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Gene Morrison
Woodside Homes Of Nevada, Inc.
3855 S. Jones Blvd., #102
Las Vegas, NV 89103

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENT**

FOR

CORTEZ HEIGHTS

(A Nevada Residential Planned Community)

NORTH LAS VEGAS, CLARK COUNTY, NEVADA

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

THIS DECLARATION ("Declaration"), made as of the 9 day of December 2003, by WOODSIDE CORTEZ HEIGHTS, LLC, a Nevada limited liability company ("Declarant"),

WITNESSETH:

WHEREAS:

A. Declarant owns certain real property near the City of North Las Vegas, in Clark County, Nevada, on which Declarant intends to subdivide, develop, construct, market and sell a single family detached residential common-interest planned community, to be known as "CORTEZ HEIGHTS"; and

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

C. Declarant intends that, upon Recordation of this Declaration, the Original Property shall be a Nevada Common-Interest Community, as defined in NRS § 116.110323, and a Planned Community, as defined in NRS § 116.110368 ("Community"); and

D. The name of the Community shall be CORTEZ HEIGHTS, and the name of the Nevada nonprofit corporation organized in connection therewith shall be CORTEZ HEIGHTS HOMEOWNERS ASSOCIATION ("Association"); and

E. Declarant further reserves the right from time to time to add all or any portion of certain other real property, more particularly described in Exhibit "B" attached hereto (the "Annexable Area") to the Community, up to a total maximum of two-hundred and thirty-nine (239) aggregate Units; and

F. Declarant intends to develop and convey all of the Original Property, and any Annexable Area which may be annexed from time to time thereto ("Annexed Property"), pursuant to general plan and subject to certain protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges; and

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

H. It is acknowledged that it is the policy of the United States and of the State of Nevada to encourage the peaceable resolution of disputes through alternative dispute resolution procedures, and therefore this Declaration contains a MANDATORY BINDING ARBITRATION CLAUSE in section 8.2;

NOW, THEREFORE, Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Annexed Property (collectively, "Properties") shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties (as defined in Article 1 hereof), in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties or any portion thereof. The protective covenants, conditions, restrictions,

reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successive owners and assigns. All Units within this Community shall be used, improved and devoted limited exclusively to single Family residential use.

ARTICLE 1 DEFINITIONS

Section 1.1 "Annexable Area" shall mean the real property described in Exhibit "B," attached hereto and incorporated by this reference herein, all or any portion of which real property may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof. At no time shall any portion of the Annexable Area be deemed to be a part of the Community or a part of the Properties until such portion of the Annexable Area has been duly annexed hereto pursuant to Article 15 hereof.

Section 1.2 "Annexed Property" shall mean any and all portion(s) of the Annexable Area from time to time added to the Properties covered by this Declaration, by Recordation of Annexation Amendment(s) pursuant to Article 15 hereof.

Section 1.3 "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the office of the Secretary of State of Nevada, as such Articles may be amended from time to time.

Section 1.4 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments and/or Special Assessments.

Section 1.5 "Assessment, Annual" shall mean the annual or supplemental charge against each Owner and his Unit, representing a portion of the Common Expenses, which are to be paid in equal monthly or quarterly installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner and proportions provided herein.

Section 1.6 "Assessment, Capital" shall mean a charge against each Owner and his Unit, representing a portion of the costs to the Association for installation, construction, or reconstruction of any improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.7 "Assessment, Special" shall mean a charge against a particular Owner and his Unit, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, plus interest and other charges on such Special Assessments as provided for herein.

Section 1.8 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.9 "Association" shall mean CORTEZ HEIGHTS HOMEOWNERS ASSOCIATION, a Nevada nonprofit corporation, its successors and assigns.

Section 1.10 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article 6 hereof.

Section 1.11 "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 1.12 "Board" or "Board of Directors" shall mean the Board of Directors of the Association. The Board of Directors is an "Executive Board" as defined by NRS § 116.110345.

Section 1.13 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared and approved pursuant to the provisions of this Declaration.

Section 1.14 "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 1.15 "City" shall mean the city, if any, in which the Properties are located (i.e., the City of North Las Vegas, Nevada).

Section 1.16 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser.

Section 1.17 "Common Elements" shall mean all real property or interests therein (and any personal property) owned or leased by the Association, but shall exclude Units. The Common Elements shall include all of that real property designated on the Plat as "Common Lot", including but not necessarily limited to "pedestrian access easement", "Clark County sanitation district easement" "public drainage easement", "Sight Visibility Restriction Zone", "Public Sewer Easements", "Public Easements", "Easements for Public Use" "P.U.E." or "Public Utility Easement," "Utility Easement," "Private Drainage Easement," and any improvements respectively thereon, and shall constitute Common Elements as to the Properties, as provided in NRS § 116.110318. Without limiting the generality of the foregoing, Common Elements shall include private streets, any streetlights, any curbs and gutters, sidewalks (which may be located on easements on Lots), any park, perimeter walls, and certain designated drainage and sewer easement areas.

Section 1.18 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Elements; unpaid Special Assessments, or Capital Improvement Assessments; allocable share of the cost of maintenance and repair of any Project Boundary Wall; costs of any commonly metered utilities and other commonly metered charges for the Properties; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys and employees; costs of all utilities, gardening, trash pickup and disposal, and other services benefiting the Common Elements; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Common Elements or Properties; costs of bonding the Board, Officers, any Managers, or any other Person handling the funds of the Association; any statutorily required "ombudsman" fees; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties, or portions thereof; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or pursuant to any applicable provision of NRS Chapter 116.

Section 1.19 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.110323, and a Planned Community, as defined in NRS § 116.110368.

Section 1.20 "County" shall mean Clark County, Nevada.

Section 1.21 "Declarant" shall mean WOODSIDE CORTEZ HEIGHTS, LLC, a Nevada limited liability company, its successors and any Person to which it shall have assigned any rights hereunder by an express written and Recorded assignment (but specifically excluding Purchasers as defined in NRS § 116.110375).

Section 1.22 "Declaration" shall mean this instrument as it may be amended from time to time.

Section 1.23 "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.

Section 1.24 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.25 "Dwelling" shall mean a residential building located on a Unit, designed and intended for use and occupancy as a residence by a single Family.

Section 1.26 "Eligible Holder" shall mean each Beneficiary, insurer and/or guarantor of a first Mortgage encumbering any Unit, which has filed with the Board a written request for notification as to relevant specified matters.

Section 1.27 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable County ordinances.

Section 1.28 "FHA" shall mean the Federal Housing Administration.

Section 1.29 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title 11 of the Emergency Home Finance Act of 1970, and any successors to such corporations.

Section 1.30 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.31 "FNMA" shall mean the Federal National Mortgage Association, a government sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

Section 1.32 "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.33 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and Rules and Regulations. Any inconsistency among the Governing Documents shall be governed pursuant to Section 16.12 below.

Section 1.34 "Identifying Number", pursuant to NRS § 116.110348, shall mean the number which identifies a Unit on the Plat.

