

APN: Portion of 124-25-101-001

Inst #: 20190906-0002493

Fees: \$40.00

09/06/2019 03:01:58 PM

Receipt #: 3827726

Requestor:

PGP TITLE - BSC

Recorded By: TAH Pgs: 76

**DEBBIE CONWAY**

**CLARK COUNTY RECORDER**

Src: ERECORD

Ofc: ERECORD

**WHEN RECORDED, RETURN TO:**

Pulte Homes of Nevada  
7255 S. Tenaya Way, Suite 200  
Las Vegas, NV 89113  
Attn: John F. Cahlan, Esq.

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

**FOR**

**ASHCROFT AT NORTH RANCH, a planned community**

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Attachments:

- Exhibit A      Property Submitted to Community
- Exhibit B      Additional Property

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

**FOR**

**ASHCROFT AT NORTH RANCH, a planned community**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ASHCROFT AT NORTH RANCH, a planned community (this “**Declaration**”) is made as of \_\_\_\_\_, 2019, by PN II, INC., a Nevada corporation d/b/a Pulte Homes of Nevada (the “**Declarant**”).

**RECITALS**

A. Declarant is the owner of certain real property located in Clark County, Nevada, which is more particularly described in Exhibit A and Exhibit B, attached hereto. Declarant intends to develop thereon (or portions thereof) a residential planned community to be known as “Ashcroft at North Ranch.”

B. It is Declarant’s intent to establish certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens, and charges upon the properties within Ashcroft at North Ranch, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of Ashcroft at North Ranch and enhancing the quality of life therein. All property annexed within Ashcroft at North Ranch shall be held and conveyed subject to such covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens, and charges.

C. In furtherance of its desire for efficient management and preservation of the values and amenities in Ashcroft at North Ranch, Declarant has created or will create Ashcroft at North Ranch Community Association, a Nevada nonprofit corporation (the “**Association**”), under the laws of the State of Nevada, to which will be delegated and assigned the powers of (i) owning, maintaining, and administering the Common Elements (as defined below) for the use of its Members (as defined below) and authorized guests and as otherwise provided herein; (ii) administering and enforcing covenants, conditions, restrictions, reservations, easements, equitable servitudes, and liens created in this Declaration; (iii) collecting and disbursing the assessments and charges created in this Declaration; and (iv) performing such other acts as will generally benefit Ashcroft at North Ranch. The Unit Owners (as defined below) of Units (as defined below) will be the Members of the Association.

D. Ashcroft at North Ranch is a common interest community as defined in the Nevada Uniform Common-Interest Ownership Act (N.R.S. 116). For the purposes of N.R.S. 116.2105(a), the common-interest community is a “planned community.”

## ARTICLE 1 DEFINITIONS

**1.1 General Definitions.** Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Uniform Common-Interest Ownership Act, N.R.S. 116.001, et seq., as amended from time to time.

**1.2 Defined Terms.** The following capitalized terms shall have the general meanings described in the Act and for purposes of this Declaration shall have the specific meanings set forth below:

1.2.1 **“Act”** means the Uniform Common-Interest Ownership Act, N.R.S. 116.001, et seq., as amended from time to time.

1.2.2 **“Additional Property”** means the real property located in Clark County, Nevada, which is described on Exhibit B attached to this Declaration, together with all buildings and other Improvements located thereon, and any other real property that Declarant may designate as “Additional Property” pursuant to N.R.S. 116.2122, together with all buildings and other Improvements located thereon.

1.2.3 **“Architectural Review Committee”** means the committee of the Association to be created pursuant to Section 6.11 of this Declaration.

1.2.4 **“Areas of Common Responsibility”** means collectively (i) all Common Elements; (ii) all real property and the Improvements situated thereon, within or adjacent to the Community that the Association is obligated to maintain, repair, or replace pursuant to the terms of this Declaration, any Plat, or another instrument executed by Declarant or the Association; (iii) all real property and the Improvements situated thereon, located within the boundaries of a Unit that the Association is obligated to maintain, repair, or replace pursuant to the terms of this Declaration, any Plat, or another instrument executed by Declarant or the Association; and (iv) all real property and the Improvements situated thereon, within or adjacent to the Community located within dedicated rights-of-way which the Association or Declarant is permitted or obligated to maintain, repair, or replace pursuant to the terms of this Declaration or another instrument executed by Declarant or the Association.

