) In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of VA, FHA, FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of First Mortgages encumbering portions of the Property. Each Owner hereby agrees that it will benefit the Association and the Membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their respective Property if such agencies approve the Property as a qualifying community 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 any of the Property.

Section 13.5. 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 received two (2) 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 address of the portion of the Property owned by 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 13.6. Enforcement and Non-Waiver .

(a) **Right of Enforcement.** Except as otherwise expressly provided herein, the Association, the successors-in-interest of the Association and any Owner, including Declarant (so long as Declarant own a portion of the Property), shall have the right to enforce any or all of the provisions of the Restrictions against any property within the Property and the Owners thereof. Such right shall include, without limitation, an action for damages, an action to enjoin any violation of the Restrictions and any other rights and remedies as may be permitted or provided by the Restrictions or law.

Enforcement and Remedies. In addition to any other remedies herein provided, each provision of this Declaration may be enforced by the Association, or any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. By accepting a deed to his or her Lot each Owner hereby acknowledges and agrees that every violation of this Declaration shall create an irrebuttable presumption of immediate and irreparable damage without adequate remedy at law, entitling Declarant, the Association and/or any Owner to obtain a temporary restraining order, preliminary or permanent injunction (mandatory or prohibitory) abating such violation. If any court proceeding are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party any costs and expenses in connection therewith, including reasonable attorneys' fees.

(b) **Violations and Nuisance .** Every act or omission whereby any provision of the Restrictions is violated in whole or in part is hereby declared to be 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.

(c) **Violation of Law .** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

(d) **Remedies Cumulative .** Each remedy provided by the Restrictions is cumulative and not exclusive. The Association may, at its option, without waiving the right to enforce its lien against the Property, bring a suit at law to enforce each Assessment obligation.

(e) **Non-Waiver .** The failure of the Association to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of the Restrictions. No waiver by the Board or its manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the manager.

(f) **Mortgages .** Any breach or amendment of the covenants, conditions or restrictions contained in the Restrictions shall not affect or impair the lien or charge of any First Mortgage or Deed of Trust made in good faith and for value on the Property or the Improvements thereon; provided, however, that any subsequent Owner of such Property shall be bound by such covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

(g) **Attorneys' Fees .** Any judgment rendered in any action or proceeding hereunder 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 delinquent payment (if applicable), interest thereon, late charges (if any) and Court costs. Any judgment, attorneys' fees or costs rendered against an Owner shall be a Special Assessment against such Owner and his Lot.

(h) **Special Assessment and Suspension .** If any Owner or his Family, guests, licensees, tenants or invitees violates the Restrictions, the Board may, after Notice and Hearing and in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner and such Owner's Property for each violation and may suspend or condition such Owner's right to use any portion of the Association Property. Any such suspension or conditional suspension shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment after the same becomes delinquent) may be imposed for so long as the violation continues. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for failure of a resident of or visitor to his property to comply with any provision of the Restrictions. Such fines or

penalties shall be a Special Assessment and may only be assessed by the Board after Notice and Hearing.

(i) **Enforcement Obligation** . The Association shall not be obligated to take any legal or other action if the Board, in its sole discretion, determines that the Association's position does not warrant taking such action; that the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or that it is not in the Association's interests, based upon hardship, expense, or other reasonable criteria, to pursue such action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction, or rule.

(j) **Owner's and Mortgagee's Power to Enforce Declaration** . If the Board has failed to act to enforce any provision of this Declaration for thirty (30) days after written demand by any Owner or Mortgagee of any Unit, then any such Owner or Mortgagee shall be entitled to prosecute, on behalf of the Board and all the Owners, any action authorized hereunder to be prosecuted by the Board, and shall be entitled to any other appropriate equitable relief.

Section 13.7. Interpretation .

(a) **Restrictions Construed Together** . All of the provisions of the Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of the Property as set forth in the Preamble to this Declaration. The Restrictions shall be construed and governed by the laws of the State of Nevada, and no provision hereof shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over the Property.