Section 1.35 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, placed in the Properties, including but not limited to Dwellings and other buildings, walkways, sprinkler pipes, swimming pools, spas and other recreational facilities, carports, garages, roads, driveways, parking areas, walls, perimeter walls, party walls, Private Streets, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softener fixtures or equipment.

Section 1.36 "Lot" shall mean the real property of any residential Unit, as shown on the Plat (specifically subject to any area shown on the Plat as a Private Street or other Common Element).

Section 1.37 "Manager" shall mean the Person, if any, whether an employee or independent contractor, appointed by the Association and delegated the authority to implement certain duties, powers or functions of the Association as provided in the Declaration and Bylaws.

Section 1.38 "Member," "Membership," "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and

privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.39 **"Mortgage," "Mortgagee," "Mortgagor."** "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor;" and "Beneficiary" shall be synonymous with "Mortgagee."

Section 1.40 **"Notice and Hearing"** shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owners expense, in the manner further provided in the Bylaws.

Section 1.41 **"Officer"** shall mean a duly elected or appointed and current officer of the Association.

Section 1.42 **"Original Property"** shall mean that real property described on Exhibit "A" attached hereto and incorporated by this reference herein, which shall be the initial real property made subject to this Declaration, immediately upon the Recordation of this Declaration.

Section 1.43 **"Owner"** shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees.

Section 1.44 **"Person"** shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.45 **"Plat"** shall mean the final plat map of CORTEZ HEIGHTS, Recorded on November 13, 2003, in Book 113 of Plats, Page 0081, and any other plat map(s) of additional parcel(s) subsequently Recorded, as said plat map from time to time maybe amended or supplemented of record by Declarant, together with any map which may, in the future, be Recorded with respect to the Annexable Area.

Section 1.46 **"Private Streets"** shall mean all private streets, rights of way, streetscapes, and vehicular ingress and egress easements, in the Properties, shown as such on the Plat.

Section 1.47 **"Properties"** shall mean all of the Original Property described in Exhibit "A," attached hereto, together with such portions of the Annexable Area, described in Exhibit "B" hereto, as may from time to time hereafter be annexed thereto pursuant to Article 15 of this Declaration.

Section 1.48 **"Purchaser"** shall have that meaning as provided in NRS § 116.110375.

Section 1.49 **"Record," "Recorded," "Filed" or "Recordation"** shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.50 **"Resident"** shall mean any person who is physically residing in a Dwelling on a Unit.

Section 1.51 **"Rules and Regulations"** shall mean the rules and regulations adopted by the Board pursuant to the Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.52 **"Sight Visibility Restriction Area"** shall mean those areas, portions of which are or may be located on portions of the Common Elements and/or Lots, identified on the Plat as "Sight Visibility Restriction

Zones," in which the height of landscaping or other improvements (other than official traffic control devices) is restricted to a maximum of twenty-four (24) inches, or as otherwise set forth on the Plat.

Section 1.53 "Unit" shall mean that portion of this Community to be separately owned by each Owner (as shown and separately identified on the Plat), and shall include a Lot and all improvements thereon. Subject to Section 9.5 below, the boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

Section 1.54 "Units That May Be Created" shall mean the total maximum number of aggregate Units within the Original Property and the Annexable Area (i.e., 239 Units).

Section 1.55 "VA" shall mean the U.S. Department of Veterans Affairs.

Any capitalized terms not defined herein shall have the meaning set forth in NRS Chapter 116.

ARTICLE 2 OWNERS' PROPERTY RIGHTS

Section 2.1 Owners' Easements of Enjoyment. Each Owner shall have a nonexclusive right and easement of ingress and egress and of use and enjoyment in, to and over the Common Elements, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject to the following:

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

(b) the right of the Association to establish uniform Rules and Regulations pertaining to the use of the Common Elements;

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

(d) subject to the voting requirements set forth in Section 2.1 (c) above, and the provisions of Article 13 below, the right of the Association to dedicate, release, alienate, transfer or grant easements, licenses, permits and rights of way in all or any portion of the Common Elements to any public agency, authority, utility or other Person for such purposes;

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

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

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Elements in accordance with the original design, finish or standard of construction of such improvement, or of the general improvements within the Properties, as the case may be; and if not materially in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding seventy-five percent (75%) of the voting power of the Association, and the vote or written consent of a majority of the voting power of the Board, and the approval of fifty-one percent (51%) of the Eligible Holders;

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

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

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

(k) the right of the Association, acting through the Board, to reasonably suspend voting rights and to impose fines as Special Assessments, and to suspend the right of an Owner or Resident to use Common Elements, for nonpayment of any regular or special Assessment levied by the Association against the Owner's Unit, or if an Owner or Resident is otherwise in breach of obligations imposed under the Governing Documents; and

(l) the easements reserved in Sections 2.2 through 2.8, inclusive, Article 14, and/or any other provision of this Declaration.

Section 2.2 Easements for Parking. Subject to the parking and vehicular restrictions set forth in Section 10.19 below, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, as well as to enforce these parking limitations by all means lawful for such enforcement on public streets, including the removal of any violating vehicle by those so empowered. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked for such purpose.

Section 2.3 Easements for Vehicular and Pedestrian Traffic. In addition to the general easements for use of the Common Elements reserved herein, there shall be reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, nonexclusive, appurtenant easements for vehicular and pedestrian traffic over the private main entry gate area and all Private Streets and any walkways within the Common Elements, subject to parking provisions set forth in Section 2.2, above, and the use restrictions set forth in Article 10, below.

Section 2.4 Easement Right of Declarant Incident to Construction and/or Marketing and Sales Activities. An easement is reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective purchasers of Units, guests and other invitees, for access, ingress, and egress over, in, upon, under, and across the Properties, including Common Elements (including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, advertising, marketing and/or sales related to the Properties, or any portions thereof); provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his Family, guests, or invitees, to or of that Owner's Lot, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Article 14 hereof. Without limiting the generality of the foregoing, until such time as the Close of Escrow of the last Unit in the Properties, Declarant reserves the right to control entry gate(s) to the Properties, and neither the Association nor any one or more of the Owners shall at any time, without the prior written approval of Declarant in its discretion, cause any entry gate in the Properties to be closed during regular marketing or sales hours (including weekend sales hours) of Declarant, or shall in any other way impede or hinder Declarant's marketing or sales activities.

Section 2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for City, County, state and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees and agents to enter upon any part of the Common Elements or any Lot for the purpose of carrying out their official duties.

Section 2.6 Easements for Water, Utility, and Irrigation Purposes. In addition to the foregoing easements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for public and private utility purposes, including but not limited to, the right of any public or private utility or mutual water district of ingress or egress over the Properties, for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Properties. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Lots, for the control, installation, maintenance, repair and replacement of water lines and systems for watering or irrigation of landscaping on Common Elements. In the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

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

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

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

Section 2.10 Owners' Right of Ingress and Egress. Each Owner shall have an unrestricted right of ingress and egress to his Unit reasonably over and across the Common Elements, which right shall be appurtenant to the Unit, and shall pass with any transfer of title to the Unit.

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

Section 2.12 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or assessments of any Owner may, in the opinion of the Association, become a lien on the Common Elements, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Special Assessment.