1.2.5 **“Articles”** means the Articles of Incorporation of the Association, as amended from time to time.

1.2.6 **“Assessments”** means the Common Expense Assessments, Maintenance Assessments, Special Assessments, and Reserve Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

1.2.7 **“Assessment Lien”** means the lien granted to the Association by the Act and/or this Declaration to secure the payment of Assessments, fines and other charges owed to the Association.



1.2.8 “**Association**” means Ashcroft at North Ranch Community Association, a Nevada nonprofit corporation, its successors and assigns.

1.2.9 “**Association Rules**” means the rules and regulations adopted by the Association, as amended from time to time.

1.2.10 “**Board of Directors**” means the Board of Directors of the Association.

1.2.11 “**Bylaws**” means the Bylaws of the Association, as amended from time to time.

1.2.12 “**Common Elements**” means any real estate within the Community owned or leased, or designated to be maintained, by the Association, and any other interests in real estate for the benefit of Unit Owners. The Common Elements initially subjected to this Declaration are described on Exhibit A, and any additional Common Elements annexed by Declarant shall be described in an amendment to this Declaration or a Declaration of Annexation annexing such Common Elements.

1.2.13 “**Common Expenses**” means expenditures made by or financial liabilities of the Association, including (i) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all Improvements thereon and all other Areas of Common Responsibility, including (if applicable) clustered mailboxes, private sidewalks, private utility lines, and other facilities and equipment not maintained by a governmental entity or utility provider; (ii) the cost of centrally metered utilities that serve the Units and/or the Common Elements; (iii) the cost of trash removal for the Units if so elected by the Board of Directors; (iv) the cost of insurance premiums for fire, liability, workers’ compensation, directors and officers liability, fidelity, and any other insurance deemed appropriate by the Board of Directors; (v) the cost of compensation, wages, services, supplies and other expenses required for the administration and operation of the Association and for the maintenance and repair of that portion of the Community for which the Association has responsibility, including fees, charges, and costs payable to any governmental entity pursuant to law; (vi) the cost of rendering to the Unit Owners all services required to be rendered by the Association under the Governing Documents; (vii) such amount as is established by the Association as adequate reserves for the cost of repair and replacement for the major components of the Common Elements and other Areas of Common Responsibility, which may be used only for Common Expenses that involve major repairs or replacement and that may not be used for daily maintenance; (viii) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (ix) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Community for the common benefit of the Unit Owners.

1.2.14 “**Common Expense Assessment**” means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.15 **“Common Expense Liability”** means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.16 **“Community”** means the real property located in Clark County, Nevada, which is described in Exhibit A attached to this Declaration, together with all Improvements located thereon, and any portion of the Additional Property or other real property that is annexed by Declarant pursuant to Article 2 of this Declaration, together with all Improvements located thereon.

1.2.17 **“Declarant”** means PN II, Inc., a Nevada corporation d/b/a Pulte Homes of Nevada, and its successors and any Person to which it may transfer any Special Declarant’s Right.

1.2.18 **“Declarant Party”** or **“Declarant Parties”** means, collectively, Declarant and the parent, affiliates, and subsidiaries of Declarant, as well as the members, managers, shareholders, officers, directors, employees, and agents of all of the foregoing, and as to Section 12.20 of this Declaration, to the extent such Persons agree to be bound by Section 12.20, any contractors, subcontractors, brokers, suppliers, architects, engineers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Community.

1.2.19 **“Declaration”** means this Declaration of Covenants, Conditions, Restrictions and Easements for Ashcroft at North Ranch, as amended from time to time.

1.2.20 **“Design Guidelines”** means the architectural and design guidelines and standards adopted by the Association pursuant to Section 4.1 of this Declaration, as amended or supplemented from time to time.

1.2.21 **“Developmental Rights”** means any right or combination of rights reserved by Declarant in this Declaration to do any of the following:

- (i) add real estate to the Community;
- (ii) create Units, Common Elements and Limited Common Elements within the Community;
- (iii) subdivide Units or convert Units into Common Elements; or
- (iv) withdraw real estate from the Community.

1.2.22 **“Dwelling”** means any building situated upon a Unit and designed and intended for independent ownership and for use and occupancy as a residence.