(b) **Restrictions Severable** . Notwithstanding the provisions of the foregoing subparagraph (a), each of the provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) **Singular Includes Plural** . Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(d) **Captions** . All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

Section 13.8. FHA/VA Approval . In the event Declarant obtains FHA or VA approval of the Property, during the Period of Declarant's Control, the following actions are subject to the prior approval of the FHA and the VA, as applicable, if such approval is required by the FHA or VA: (a) annexation of Annexable Area that is intended to include Lots encumbered by Mortgages insured or guaranteed by the FHA or VA, (b) expansion of the Annexable Area, (c) deannexation of Property, (d) dedication, conveyance or Mortgage of Association Property, (e) amendment of this Declaration materially affecting or impairing the interests of the FHA or VA, and (f) any merger, consolidation or dissolution of the Association.

Section 13.9. First Mortgagee Approval . Notwithstanding anything herein to the contrary, the right of any First Mortgagee or other lender, excluding VA, FHA and HUD, to approve any action or matter in this Declaration is subject to the receipt by the Association of written request for such approval right from each such First Mortgagee or other lender. Approval by such First Mortgagee or other lender shall be deemed given if written notice to the contrary is not received by the Association within sixty (60) days following written notice or request for approval by the Association to such First Mortgagee or other lender, which notice or request shall be sent by certified U.S. Mail.

Section 13.10. No Public Right of Dedication . Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

Section 13.11. Constructive Notice and Acceptance . Every person who owns, occupies or acquires any right, title, estate or interest in or to any portion of the Property does 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 this Declaration is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

Section 13.12. No Representations or Warranties . No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Property, any portion of the Property, the Association Property or any land near or

adjacent to the Property, or any Improvement thereon, its physical conditions, zoning, use, compliance with applicable laws, merchantability, fitness for intended use or a particular purpose, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

Section 13.13. Nonliability and Indemnification . The Association's Officers, Directors, agents and employees, including members of the Architectural Committee, shall be indemnified by the Owners and the Association against all expenses and liabilities, including attorneys fees, reasonably incurred by or imposed upon any of them in connection with any proceeding to which any of them may be a party, or in which any of them may become involved, by reason of their being or having been an Officer, Director or employee of the Association, or any settlement thereof, whether or not they are an Officer, Director or employee at the time such expenses are incurred, except in such cases wherein such person is adjudged to have committed willful misfeasance or malfeasance in the performance of his duties. Notwithstanding the foregoing, in the event of a settlement, the indemnification shall apply only when the Board of Directors of the Association determines that such settlement and reimbursement is in the best interest of the Association.

Section 13.13.1. Transfers . Prior to transfer of a Lot, the Owner thereof shall notify the Board in writing of the name and address of the transferee, the nature of the transfer and the Lot involved, as well as such other information relative to the transfer and the transferee as the Board may reasonably request.

Section 13.14. Priorities and Inconsistencies . If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

This Declaration is intended to comply with the provisions of Nevada's Uniform Common-Interest Ownership Act, Chapter 116 of Nevada Revised Statutes (the "Act"). In the event any provision of this Declaration is held to be violative of the Act, this Declaration shall be deemed amended to the extent necessary to comply with the Act.

Section 13.15. Further Assurances . The Association and each Owner hereby agree to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of this Declaration.

Section 13.16. Effect of Provisions of Declaration . Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Property or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in the Property or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running, in each case, as a burden with and upon the title to the Property and each Lot for the benefit of the Property and each Lot; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Property and each Lot in favor of the Association.

Section 13.17. Protection of Encumbrances . Notwithstanding any other provision hereof, no amendment, violation, breach of, or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgage, deed of trust or other lien on any Lot taken in good faith and for value and recorded prior to the time of recording of notice of such amendment, violation, breach or failure to comply. Any subsequent Owner of such Lot shall, however, take subject to this Declaration, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

ARTICLE 14

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 14.1. Prerequisites to Actions . Prior to any Owner or the Association filing a suit in any court, undertaking any action in accordance with Section 14.5, or retaining an expert for such actions against Declarant or any builder or sub-contractor of any portion of the Project, the Board or

the Owner bringing or undertaking such action shall notify the potential adverse party of the alleged problem or deficiency and shall provide reasonable opportunity to inspect and repair or otherwise remedy the problem.