ARTICLE 3 CORTEZ HEIGHTS HOMEOWNERS ASSOCIATION

Section 3.1 Organization of Association. The Association is or shall be incorporated under the name of CORTEZ HEIGHTS HOMEOWNERS ASSOCIATION, as a non-profit corporation under NRS §§ 81.410 through 81.540, inclusive. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents and in compliance with Nevada law.

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

Section 3.3 Membership. Every Owner, upon acquiring title to a Lot, shall automatically become a Member and shall remain a Member until such time as his ownership of the Unit ceases, at which time his membership in the Association shall automatically cease. Memberships shall not be assignable, except to the Person to which title to the Unit has been transferred, and every Membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

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

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

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

Section 3.6 Board of Directors.

(a) The affairs of the Association shall be managed by a Board of not less than three (3), nor more than seven (7) Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board, which shall initially consist of three (3) Directors. The number of Directors may be increased to five (5) or seven (7) by Declarant (during the Declarant Control Period, as set forth below), or by resolution of the Board, and otherwise may be changed by amendment of the Bylaws, provided that there shall not be less than any minimum number of Directors nor more than any maximum number of Directors from time to time required by applicable Nevada law. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. If a Director is sued for liability for actions undertaken in his role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's

vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

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

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

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

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

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

(c) The Declarant Control Period shall terminate on the earliest of: (1) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Units That May Be Created; (2) five years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (3) five years after any right to annex any portion of the Annexable Area was last exercised pursuant to Article 15 hereof.

Section 3.8 Control of Board by Owners. Subject to and following the Declarant Control Period: (a) the Owners shall elect a Board of at least three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, within thirty (30) days of his appointment or election, certify in writing that he is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

Section 3.9 Election of Directors. Not less than thirty (30) days before the preparation of a ballot for the election of Directors, which shall normally be conducted at an Annual Meeting, the Association Secretary or other designated Officer shall cause notice to be given to each Owner of his eligibility to serve as a Director. Each Owner who is qualified to serve as a Director may have his name placed on the ballot along with the names of the nominees selected by the Board or a nominating committee established by the Board. The election of any Director must be conducted by secret written ballot. The Association Secretary or other designated Officer shall cause to be sent prepaid by United States mail to the mailing address of each Unit within the Community or to any other mailing address designated in writing by the Unit Owner, owner, a secret ballot and a return envelope. Election of Directors must be conducted by secret written ballot, with the vote publicly counted (which may be done as the meeting progresses).

Section 3.10 Board Meetings.

(a) A Board meeting must be held at least once every 90 days. Except in an emergency, the Secretary or other designated Officer shall, not less than 10 days before the date of a Board meeting, cause notice of the meeting to be given to the Owners. Such notice must be: (1) sent prepaid by United States mail to

the mailing address of each Unit or to any other mailing address designated in writing by the Owner; or (2) published in a newsletter or other similar publication circulated to each Owner. In an emergency, the Secretary or other designated Officer shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Unit. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each Unit within the Community or posted in a prominent place or places within the Common Elements.

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

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

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

(e) At least once every 90 days, the Board shall review at one of its meetings: (1) a current reconciliation of the Operating Fund (as defined in Section 6.2 below); (2) a current reconciliation of the Reserve Fund (as defined in Section 6.2 below); (3) the actual revenues and expenses for the Reserve Fund, compared to the Reserve Budget for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the Operating Fund and Reserve Fund; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

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

Section 3.11 Attendance by Owners at Board Meetings; Executive Sessions. Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and reasonable limitations on the time an Owner may speak at such meeting. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. Owners may not attend or speak at an Executive Session, unless the Board specifically so permits. An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

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

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

(c) discussing any violation ("Alleged Violation") of the Governing Documents (including, without limitation, the failure to pay an Assessment) alleged to have been committed by an Owner ("Involved Owner") (provided that the involved Owner shall be entitled to request in writing that such hearing be conducted by the Board in open meeting, and provided further that the Involved Owner may attend such hearing and testify concerning the Alleged Violation, but may be excluded by the Board from any other portion of such hearing, including, without limitation, the Board's deliberation).

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

ARTICLE 4 VOTING RIGHTS

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

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

Section 4.3 Meetings of the Membership. Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting." The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring. If the Members have not held a meeting for one (1) year, a meeting of the Association Membership must be held by not later than the March 1 next following. A special meeting of the Association Membership may be called at any reasonable time and place by written request of: (a) the Association President, (b) a majority of the Directors, or (c) Members representing at least ten percent (10%) of the voting power of the Association, or as otherwise may be required by applicable law. Notice of special meetings shall be given by the Secretary of the Association in the form and manner provided in Section 4.4, below.

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

(a) Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association Secretary shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by any Owner. The meeting notice must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of an Owner to: (i) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request, if the Owner pays the Association the cost of making the distribution; and (ii) speak to the Association or Board (unless the Board is meeting in Executive Session).

(b) The meeting agenda must consist of:

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

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

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

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

(d) If the Association adopts a policy imposing a fine on an Owner for the violation of a provision of the Governing Documents, the Board shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner thereof, a specific schedule of fines that may be imposed for those particular violations, at least thirty (30) days prior to any attempted enforcement, and otherwise subject to Section 16.1, below.

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

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

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

and the voting instructions received for each proxy. If and for so long as prohibited by Nevada law, a vote may not be cast pursuant to a proxy for the election of a Director.

Section 4.7 Quorums. The presence at any meeting of Members who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Members present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of the Members required to constitute a quorum, unless a greater vote is required by law or by this Declaration. If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Members entitled to vote at least twenty percent (20%) of the total votes of the Association. Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e.g., 67%) of votes of the total voting Membership, as set forth in this Declaration.

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

Section 4.9 Action By Written Consent, Without Meeting. Any action which may be taken at any regular or special meeting of the Members may be taken without a meeting and without prior notice, if authorized by a written consent setting forth the action so taken, signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members were present and voted, and filed with the Association Secretary; provided, however, that Directors may not be elected by written consent except by unanimous written consent of all Members. Any Member giving a written consent, or such Member's proxy holder, may revoke any such consent by a writing received by the Association prior to the time that written consents of the number of Members required to authorize the proposed action have been filed with the Association Secretary, but may not do so thereafter. Such revocation shall be effective upon its receipt by the Association Secretary. Unless the consents of all Members have been solicited in writing and have been received, prompt notice shall be given, in the manner as for regular meetings of Members, to those Members who have not consented in writing, of the taking of any Association action approved by Members without a meeting. Such notice shall be given at least ten (10) days before the consummation of the action authorized by such approval with respect to the following:

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

Section 4.10 Adjourned Meetings and Notice Thereof. Any Members' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members present either in person or by proxy thereat, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in Section 4.9. When any Members' meeting, either regular or special, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any Members' meeting, either regular or special, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Member as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Members may transact any business that might have been transacted at the original meeting.

ARTICLE 5
FUNCTIONS OF ASSOCIATION

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

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

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

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

(d) **Taxes.** The power and duty to pay all taxes and assessments levied upon the Common Elements and all taxes and assessments payable by the Association.