1.2.23 **“First Mortgage”** means any mortgage or deed of trust encumbering a Unit with first priority over any other mortgage or deed of trust on the same Unit.

1.2.24 **“First Mortgage”** means the holder of any First Mortgage.

1.2.25 **“Governing Documents”** means this Declaration together with the Articles, Bylaws, Design Guidelines, Association Rules, and any other documents that govern the operation of the Community or the Association.

1.2.26 **“Identifying Number”** means the number assigned to a particular Unit that identifies only that one Unit in the Community and that is shown on a Plat as a “Lot Number.”

1.2.27 **“Improvement”** means any physical structure, fixture, or facility existing or constructed, placed, erected, or installed on the land included in the Community, including buildings, basketball hoops and poles, play equipment, private drives, paving, fences, walls, hedges, plants, trees and shrubs of every type and kind.

1.2.28 **“Include”** or **“including,”** whether or not capitalized, means “include or including, without limitation,” unless otherwise indicated.

1.2.29 **“Limited Common Elements”** means a portion of the Common Elements allocated by this Declaration or as designated on a Plat or by operation of Subsection 2 or 4 of N.R.S. 116.2102 for the exclusive use of the Unit Owners of one or more but fewer than all of the Units.

1.2.30 **“Maintenance Assessment”** means any assessment levied against a Unit pursuant to Section 7.4 of this Declaration.

1.2.31 **“Maintenance Standard”** means the standard of maintenance of Improvements established from time to time by the Board of Directors, or in the absence of any standard established by the Board of Directors, the standard of maintenance of Improvements generally prevailing throughout the Community.

1.2.32 **“Member”** means any Person who is or becomes a member of the Association.

1.2.33 **“Period of Declarant Control”** means the time period commencing on the date this Declaration is Recorded and ending on the earlier of:

(i) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units that may be created to Unit Owners other than Declarant; or

(ii) five (5) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or

(iii) five (5) years after any right to add new Units was last exercised;  
or

(iv) such later date as may be permitted under the Act; or

(v) such earlier date as may be elected by Declarant pursuant to Subsection 6.2.3 of this Declaration.

1.2.34 **“Person”** means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.2.35 **“Plat”** means a Recorded final subdivision map or parcel map for any portion of the Community, and all amendments, supplements and corrections thereto, and any subdivision map or parcel map that may be Recorded against any part of the Additional Property that is annexed by Declarant pursuant to Article 2 of this Declaration, and any amendments, replats, supplements or corrections thereto.

1.2.36 **“Purchaser”** means any Person who by means of a voluntary transfer becomes a Unit Owner, except for (i) Declarant, (ii) a Person who purchases a Unit and then leases it to Declarant for use as a model in connection with the sale of other Units, and (iii) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant’s Right.

1.2.37 **“Record”** or any derivative thereof, means to record, or having been recorded, in the office of the County Recorder of Clark County, Nevada.

1.2.38 **“Reserve Assessment”** means the assessment levied against the Units pursuant to Section 7.18 of this Declaration.

1.2.39 **“Resident”** means each individual occupying or residing in any Unit.

1.2.40 **“Special Assessment”** means any assessment levied against the Units pursuant to Section 7.3 of this Declaration.

1.2.41 **“Special Declarant’s Rights”** means rights reserved for the benefit of Declarant in this Declaration or by the Act to do any of the following:

(i) construct Improvements provided for in this Declaration or shown on the Plat;

(ii) exercise any Developmental Right;

(iii) maintain sales offices, management offices, models, and signs advertising the Community and models;

(iv) use easements through the Common Elements and other Areas of Common Responsibility for the purpose of making Improvements within the Community or within the Additional Property;

(v) make the Community subject to a master association other than the Association;

(vi) merge or consolidate the Community with another common-interest community of the same form of ownership; or

(vii) appoint or remove any officer of the Association and any member of the Board of Directors during the Period of Declarant Control.

1.2.42 “**Unit**” means a physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration.

1.2.43 “**Unit Owner**” means the Record Owner (including Declarant), whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a tenant of a Unit. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of a Unit, the fee simple title to which is vested in a trustee under a deed of trust, the Trustor shall be deemed to be the Unit Owner. In the case of a Unit, the fee simple title to which is vested in a trustee pursuant to a trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

1.2.44 “**Visible From Neighboring Property**” means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of a neighboring property, including a Unit, Common Element, or street.