Section 14.2. Consensus for Association Litigation . Except as provided in this Section 14.2, the Association shall not commence any judicial, administrative or other legal suit, action or proceeding, including without limitation any action under Section 14.5, without first providing to all Owners at least 21 days' written notice of a meeting to consider such proposed action. Taking such action shall require the vote of Owners of 75% of the total number of Lots. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Restrictions (including, without limitation, the collection of assessments and the foreclosure of liens); (b) counterclaims brought by the Association in proceedings instituted against it, or (c) actions to protect the health or safety of the Owners or Association Property. This Section 14.2 shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 14.3. Alternative Method for Resolving Disputes . Declarant, the Association, their respective officers, directors and committee members, Owners and other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property and the Association, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to attempt to resolve those claims, grievances or disputes described in 14.4 ("Claims") using the procedures set forth in Section 14.5 before filing suit in any court or undertaking any other legal action.

Section 14.4. Claims . Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Restrictions, or the rights, obligations, and duties of any Bound Party under the Restrictions shall be subject to the provisions of Section 14.5.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute a Claim and shall not be subject to the provisions of Section 14.5.

(a) Any suit by the Association against any Bound Party to enforce the provisions of Articles 6, 7, 8 or 9.

(b) Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Restrictions.

(c) Any suit in which any indispensable party is not a Bound Party, and

(d) Any Claim to which any applicable statute of limitations would expire within 120 days of giving the Notice required by Section 14.5(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonable be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.5.

Section 14.5. Mandatory Procedures .

(a) **Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and Respondent's role in the Claim:

(ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises):

(iii) Claimant's proposed remedy; and

(iv) That Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.

(b) **Negotiation and Mediation.** The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by any party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within 30 days from the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the Pahrump, Nevada area.

If Claimant does not submit the claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim, provided nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a written notice of termination of the mediation proceedings. The notice of termination of the mediation shall be set forth that the Parties are at an impasse and the date that mediation was terminated.

Section 14.6. Allocation of Costs of Resolving Claims . Each Party shall bear its own costs, including attorneys' fees, incurred in connection with the proceedings in Section 14.5 and each Party shall share equally all costs of the mediator(s).

Section 14.7. Enforcement of Resolution . After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of this agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 14.5. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

Declarant has executed this Declaration as of the date set forth below.

DATED: January 29, 2002

Deserto Verde, LLC,
a Nevada limited liability company

By: Pahrump Partners, LLC
Managing Member

By: Bois du Nord, Ltd.
Managing Member

By: 
Julie A. Gilbert, Vice President

By: OTH, L.L.C.
Managing Member

By: 
Nan Woods, Manager

529294

STATE OF NEVADA)
) ss.
County of Nye)

see attached
This instrument was acknowledged before me on _____, 2002 by
_____ as _____ of Deserto Verde, LLC, a Nevada limited
liability company..

Notary Public
My Commission Expires _____

EXHIBIT A
Property

The property located in the City of Pahrump, County of Nye, State of Nevada described as Lots 18 through 50 inclusive, Lots 110 through 118 inclusive, Lots 133 through 169 inclusive, Lots 203 and 204, Lots 259 through 269 inclusive, Lots "A" through "N" inclusive, and Lot "P" of Desert Greens, a Planned Unit Development, recorded as Phase 1 Final Map on December 20, 2001, as file number 526521, in the Office of the County Recorder of Nye County, Nevada.