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

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

(g) **Manager.** The power, subject to Section 5.5, below, 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 but not the duty to delegate powers to committees, Officers and employees of the Association. Any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon ninety (90) days written notice.

(h) **Rights of Entry and Enforcement.** The power but not the duty, after Notice and Hearing (except in the event of emergency which poses an imminent threat to health or substantial damage to property, in

which event, Notice and Hearing shall not be required), to enter upon any area of a Unit, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment pursuant to Article 7, below. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Dwelling without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party. Subject to Section 5.3, below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

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

(j) 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.

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

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

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

(i) Pro forma operating statements (Budgets), Reserve Budgets, and Reserve Studies shall be distributed pursuant to Section 6.4, below;

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

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

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

(p) Insurances. The power and the duty to cause to be obtained and maintained the insurance coverage's pursuant to Article 12, below.

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

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

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

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

(i) reasonably related to the purpose for which adopted;

(ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;

(iii) adopted without intent to evade any obligation of the Association;

(iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);

(v) uniformly enforced under the same or similar circumstances against all Owners; provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and

(vi) duly adopted, and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

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

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially

threatens all of the health, safety and welfare of the Owners, or (iv) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding." The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

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

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars (\$5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefore, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$5,000.00 limit, with the express consent of more than fifty percent (50%) of all of the Members of the Association, at a special meeting called for such purpose.

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

(3) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the

Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (x) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

4) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

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

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

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

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

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

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

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

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

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Nevada Real Estate Division pursuant and subject to the provisions of NRS Chapter 645 and/or NRS § 116.3119.3, or duly exempted pursuant to NRS § 116.3119.4) Any and all employees with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

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

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

(e) By execution of its agreement with the Association, a Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; (3) to comply fully, at its expense, with all applicable regulations of the Nevada Real Estate Division; and (4) Manager's sole expense, to promptly turn over to the

Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed).

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

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

Section 5.6 Inspection of Books and Records.

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

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

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

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

Section 5.7 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and annual reports, as required in Section 5.1 (f) above. Such notices and information shall be delivered to Declarant at its most recently designated address.

Section 5.8 Compliance with Applicable Laws. The Association shall comply with all applicable laws, including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or County ordinance. Subject to the foregoing, in the event of irreconcilable conflict between

applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

ARTICLE 6

COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

Section 6.3 Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements; (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any other purpose whatsoever, (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing; (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President or the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); (vi) under no circumstances shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund; and (vii) any use of the Reserve Fund in violation of the foregoing provisions shall be unauthorized and ultra vires as to the Association, and shall subject any Director who acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.3(a) to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized use of the Reserve Fund.

(b) The Board shall periodically retain the services of a qualified reserve study analyst, with sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study"). Thereafter, the Board shall: (1) cause to be conducted at least once every five years, a subsequent Reserve Study; (2) review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient; and (3) make any adjustments the Board deems necessary to maintain the required reserves.

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

Section 6.4 Budget; Reserve Budget.

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

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

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

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

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

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

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

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

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

Section 6.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a fifteen percent (15%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessments levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, ratification as provided in Section 6.4 above.

Section 6.6 Initial Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant, the Purchaser of such Unit shall be required to pay a capital contribution to the Association, in an amount equal to the greater of: (a) two (2) full monthly installments of the greater of the initial or then-applicable Annual Assessment (notwithstanding Section 6.7 below), or (b) One Hundred Twenty Five Dollars (\$125.00). Such capital contribution is in addition to, and is not to be considered as an advance payment of, the Annual Assessment for such Unit, and may be applied to initial working capital needs of the Association.

Section 6.7 Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be: (a) with respect to Units within the Original Property, that date which is the Close of Escrow to a Purchaser of the first Unit in the Original Property, and (b) with respect to each Unit within the Annexed Property, that date on which the Annexation Amendment for such Unit is Recorded; provided that Declarant may establish, in its sole and absolute discretion, a later Assessment Commencement Date uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. The first Annual Assessment for each Unit shall be pro-rated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be retained by the Association for use in reducing the following year's Annual Assessment or for deposit in the reserve account. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

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

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

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

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

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

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

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

Section 7.1 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the rate of ten percent (10%) per annum, commencing thirty (30) days from the due date until paid. In addition, the Board may require the delinquent Owner to pay a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest or any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or by abandonment of his Unit.

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

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

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

Section 7.4 Foreclosure Sale. Subject to the limitation set forth in Section 7.3 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS §116.31164 and Covenants Nos. 6, 7 and 8 of NRS §107.030 and §107.090, as amended, insofar as they are consistent with the provisions of NRS § 116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS § 116.31163. Notice of time and place of sale shall be provided as required by NRS § 116.311635.

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

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

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

Section 7.8 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. A lien for assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the assessment sought to be enforced, and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS §116.3116. The sale or transfer of any Unit shall not affect an assessment lien. However, the sale or transfer of any Unit 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. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become

due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his successors and assigns.

ARTICLE 8
LIMITED WARRANTY;
MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT

Each Owner, and the Association, by taking title to a Unit and/or any portion of the Common Elements, acknowledges and agrees as follows:

Section 8.1 Limited Warranty by Declarant. Declarant may issue a "Home Builder's Limited Warranty" (the "Limited Warranty") regarding the Units to each initial third-party Owner upon the close of escrow, and regarding the Common Elements to the Association. The Limited Warranty is currently administered by Professional Warranty Service Corporation, or its successor ("PWC"). The actual terms of the Limited Warranty are defined by the Limited Warranty documents themselves. If issued, a copy of the Limited Warranty will be provided to each initial third-party Owner, and may be obtained from PWC at its current address of P.O. Box 800, Annandale, VA 22003-0800. Each Owner whether they are an initial purchaser of a Unit or a subsequent purchaser, and the Association, as concerns the Common Elements, are hereby advised and agree that:

- a) the Limited Warranty is the only warranty provided by the Declarant;
- b) that all allegations of "Construction Defects," as that term is defined in the Limited Warranty documents provided to the initial third-party Owner and to the Association, will be resolved under and in accordance with, the Limited Warranty;
- c) that final, binding arbitration is the sole remedy for resolving disputes involving alleged Construction Defects;
- d) that by taking title to a Unit or the Common Elements, each Owner (whether an initial purchaser of a Unit or a subsequent purchaser) and the Association agree to be bound by the terms of the Limited Warranty;
- e) the length of time for coverage under the Limited Warranty shall be defined on the Limited Warranty Validation Form provided to the initial Owner.