## **ARTICLE 2**

### **SUBMISSION OF PROPERTY; ALLOCATION OF INTERESTS AND EXPENSES; EXPANSION OF COMMUNITY**

**2.1 Submission of Property.** Declarant hereby submits the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Act for the purpose of creating a planned community in accordance with the provisions of the Act, and hereby declares that the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, and any part of the Additional Property annexed pursuant to Article 2 of this Declaration, together with all Improvements situated thereon and easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

**2.2 Name of Planned Community.** The name of the planned community created by this Declaration is Ashcroft at North Ranch.

**2.3 Name of Association.** The name of the Association is Ashcroft at North Ranch Community Association.

**2.4 Identifying Numbers of Units.** The Identifying Numbers of the Units are set forth on Exhibit A.

**2.5 Unit Boundaries.**

2.5.1 The boundaries of each Unit are as shown on a Plat.

2.5.2 Declarant reserves the right to relocate the boundaries between adjoining Units owned by Declarant, and between adjoining Units owned by Declarant and any Unit Owner with the written consent of such Unit Owner, and to reallocate each such Unit's votes in the Association and Common Expense Liability subject to and in accordance with the Act.

**2.6 Allocation of Common Expense Liability.** The liability for the Common Expenses of the Association shall be allocated equally among the Units in the Community. Accordingly, each Unit's initial fractional interest in the Common Expenses of the Association shall be 1/4. If the Community is expanded by the annexation of all or any part of the Additional Property or any other real property pursuant to Article 2 of this Declaration, the liability for the Common Expenses of the Association shall be reallocated equally among the then existing Units. Nothing contained in this Section 2.6 shall prohibit certain Common Expenses from being apportioned to particular Unit(s) under Articles 5 and 7 and other provisions of this Declaration.

**2.7 Allocation of Votes in the Association.** The total votes in the Association shall be equal to the number of Units in the Community. The votes in the Association shall be allocated equally among all the Units, with each Unit having one (1) vote.

**2.8 Allocation of Limited Common Elements.** The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by Declaration of Annexation or other amendment to this Declaration.

**2.9 Expansion of the Planned Community.**

2.9.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the Community created by this Declaration, without the consent of the Association or any other Unit Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. Declarant shall exercise its right to expand the planned community by

Recording an amendment or a declaration of annexation (a “**Declaration of Annexation**”) to this Declaration containing the following:

- (i) a legal description of the portion of the Additional Property being annexed;
- (ii) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit;
- (iii) a description of the Common Elements and Limited Common Elements created;
- (iv) a reallocation to each Unit of the fractional undivided interest in the liability for Common Expenses of the Association and the current number of votes in the Association, all of which shall be allocated equally to each Unit; and
- (v) a description of any Developmental Rights reserved by Declarant within the Additional Property being annexed.

2.9.2 Unless otherwise provided in the Declaration of Annexation adding Additional Property, the effective date for reallocating to each Unit a fractional undivided interest in the liability for Common Expenses of the Association and in the votes in the Association shall be the date on which the Declaration of Annexation annexing additional Units is Recorded.

2.9.3 This option to expand the Community shall expire twenty-five (25) years from the date of the Recording of this Declaration.

2.9.4 The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The property submitted to the Community need not be contiguous, and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

2.9.5 There are no limitations on the locations or dimensions of Improvements to be located on the Additional Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property.

2.9.6 The Additional Property, when and if added to the Community, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respect to the Governing Documents.

2.9.7 Declarant reserves the right to create and develop, directly or through merchant builders to which the various Units may be conveyed, up to an aggregate maximum of 120 Units in the Community. Declarant makes no representations, assurances, or warranties

whatsoever that: (i) all of such Units will be created or developed, nor that the Community will be completed in accordance with the plans for the Community as they exist on the date this Declaration is Recorded; (ii) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the sequence, timing, or location of development; or (iv) the use of any property subject to this Declaration will not be changed in the future. Unless otherwise expressly provided elsewhere herein, any “Developmental Rights” or “Special Declarant’s Rights” (as those terms are defined in the Act) reserved to Declarant in this Declaration may be exercised with respect to different portions of the Community or Additional Property at different times, and the exercise of such rights in a portion of the Community or Additional Property shall not necessitate the exercise of any such right in all or any portion of the remaining Community or Additional Property.