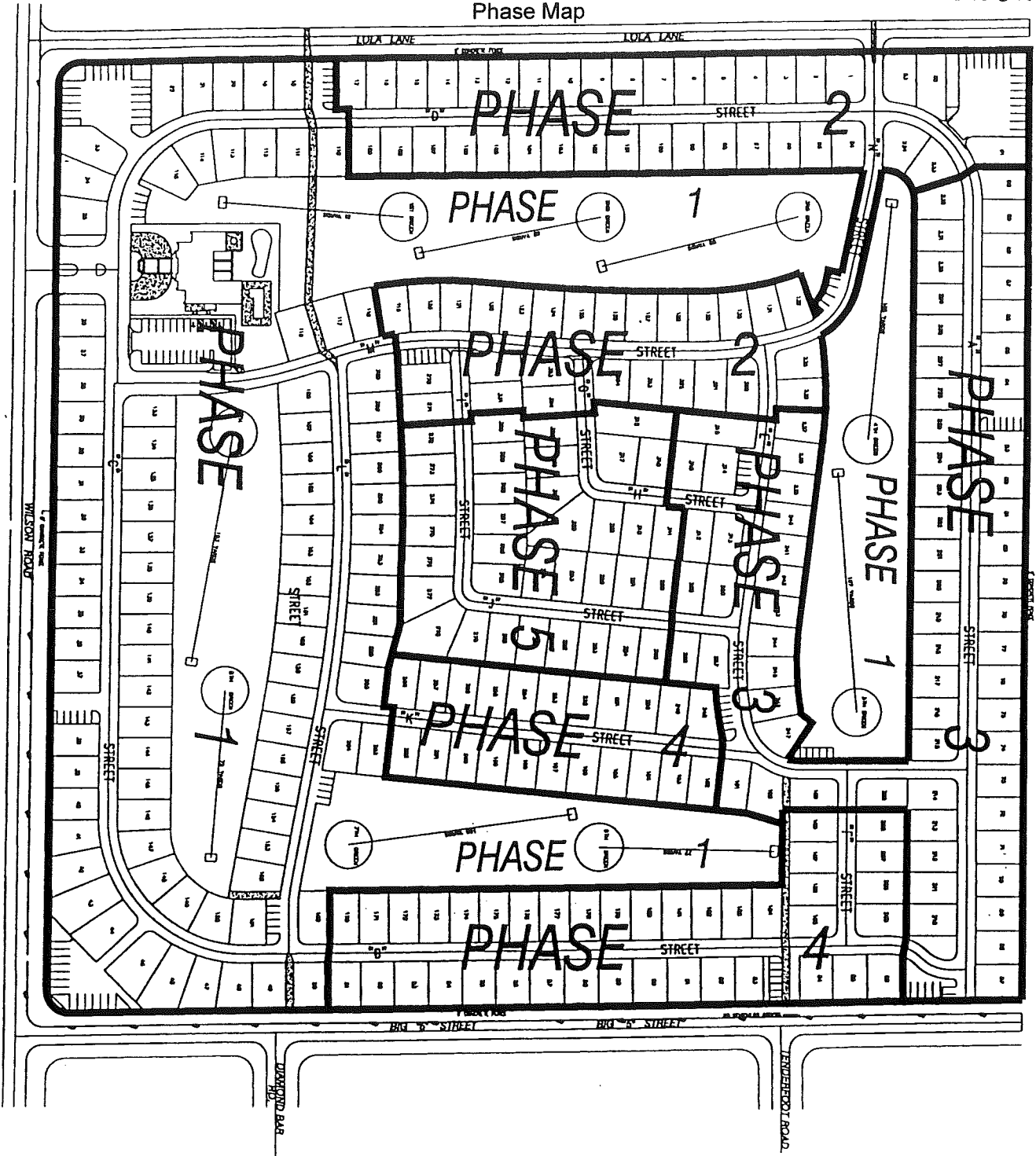
EXHIBIT B
Annexable Area

529294

All of the property located in the City of Pahrump, County of Nye, of Desert Greens, a Planned Unit Development, recorded as Phase 1 Final Map on December 20, 2001, as file number 526521, in the Office of the County Recorder of Nye County, Nevada, excluding Lots 18 through 50 inclusive, Lots 110 through 118 inclusive, Lots 133 through 169 inclusive, Lots 203 and 204, and Lots 259 through 269 inclusive, shown thereon.

EXHIBIT C
Phase Map

529294



W.O. 99-177
OCT. 29, 2001

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR DESERT GREENS

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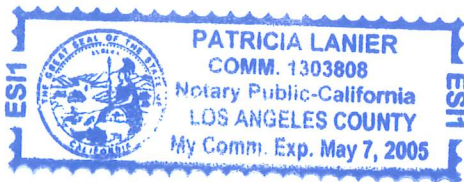
County of Los Angeles

} ss.

On January 30, 2001, before me, Patricia Lanier, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")personally appeared Julie A. Gilbert,
Name(s) of Signer(s)

- ☒ personally known to me
☐ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Patricia Lanier
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Desert Greens

Document Date: January 29, 2001 Number of Pages: 47

Signer(s) Other Than Named Above: Nan Woods on behalf of OTH, L.L.C.

Capacity(ies) Claimed by Signer

Signer's Name: Julie A. Gilbert

- ☐ Individual
☒ Corporate Officer — Title(s): Vice President
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
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Signer Is Representing: Bois du Nord, Ltd., managing member of Pahrump Partners, LLC, managing member of Deserto Verde, LLC

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