Section 8.2 MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT. To the fullest extent permitted by law, all claims and disputes of any kind that an Owner or the Association may have arising from or in any way related to a Unit or Units or the Common Elements involving the Declarant or any affiliate, agent, employee, executing officer, manager, or owner of Declarant (a "Dispute") shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving disputes between the Declarant and any Owner and/or the Association. Disputes subject to binding arbitration include but are not limited to:

- a) Any disagreement that a condition in the Unit or in the Common Elements is a Construction Defect (as defined in the Limited Warranty) and is therefore covered by the Limited Warranty;
- b) Any disagreement as to whether a Construction Defect has been corrected in compliance with the Limited Warranty;
- c) Any alleged breach of the Limited Warranty;

- d) Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- e) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- f) Any disputes concerning the issues that should be submitted to binding arbitration;
- g) Any disputes concerning timeliness of performance and our Buyer's notifications under the Limited Warranty;
- h) Any dispute as to the payment or reimbursement of the arbitration filing fee;
- i) Any dispute as to whether the Limited Warranty, or any provision thereof, including, but not limited to any waiver under the Limited Warranty, is unenforceable;
- j) Any other claim arising out of or relating to the sale, design, or construction of the Unit or the Common Elements, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by the Limited Warranty.

The arbitration shall be conducted by Construction Arbitration Services, Inc. or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed.

The arbitration shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1-16) to the exclusion of any inconsistent state law, regulation, or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. This filing fee shall be no more than the amount charged by the arbitration service to PWC for each arbitration. Contact PWC to determine the arbitration filing fee in effect at the time an arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Dispute, and the Court shall, upon motion of any party to the proceeding, direct that such Dispute be arbitrated in accordance therewith.

The obligations of this Section 8.2 to submit all disputes to final, binding arbitration is wholly independent and separate from the rights and obligations under the Limited Warranty provisions of Section 8.1. In the event any Unit is not issued a Home Builder's Limited Warranty as described in Section 8.1, all Disputes shall be resolved by final, binding arbitration conducted by Construction Arbitration Services, Inc., or such other organization as the parties to the Dispute may agree upon, pursuant to the terms of this Section 8.2.

Section 8.3 Obligation of Owners to Provide Copy of Limited Warranty Documents to Subsequent Purchaser. Each Owner that transfers his or her interest in a Unit shall provide a copy of the Limited Warranty to the subsequent owner and shall thereby transfer to the subsequent owner all remaining coverage for the Unit under the Limited Warranty.

Section 8.4 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article 8 and its subsections may not be amended except with the written consent of the Declarant.

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

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

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

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

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

Section 9.4 Damage and Destruction Affecting Dwellings and Duty to Rebuild. If all or any portion of any Unit or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore the Unit substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Board. The Owner of any damaged Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within six (6) months after the damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Unit which is damaged shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner at the time of the damage still held title to the Unit. However, in no event shall such transferee of title be required to commence or complete such reconstruction in less than ninety (90) days from the date such transferee acquired title to the Unit.

Section 9.5 Party Walls. Each wall which is built as a part of the original construction by Declarant and placed on the property line between Units shall constitute a party wall. In the event that any party wall is not

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

Section 9.6 Perimeter Walls. Portions of Perimeter Walls, constructed or to be constructed by Declarant, abutting or located on individual Lots are Improvements, all portions of which are located, or conclusively deemed to be located, within the boundaries of individual Units. By acceptance of a deed to his Unit, each Owner on whose Unit a portion of the perimeter wall is located, hereby covenants, at the Owner's sole expense, with regard to the portion of the Perimeter Wall ("Unit Wall") located or deemed located on his Unit: to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Unit Wall at all times in good repair; and, if and when reasonably necessary, to replace the Unit Wall to its condition and appearance as originally constructed by Declarant. No changes or alterations (including, without limitation, temporary alterations, such as removal for construction of a swimming pool or other Improvement) shall be made to any perimeter wall, or any portion thereof, without the prior written approval of the Board. The foregoing and any other provision herein notwithstanding, under no circumstances shall any wall, or portion thereof, originally constructed by Declarant, be changed, altered or removed by any Owner (or agent or contractor thereof if such wall, or portion thereof, is shown on any improvement plan as a flood control wall, or any other wall, or if such change, alteration or removal in the sole judgment of Declarant would adversely affect surface water, drainage, or other flood control considerations or requirements. If any Owner shall fail to insure, or to maintain, repair or replace his Unit Wall within sixty (60) days when reasonably necessary, in accordance with this Section 9.6, the Association shall be entitled (but not obligated) to insure, or to maintain, repair or replace such Unit Wall, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration. The foregoing notwithstanding, the Association shall be responsible for removing or painting over any graffiti from or on Exterior Walls.

Section 9.7 Installed Landscaping.

(a) Within sixty (60) days after the Close of Escrow for the purchase of a Unit, the Owner shall install and shall thereafter maintain the landscaping on his Unit in a neat and attractive condition. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on his Lot, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

(b) To help prevent water damage to foundations and/or walls, each Owner covenants, by acceptance of a deed to his Lot, to not cause or permit irrigation water or sprinkler water on his Lot to seep or flow onto, or to strike upon, any foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or perimeter wall), and/or any other Improvement). Without limiting the generality of the foregoing or any other provision in this Declaration, each Owner shall at all times ensure that: (1) there are no unapproved grade changes (including, but not necessarily limited to, mounding) within three feet of any such foundation or wall located on or immediately adjacent to the Owner's Lot; and (2) only xeriscape (low moisture,

low maintenance) landscaping is located on the Owner's Lot within three feet of any such foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or perimeter wall), and/or any other Improvement.

Section 9.8 Modification of Improvements. Maintenance and repair of Common Elements shall be the responsibility of the Association, and the costs of such maintenance and repair shall be Common Expenses; provided that, in the event that any Improvement located on a Common Element is damaged because of any Owner's act or omission, such Owner shall be solely liable for the costs of repairing such damage and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not: add to, delete, modify, change, or landscape, all or any portion of the Common Elements, or perimeter wall, without prior written approval of the Board, in its sole discretion.

ARTICLE 10 USE RESTRICTIONS

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

Section 10.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending "reverse engineering," destructive testing, or any other nonresidential purposes; provided that Declarant, its successors and assigns, may exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care provided that the number of non-Family children, when added to the number of Family children being cared for at the Lot, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 10.5, below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than thirty (30) days.

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

Section 10.3 Insurance Rates. Without the prior written approval of the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any law.

Section 10.4 Animal Restrictions. No animals, reptiles, poultry, fish, or fowl or insects of any kind ("animals") shall be raised, bred or kept on any Unit, except that a reasonable number of dogs, cats, birds, or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable County ordinance or any other provision of the Declaration, 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 may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board, a nuisance to other Owners or Residents. Subject to the foregoing, animals belonging to Owners, Residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner and/or Resident shall be liable to each and all other Owners, Residents, and their respective Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or Resident or respective Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner and Resident to clean up after such animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar improvement pertaining to animals shall be placed or permitted in any Unit, unless approved by the Board in advance and in writing (and, in any event, any such "dog run" or similar improvement shall not exceed the height of any party wall on the Lot, and shall otherwise not be permitted, or shall be immediately removed, if it constitutes a nuisance in the judgment of the Board); and (b) all Owners shall comply fully in all respects with all applicable County ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

Section 10.5 Nuisances. No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings; and no plant waste, compost, bulk materials or other debris of any kind; (all, collectively, hereafter, "rubbish and debris") shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. Without limiting the foregoing, all rubbish and debris shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purposes. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time (not to exceed twelve (12) hours before or after scheduled trash collection hours). No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security, or fire protection purposes), noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or Residents or any equipment or item which may unreasonably interfere with television or radio reception within any Unit, shall be located, used or placed on any portion of the Properties without the prior written approval of the Board. No loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Common Elements without the prior written approval of the Board. Alarm devices used exclusively to protect the security of a Dwelling 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. The Board shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by

such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

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

Section 10.7 Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements, unless adequate alternative provision is made for proper drainage and approved in advance and in writing by the Board. Without limiting the generality of the foregoing, any request by an Owner for Board approval of alteration of established drainage pattern shall be subject to the Owner obtaining all necessary governmental approvals. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to a Purchaser from Declarant.