2.9.8 Notwithstanding anything in this Declaration to the contrary, Declarant reserves the right to expand the Community by adding additional property not described on Exhibit B attached hereto so long as (i) such additional property is annexed and submitted to this Declaration in the same manner described in this Section, (ii) the maximum number of Units set forth in this Section is not increased, and (iii) the addition of such additional property complies with the provisions of N.R.S. 116.2122.

### **ARTICLE 3 EASEMENTS**

**3.1 Utility Easements.** There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, construction, replacing, repairing, or maintaining of all utilities, including gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by Declarant or as approved by the Board of Directors. The exercise of rights under this easement shall not unreasonably interfere with the rights granted under other Recorded easements on the Common Elements.

**3.2 Ingress and Egress Easements.** There are hereby created permanent, perpetual, and non-exclusive easements for ingress and egress for pedestrian traffic over, through, and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Elements, except that such easements shall not extend to any Limited Common Elements. There is also created a permanent, perpetual, and non-exclusive easement for ingress and egress for pedestrian and vehicular traffic over, through, and across such driveways and parking areas upon the Common Elements as from time to time may be paved and intended for such purposes, except that such easements shall not extend to any Limited Common Elements. Such easements shall run in favor of and be for the benefit of the Unit Owners and Residents and their guests, tenants, and invitees.



### **3.3 Unit Owners' Easements of Enjoyment.**

3.3.1 Every Unit Owner shall have a right to use the Common Elements for the purposes for which they were intended, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements and to prohibit access to such portions of the Common Elements, such as landscaped areas, not intended for use by the Unit Owners and Residents;

(ii) the right of the Association to grant easements through or over the Common Elements, convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth herein and in the Act;

(iii) the right of the Association to change the use of a Common Element as provided in this Declaration;

(iv) all rights and easements set forth in this Declaration, including the rights and easements granted to Declarant by this Declaration; and

(v) the right of the Association to suspend the right of a Unit Owner, any Resident of the Unit and their invitees to use the Common Elements for any period during which the Unit Owner, any Resident of the Unit or their invitees are in violation of any provision of the Governing Documents.

3.3.2 If a Unit is leased or rented, the tenant and the Residents residing with the tenant shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.

3.3.3 The guests and invitees of any Unit Owner or other person entitled to use the Common Elements pursuant to this Declaration or of any tenant who is entitled to use the Common Elements pursuant to this Declaration may use the Common Elements provided they are accompanied by a Unit Owner, tenant, or other person entitled to use the Common Elements pursuant to this Declaration or as otherwise permitted by the Association Rules. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

3.3.4 A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding

that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

### **3.4 Declarant's Use for Sales and Leasing Purposes.**

3.4.1 Declarant and its affiliates shall have the right and an easement to maintain sales and leasing offices, management offices, a design center, construction offices, model homes, and parking areas (collectively, "**Sales and Construction Facilities**") throughout the Community and to maintain one or more advertising, identification, or directional signs in the Areas of Common Responsibility or on the Units owned or leased by Declarant. Declarant reserves the right to place Sales and Construction Facilities on any Units owned or leased by Declarant and on any portion of the Areas of Common Responsibility in such number, of such size, and in such locations as Declarant deems appropriate.

3.4.2 Declarant may from time to time relocate Sales and Construction Facilities to different locations within the Community. Upon the relocation of Sales and Construction Facilities from a portion of the Community constituting an Area of Common Responsibility, Declarant may remove all personal property and fixtures therefrom.

3.4.3 Declarant shall have the right to restrict the use of the parking spaces in the Areas of Common Responsibility, including the right to reserve such spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction, and management activities.

3.4.4 Declarant reserves the right to erect temporary barriers on private streets to establish traffic patterns for the purpose of separating Sales and Construction Facilities from occupied Dwellings.

3.4.5 Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction, and maintenance of the Community that has not been represented to the Association as property of the Association. Declarant reserves the right to remove from the Community any and all goods and Improvements used in development, marketing, and construction, whether or not they have become fixtures.