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

Section 10.9 No Hazardous Activities. No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, or Common Elements. Without limiting the foregoing, (a) no firearm shall be discharged within the Properties, and (b) there shall be no exterior or open fires whatsoever, except within a barbecue and contained within a receptacle commercially designed therefore, while attended and in use for cooking purposes, or except within a fireplace designed to prevent the dispersal of burning embers, so that no fire hazard is created, or except as specifically authorized in writing by the Board (all as subject to applicable ordinances and fire regulations).

Section 10.10 No Unsightly Articles. No unsightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, and garden and maintenance equipment, or inoperable vehicle) shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, Common Elements, or neighboring property.

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

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

designed for use in boring for water, oil, geothermal heat, natural gas, or other mineral or depleting asset shall be erected.

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

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

Section 10.15 Improvements.

(a) No Lot shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its servants and occasional guests, plus a garage, fencing and/or wall, and such other Improvements as are necessary or customarily incident to a single-Family Dwelling. No part of the construction on any Lot shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any building within the Properties, except one or more chimneys or vent stacks. No permanent or attached basketball backboard, jungle gym, play equipment, or other sports apparatus shall be constructed, erected, or maintained on the Properties without the prior written approval of the Board. Apart from any installation by Declarant as part of its original construction, no patio cover, antennae, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant during the original construction of the Dwelling), subject to Section 10.16, below.

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

(c) No fence or wall shall be erected or altered without prior written approval of the Board, and all alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the Board.

(d) Garages shall be used only for their ordinary and normal purposes. Unless constructed or installed by Declarant as part of its original construction, no Owner or Resident may convert the garage on his Unit into living space or otherwise use or modify the garage so as to preclude regular and normal parking of vehicles therein. The foregoing notwithstanding, Declarant may convert a garage located in any Unit owned by Declarant into a sales office or related purposes.

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

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

(b) located in the rear yard of the Unit (i.e., the area between the plane formed by the front facade of the Dwelling and the rear lot line) and set back from all lot lines at least eight (8) feet; or, if such location is not reasonably practicable, then,

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

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

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

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

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

Section 10.17 Landscaping. Subject to the provisions of Article 9 (including, but not limited to, Sections 9.7 and 9.8 above), each Owner shall install and shall thereafter maintain the landscaping on his Lot in a neat and attractive condition. No plants or seeds infected with insects or plant diseases shall be brought upon, grown or maintained upon any part of the Properties. The Board may adopt Rules and Regulations to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with this Declaration or such Rules and Regulations, or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Board shall have the right to either (a) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists a bona-fide unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon the exterior portion of such Owner's Unit for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Special Assessment, enforceable in the manner set forth in Article 7 above. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Lot, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

Section 10.18 Prohibited Plant Types. Without limiting the generality of any other provision herein, the following plant types are hereby specifically declared to be nuisances, and shall not be permitted anywhere within the Properties: (a) *Olea europaea* ("olive") (other than "fruitless olive," which shall be permitted); (b) *Morus alba* or *nigra* ("mulberry"); and/or (c) *Cynodon dactylon* ("bermuda grass").

Section 10.19 Parking and Vehicular Restrictions. No Person shall park, store or keep anywhere within the Properties, any inoperable or similar vehicle, or any large commercial-type vehicle (other than a pickup or camper truck or similar vehicle up to and including one (1) ton when used for daily transportation of the Owner or Residents or Family respectively thereof, which shall be permitted), including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, any recreational vehicle, camper unit, house car or motor

home, any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home, any inoperable vehicle, or any other similar vehicle or any vehicular equipment, mobile or otherwise, deemed by the Board to be a nuisance, except wholly within the Owner's garage and only with the garage door closed. No Person shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Properties or on any street abutting the Properties. However, repair and/or restoration of one (1) such item only shall be permitted within an Owner's garage so long as the garage door remains closed; provided, however, that such activity may be prohibited entirely by the Board if the Board determines in its reasonable discretion that such activity constitutes a nuisance. Vehicles owned, operated or within the control of any Owner or of a resident of such Owner's Dwelling shall be parked in the garage of such dwelling to the extent of the space available therein. All garages shall be kept neat and free of stored materials so as to permit the parking of at least one (1) standard sized American sedan automobile therein at all times. Garage doors shall not remain open for prolonged periods of time, and must be closed when not reasonably required for immediate ingress and egress. The Association, through the Board, is hereby empowered to establish and enforce any additional parking limitations, rules and/or regulations (collectively, "parking regulations") which it may deem necessary, including, but not limited to, the levying of fines for violation of parking regulations, and/or removal of any violating vehicle at the expense of the owner of such vehicle. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner as to permit any activity which would be contrary to any County ordinance.

Section 10.20 Prohibited Direct Access. Any other provision herein notwithstanding, there shall be no direct vehicular access to 5th Street, Hammer Lane, Donna Street, or Washburn Road from any abutting Lot or through a Common Area from any abutting Lot, and any such direct vehicular access is hereby prohibited.

Section 10.21 Sight Visibility Restriction Areas. The maximum height of any and all sight restricting Improvements (including, but not necessarily limited to, landscaping), on all Sight Visibility Restriction Areas, shall be restricted to a maximum height not to exceed twenty-four (24) inches, or such other height set forth in the Plat ("Maximum Permitted Height"). In the event that any Improvement located on any Sight Visibility Restriction Area on a Unit exceeds the Maximum Permitted Height, the Association shall have the power and easement to enter upon such Unit and to bring such Improvement into compliance, and the Owner shall be solely liable for the costs thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration.

Section 10.22 View Restrictions. No vegetation, Improvement, or other obstruction shall be planted, constructed, or maintained by an Owner on his Unit in such location or of any such height as to obstruct unreasonably the view from any other Unit. Each Owner of a Unit shall be responsible for periodic trimming, pruning and thinning of all hedges, shrubs and trees located on his Unit, so as not to unreasonably obstruct the view of adjacent Owners. The Association shall be responsible for accomplishing such work on the Common Elements. If an Owner fails to perform necessary trimming, pruning or thinning, the Association shall have the right but not the obligation, after notice and hearing, to enter upon such Unit for purposes of performing such work. Notwithstanding the foregoing, each Owner, by accepting a deed to his Unit, whether or not specifically so stated in such deed, hereby acknowledges that any construction or installation by Declarant or third parties, or growth of trees or other plants, may impair or eliminate the view of such Owner, and hereby accepts and consents to such view impairment or elimination.

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

Section 10.24 Declarant Exemption. Units owned by Declarant, shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Unit to a Purchaser, and activities of Declarant reasonably related to Declarant's development, construction, and marketing efforts, shall be exempt from the provisions of this Article 10. This Article 10 may not be amended without Declarant's prior written consent.

ARTICLE 11
DAMAGE TO OR CONDEMNATION OF COMMON ELEMENTS

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

(a) **Repair of Damage.** Any portion of this Community for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Community is terminated, in which case the provisions of NRS § 116.2118, 116.21183 and 116.21185 shall apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community; (A) the proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units; and (B) the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the liabilities of all the Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations.

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

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

Section 11.3 **Condemnation Involving a Unit.** For purposes of NRS § 116.1107(2)(a), if part of a Unit is required by eminent domain, the award shall compensate the Owner for the reduction in value of the Unit's interest in the Common Elements. The basis for such reduction shall be the extent to which the occupants of the Unit are impaired from enjoying the Common Elements. In cases where the Unit may still be used as a Dwelling, it shall be presumed that such reduction is zero (0).

ARTICLE 12 **INSURANCE**

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

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

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

Section 12.3 Fidelity Insurance. The Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance coverage (in an amount at least equal to 100% of Association Funds from time to time handled by such Persons) and such other insurance as it deems prudent, insuring the Board, the Directors, and Officers, and any Manager, against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof. If reasonably feasible, the amount of such coverage shall be at least \$1,000,000.00, and said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period. The Association shall require that the Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From such time as Declarant no longer has the power to control the Board, as set forth in Section 3.7(c) above, blanket fidelity insurance coverage which names the Association as an obligee shall be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the

Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Units, plus Reserve Funds), or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable.

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

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his Unit, at his sole expense to have obtained, and to have furnished his Mortgagee (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of, a homeowners policy of fire and casualty insurance with extended coverage for loss or damage to all insurable improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and shall provide the Board with duplicate copies of such insurance policy upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability, damage to person or property occurring inside his Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein, each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance.

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

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

ARTICLE 13 MORTGAGEE PROTECTION CLAUSE

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

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

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

(c) Except as provided in NRS § 116.3116(2), each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title to such Unit free and clear of any claims of unpaid assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee.

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

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

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

(iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other

Improvements on the Units, the maintenance of the Exterior Walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

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

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

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

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

(f) All Eligible Holders who have filed a written request for such notice with the Board shall be given thirty (30) days' written notice prior to: (1) any abandonment or termination of the Association; (2) the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws; and (3) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties. Such first Mortgagees shall be given immediate notice: (i) following any damage to the Common Elements whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00); and (ii) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

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

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

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

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

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

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

ARTICLE 14 DECLARANT'S RESERVED RIGHTS

Section 14.1 **Declarant's Reserved Rights.** Any other provision herein notwithstanding, pursuant to NRS §1 16.2105(i)(h), Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

- (a) **Right to Complete Improvements and Construction Easement.** Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of Recordation of this Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements on the Properties and an easement over the Properties for such purpose; provided, however, that if Declarant still owns any property in the Properties on such fifteenth (15th) anniversary date, then such rights and reservations shall continue for one additional successive period of sixty (60) months thereafter. Any damage to any Unit or the Common Elements caused by Declarant or its agents in the use or exercise of said right and/or easement shall be repaired by and at the expense of Declarant.
- (b) **Exercise of Developmental Rights.** Pursuant to NRS Chapter 116, Declarant reserves the right to annex all or portions of the Annexable Area to the Community, pursuant to the provisions of Article 15 hereof, for as long as Declarant owns any portion of the Annexable Area. No assurances are made by Declarant with regard to the boundaries of those portions of the Properties which may be annexed or the order in which such portions may be annexed. Declarant also reserves the right to withdraw real property from the Community.
- (c) **Offices, Model Homes and Promotional Signs.** Declarant reserves the right to maintain signs, sales and management offices, and models in any Unit owned or leased by Declarant in the Properties, and signs anywhere on the Common Elements, for so long as Declarant owns or leases any Unit.
- (d) **Appointment and Removal of Directors.** Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.7 hereof, during the Declarant Control Period.
- (e) **Amendments.** Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 16.7, below, during the time periods set forth therein.
- (f) **Easements.** Declarant has reserved certain easements, and related rights, as set forth in this Declaration.
- (g) **Other Rights.** Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, including, but not limited to, Article 16 below, and, to the maximum extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all Developmental Rights and Special Declarant Rights as set forth or referenced therein).
- (h) **Control of Entry Gates.** Declarant reserves the right, until the Close of Escrow of the last Lot in the Properties, to unilaterally control all entry gates, and to keep all entry gates open during such hours

established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

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

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

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

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

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

(d) Without limiting Section 14.1 (c), above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

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

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

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

ARTICLE 15 **ANNEXATION**

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

privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B" hereto), in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15.

Section 15.2 Annexation Amendment. Each Annexation Amendment shall conform to the requirements of NRS § 116.2110, and shall include:

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

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

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

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

Section 15.6 Contraction of Annexable Area. So long as real property has not been annexed to the Properties subject to this Declaration, the Annexable Area may be contracted to delete such real property effective upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners, if any, of such real property, and declaring that such real property shall thereafter be deleted

from the Annexable Area. Such real property may be deleted from the Annexable Area without a vote of the Association or the approval or consent of any other Person, except as provided herein.

ARTICLE 16 GENERAL PROVISIONS

Section 16.1 **Enforcement.** This Declaration, the Articles and the Bylaws may be enforced by the Association, subject to Sections 5.2 and 5.3 above, as follows:

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

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

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

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

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

(iv) no fine imposed under this Section 16.1 may exceed the maximum amount(s) permitted from time to time by applicable provision of NRS Chapter 116 for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2(b), above);

(v) subject to Section 5.2(c)(iii) above, if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid or reasonably disputed in writing delivered to the Board by such Owner or Resident (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then such Special Assessment shall be enforceable pursuant to Articles 6 and 7 above; and

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

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

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

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

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

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

Section 16.2 Additional Disclosures, Disclaimers and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit or possession of a Unit, each Owner (for purposes of this Section 16.2, the term "Owner" shall include the Owner, any Resident, and their respective Families, guests and tenants), shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

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

(b) that the Unit and the other portions of the Properties are or from time to time may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise; that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to airplane flight patterns, and/or airplane noise; and that Owner hereby releases Declarant from any and all claims arising from or relating to airplane flight patterns or airplane noise; and

(c) that the Unit and other portions of the Properties are or may be located adjacent to or nearby major roadways, including the future North Las Vegas Beltway, if completed, and subject to levels of traffic thereon and noise, dust, and other nuisance from such roadways and vehicles; that Declarant hereby specifically disclaims any and all representations or warranties, express or implied, with regard to or pertaining to roads and/or noise, dust, and other nuisance therefrom; and

(d) that the North Las Vegas Valley contains a number of earthquake faults, and the Unit and other portions of the Properties may be located on or nearby an identified or yet to be identified seismic fault line. Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to earthquake or seismic activities; and