3.4.6 For so long as Declarant owns any property described on Exhibit A or Exhibit B, Declarant reserves the right to use any Areas of Common Responsibility within the Community for management and sales activities, including permitting the temporary use of such areas by prospective purchasers, and sponsoring special events for charitable, philanthropic, political, or marketing purposes.

3.4.7 In the event of any conflict or inconsistency between this Section and any other provision of the Declaration, this Section shall control.

### **3.5 Declarant's Rights and Easements.**

3.5.1 Declarant shall have the right and an easement on and over the Common Elements and other Areas of Common Responsibility to construct the Improvements shown on a Plat and other Improvements that Declarant may deem necessary, without the approval of any Unit Owner or the Association, and to use the Areas of Common Responsibility and any Units owned by Declarant for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies, and fixtures, and the performance of work in the Community.

3.5.2 Declarant shall have the right and an easement on, over and under the Common Elements and other Areas of Common Responsibility for the purpose of maintaining and correcting drainage of surface, roof, or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5.3 Declarant shall have an easement through the Units and Common Elements for any access necessary to complete any renovations, warranty work, or modifications to be performed by Declarant.

3.5.4 Declarant shall have the right and an easement on, over, and through the Common Elements and Units as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant's Rights whether arising under the Act or reserved in this Declaration.

3.5.5 In the event of any conflict or inconsistency between this Section and any other provision of the Declaration, this Section shall control.

**3.6 Units' Easement in Favor of Association.** In addition to any rights that the Association may have pursuant to Nevada law, including N.R.S. Chapter 40, the Units are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:

(i) for inspection of the Units, Common Elements and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

(ii) for inspection, maintenance, repair, and replacement of the Common Elements and Limited Common Elements situated in or accessible from such Units;

(iii) for inspection, maintenance, repair, and replacement of those portions of Units to be maintained by the Association as set forth in this Declaration or other Recorded instrument;

(iv) for correction of emergency conditions in Units, Common Elements or Limited Common Elements, or casualties to the Areas of Common Responsibility, Common Elements, Limited Common Elements, or the Units;

(v) for the purpose of enabling the Association, the Board of Directors, or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers, and duties under the Governing Documents; and

(vi) for inspection, at reasonable times and upon reasonable notice to the Unit Owners, of the Units, Common Elements and Limited Common Elements in order to verify that the provisions of the Governing Documents are being complied with by the Unit Owners and Residents and their guests, tenants, and invitees.

**3.7 Easement Data.** The Recording data required to be contained herein pursuant to N.R.S. 116.2105(l)(m) for any easements or licenses appurtenant to or included in this common-interest community or to which any portion of this common-interest community is or may become subject by means of a reservation of this Declaration is as follows: 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 a Plat is the same as the Recording data for the Plat.

**3.8 Easement for Unintended Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of the original construction shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

**3.9 Landscape Easements.** There is hereby created a permanent, perpetual, and non-exclusive easement for the benefit of the Association and its directors, officers, agents, employees, and independent contractors upon, under, over, and across certain Units in the locations designated on a Plat as “Landscape Easement” or similar designation (the “**Landscape Easement Area**”) for the purpose of permitting the Association to maintain, repair, and replace the landscaping Improvements installed within the Landscape Easement Area. Unless otherwise provided in a Declaration of Annexation, all landscaping Improvements installed within the Landscape Easement Area, including all irrigation facilities, shall be deemed to be Areas of Common Responsibility; provided, however, that each Unit Owner of a Unit subject to a Landscape Easement shall be responsible for providing and maintaining access to irrigation water and paying the cost of all irrigation water required for the Unit’s applicable Landscape Easement Area by connection of the landscape irrigation lines to the Unit’s domestic water lines. A Unit Owner (i) shall not alter, remove, replace, or disturb the Improvements within the Landscape Easement Area that are to be maintained by the Association, (ii) shall not construct or install any Improvements within the Landscape Easement Area without the prior written consent of the Board of Directors, and (iii) shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Association to fulfill its

obligations under this Section. The Association shall have the right to adopt reasonable rules and regulations governing the use of the Landscape Easement Areas.

**3.10 Mail Box Easements.** Certain Units, as determined by the U.S. Postal Service (the “USPS”), may be made subject to a permanent, perpetual, and non-exclusive easement (the “Mail Box Easement”) for the installation and maintenance of USPS mail boxes and appurtenant facilities (the “Mail Boxes”). The Mail Box Easement shall be located on the portion of each Unit where the USPS requires the Mail Boxes to be constructed, and shall include such portions of the Unit reasonably necessary to install and maintain the Mail Boxes (the “Mail Box Easement Area”). Each Mail Box Easement shall be for the benefit of (i) the Unit Owners for receipt and delivery of U.S. mail, and (ii) Declarant and the Association and their directors, officers, agents, employees, and independent contractors for the purpose of permitting Declarant to install the Mail Boxes and the Association to perform any maintenance, repair, and replacement of the Mail Boxes not performed by the USPS. In the event any such maintenance, repair, and replacement is not performed by the USPS, the Mail Box Easement Areas shall be deemed to be Areas of Common Responsibility. A Unit Owner (i) shall not alter, remove, replace, or disturb the Improvements within the Mailbox Easement Area, (ii) shall not place or permit to be placed any materials that would obstruct access to the Mailbox Easement Area or construct or install any Improvements within the Mailbox Easement Area without the prior written consent of the Board of Directors, and (iii) shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Association to fulfill its obligations under this Section. The Association shall have the right to adopt reasonable rules and regulations governing the use of the Mailbox Easement Area.

**3.11 Additional Easements.** Certain Units in the Community may be subject to other easements as more particularly described in the Plat for such Unit or other Recorded instrument, including: sidewalk, utility, drainage, streetlight, traffic control device, pedestrian access, and bus pad/shelter easements. Such easements may be publicly or privately maintained as set forth in the Plat. A Unit Owner shall not interfere with the use of such easements. The Association shall have the right to adopt reasonable rules and regulations governing the use of such easement areas.

## **ARTICLE 4 PERMITTED USES AND RESTRICTIONS**

### **4.1 Architectural Control.**

4.1.1 All Improvements constructed on Units shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Unit.

4.1.2 No excavation or grading work shall be performed on any Unit without the prior written approval of the Architectural Review Committee.

4.1.3 No Improvement shall be constructed or installed on any Unit without the prior written approval of the Architectural Review Committee. No oral communications

will be deemed to constitute approval from the Architectural Review Committee. No addition, alteration, repair, change, or other work that in any way alters the exterior appearance of a Unit, including the exterior color scheme, or any Improvements located thereon, from its appearance after the initial construction thereof by Declarant, shall be made or done without the prior written approval of the Architectural Review Committee. Accordingly, approval by the Architectural Review Committee is not required for the repainting of the exterior of a Dwelling in accordance with the originally approved color scheme.

4.1.4 The Association may adopt, amend, and repeal Design Guidelines for the Community. The Design Guidelines may include, without limitation, provisions regarding: (i) the size of Dwellings; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Dwellings and other buildings; (iv) landscaping design, content, and conformance with the character of the Community, and permitted and prohibited plants; (v) requirements concerning exterior color schemes and exterior finishes and materials; (vi) signage; (vii) perimeter and screen wall design and appearance; and (viii) procedures to be used in the architectural review process.

4.1.5 Any Unit Owner desiring approval of the Architectural Review Committee for excavation or grading, or for the construction, installation, addition, alteration, repair, change, or replacement of any Improvement that would alter the exterior appearance of a Unit, or the Improvements located thereon, shall submit to the Architectural Review Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, or other work that the Unit Owner desires to perform, including the distance of such work from neighboring properties, if applicable. Any Unit Owner requesting the approval of the Architectural Review Committee shall also submit to the Architectural Review Committee any additional information, plans and specifications that the Architectural Review Committee may request. If the Architectural Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after the application, together with the applicable review fee, and all supporting information, plans and specifications requested by the Architectural Review Committee have been submitted to it, the application shall be deemed to have been disapproved.

4.1.6 In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change, or other work that must be approved by the Architectural Review Committee, the Architectural Review Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation. The Architectural Review Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change, or other work that must be approved by the Architectural Review Committee pursuant to this Section 4.1 if the Architectural Review Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change, or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change, or other work does not comply with the Design Guidelines; (iii) the proposed construction, installation, addition, alteration, repair, change, or other work is not in harmony with existing

Improvements in the Community or with Improvements previously approved by the Architectural Review Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change, or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change, or other work would be detrimental to or adversely affect another Unit Owner or the appearance of the Community; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Community.