(e) that the Properties are or may be located adjacent to or nearby a school or preschool ("a school"), and subject to levels of noise, dust, and other nuisance resulting from proximity to such school or otherwise related nuisance resulting from proximity to such school or otherwise related to such school; and

(f) that the Properties are or may be located adjacent to or nearby a religious center, and subject to levels of traffic and sound and noise and other nuisance resulting from proximity to such religious center or otherwise related nuisance resulting from proximity to such religious center or otherwise related to such religious center; and

(g) that construction or installation of Improvements by Declarant, other Owners, or third parties, and/or installation or growth of trees or other plants, may impair or eliminate the view, if any, of or from a Unit. Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to the impairment or elimination of any existing or future view from a Unit; and

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

(i) that indoor air quality of the Unit and/or Common Elements may be affected, in a manner and to a degree found in new construction within industry standards, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on; and

(j) that the Properties are located adjacent to or nearby several designated commercial sites, and subject to substantial levels of sound and noise, and other nuisances, from such commercial sites, and commercial facilities developed thereon; and

(k) that installation and maintenance of a gated Community, or any security device, operation, or method, shall not create any presumption, or duty whatsoever of Declarant or the Association (or their respective officers, directors, managers, employees, agents, and/or contractors), with regard to security or protection of person or property within or adjacent to the Community; and

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

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

(n) that Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new homes; and

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

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

(q) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control the entry gate(s), and to keep all such entry gate(s) open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; and

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

(s) that Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.110385); and

(t) that Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration; and

(u) that Declarant and Association respectively are separate legal entities, and that no such entity has any responsibility, obligation, or liability, whatsoever for the actions or omissions of any such other entity (and/or such other entity's officers, directors, employees, agents, contractors, successors, or assigns).

Section 16.3 Releases. By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant

specifically disclaims any and all representations and warranties, express and implied, with regard to any of the foregoing disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) to fully and unconditionally release Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration.

Section 16.4 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 16.5 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, until terminated in accordance with NRS § 116.2118.

Section 16.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 16.7 Amendment. Any amendment to this Declaration shall require the prior written consent of Declarant. Except as otherwise provided by this Declaration, and except in cases of amendments that may be executed by Declarant, this Declaration, including the Plat, may only be amended by both: (a) the affirmative vote or written consent of Owners constituting at least sixty-seven percent (67%) of the total voting power of the Association, and (b) the written consent of at least a majority of the total voting power of the Board. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by the Eligible Holders of at least sixty-seven percent (67%) of the Eligible Holders at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles 7, 12, 13, 14 and 16 hereof.

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

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

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

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

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

(g) Any amendment concerning: voting rights; rights to use the Common Elements; reserves and responsibility for maintenance, repair and replacement of the Common Elements; leasing of Units; establishment of self-management by the Association where professional management has been required by any

Beneficiary, insurer or guarantor of a first Mortgage; annexation or deannexation of property to or from the Properties; boundaries of any Unit; and assessments, assessment liens, or the subordination of such liens.

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

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

Notwithstanding all of the foregoing, for so long as Declarant owns a Unit or Lot, Declarant shall have the power from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibits hereto, and otherwise to ensure that the Declaration conforms with requirements of applicable law. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B" hereto), in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, adding said real property to the Community, in the manner provided for in NRS § 116.2110 and in Article 15 above.

Section 16.8 Notice of Change to Governing Documents. If any change is made to the Governing Documents, the Secretary (or other designated Officer) shall, within 30 days after the change is made, prepare and cause to be hand delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the changes made.

Section 16.9 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 16.10 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 16.11 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 16.12 Priorities and Inconsistencies. Subject to Sections 5.8, above, and 16.15, below: (a) the Governing Documents shall be construed to be consistent with one another to the extent reasonably possible; (b) if there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term or provision of this Declaration fails to comply with provision of NRS Chapter 116 applicable hereto); (c) in the event of any inconsistency between the Articles and Bylaws, the Articles shall prevail; and (d) in the event of any inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail.

Section 16.13 Limited Liability. Except to the extent, if any, expressly prohibited by applicable provision of NRS Chapter 116, neither Declarant, the Association, any member of the Board, nor any officer, agent, employee, or committee representative, respectively of Declarant, or the Association, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former Association committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.


Section 16.14 Business of Declarant. Except to the extent expressly provided herein or as required by applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, its agents or representatives in connection with or incidental to Declarant's improvement and/or development of the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 16.15 Compliance With NRS Chapter 116. It is the intent of Declarant and the Community that this Declaration shall be in all respects consistent with, and not in violation of, applicable provision of NRS Chapter 116. In the event any provision of this Declaration is found to irreconcilably conflict with or violate any applicable provision of NRS Chapter 116, such offending Declaration provision shall be automatically deemed modified or severed here from to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of NRS Chapter 116. Notwithstanding the foregoing or any other provision set forth herein, if any provision of Senate Bill 451 (1999) should, in the future, be removed or made less burdensome (from the perspective of Declarant), as a matter of law, then the future change in such provision shall automatically be deemed to have been made and reflected in this Declaration.

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

DECLARANT:

WOODSIDE CORTEZ HEIGHTS, LLC
a Nevada limited liability company


By: Gene Morrison
Its: Manager

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on this 9 day of Dec, 2003, by GENE MORRISON, as Manger of WOODSIDE CORTEZ HEIGHTS, LLC a Nevada limited liability company.

My Commission Expires
11-20-2004

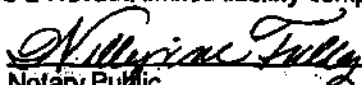
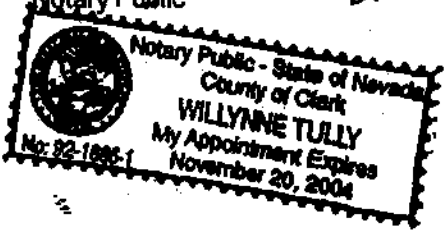

Notary Public


EXHIBIT "A"

ORIGINAL PROPERTY

Lots Three (3) through Six (6), inclusive; Lots One Hundred Forty-five (145) through One Hundred Forty-nine (149), inclusive; and Lots One Hundred Eighty-two (182) through One Hundred Eighty-four (184), inclusive; all of CORTEZ HEIGHTS as shown by map thereof in Book 113 of Plats, Page 0081, in the Office of the County Recorder of Clark County, Nevada; together with a non-exclusive easement of enjoyment over Common Elements of the Properties (as said terms are defined in the foregoing Declaration).

EXHIBIT "B"

ANNEXABLE AREA

All of the real property in **CORTEZ HEIGHTS**, as shown by map thereof in **Book 113 of Plats, Page 0081** ("Plat"), in the Office of the County Recorder of Clark County, Nevada;

EXCEPTING THEREFROM ONLY: the "Original Property" described on the foregoing Exhibit "A".

[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY SUPPLEMENT OR MODIFY OF RECORD ANY AND ALL OF THE FORGOING LEGAL DESCRIPTIONS]

When Recorded, Return to:

**Woodside Cortez Helghts, LLC
Attn: Gene Morrison
3855 South Jones Blvd., Suite 102
North Las Vegas, Nevada 89103
702-889-7800**