4.1.7 The Design Guidelines may contain provisions that are specific to one portion of the Community and do not apply to other portions of the Community. There may be special or unusual cases in which a Unit Owner, while in compliance with the Design Guidelines, may be denied approval by the Architectural Review Committee. Such cases may concern landscaping, alterations, construction, or other modifications which cannot be anticipated or defined by this Declaration or the Design Guidelines. All cases of such nature would be unique and judged on individual, particular circumstances.

4.1.8 The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Section shall not be deemed a waiver of the Architectural Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, or other work subsequently submitted for approval.

4.1.9 Upon receipt of approval from the Architectural Review Committee for any construction, installation, addition, alteration, repair, change, or other work, the Unit Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Review Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable unless the Architectural Review Committee establishes a schedule for the construction and completion of such work. A Unit Owner shall adhere to any schedule required by the Architectural Review Committee for (i) the completion of the design of a Unit or the design of an Improvement to a Unit; (ii) the commencement of the construction of a Unit or the construction of an Improvement to a Unit; (iii) the completion of the construction of a Unit or the construction of an Improvement to the Unit; or (iv) the issuance of a permit that is necessary for the occupancy of a Unit or for the use of an Improvement to a Unit. Completion of work shall include any clean-up and/or removal of equipment, building materials, dirt, debris and similar materials, and repair/replacement of any damage to Improvements sustained in connection with the work.

4.1.10 Any change, deletion or addition to the plans and specifications approved by the Architectural Review Committee must be approved in writing by the Architectural Review Committee.

4.1.11 The Architectural Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair,

change, or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Review Committee. The amount of the fee may include the reasonable costs incurred by the Architectural Review Committee for review of the request by architects, engineers or other professional persons deemed necessary by the Architectural Review Committee in its sole discretion.

4.1.12 The provisions of this Section do not apply to, and approval of the Architectural Review Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change, or replacement of any Improvements made by, or on behalf of, Declarant or any Person affiliated with or controlled by Declarant.

4.1.13 The approval required of the Architectural Review Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits that may be required under any federal, state or local law, statute, ordinance, rule or regulation.

4.1.14 If any of the Dwellings surrounding a Unit contain Solar Energy Systems (as defined in Section 4.31), the Unit Owner of the proposed Improvements shall confirm that the proposed Improvements will not result in a violation of the Shading Restrictions (as defined in Subsection 4.31.1), including whether any trees or shrubs have the potential to grow to a height that would result in a violation of the Shading Restrictions.

4.1.15 The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Review Committee as to the quality of such construction, installation, addition, alteration, repair, change, or other work or that such construction, installation, addition, alteration, repair, change, or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation (“**Applicable Laws**”). Neither Declarant, the Association, the Board of Directors, any party retained by the Architectural Review Committee as a consultant nor any committee or member of any of the foregoing shall be held liable for any claim whatsoever arising out of construction on or modifications to any Unit, including claims that such construction and/or modifications are not in compliance with Applicable Laws. Each Unit Owner is responsible for investigation of and compliance with all Applicable Laws prior to submitting a request for approval pursuant to this Section.

4.1.16 The Architectural Review Committee may condition its approval of plans and specifications upon the agreement by the Unit Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Review Committee in an amount determined by the Architectural Review Committee to be reasonably sufficient to: (i) assure the completion of the proposed construction, installation, addition, alteration, repair, change, or other work or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such construction, installation, addition, alteration, repair, change, or other work, (ii) remove any construction debris from a Unit that is permitted to accumulate in violation of Section 4.4 of this Declaration, and (iii) to repair any damage that might be caused



to any Area of Common Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Unit Owner upon: (a) the completion of the construction, installation, addition, alteration, repair, change, or other work in accordance with the plans and specifications approved by the Architectural Review Committee; and (b) the Unit Owner's written request to the Architectural Review Committee, provided that there is no damage caused to any Area of Common Responsibility by the Unit Owner or its agents or contractors.

4.1.17 A Unit Owner may appeal a decision made by the Architectural Review Committee to the Board of Directors (unless the Board of Directors is functioning as the Architectural Review Committee, in which event the decision of the Architectural Review Committee shall be final). Appeals must be in writing and addressed to the Architectural Review Committee. Requests for appeal must be delivered to the Architectural Review Committee within fifteen (15) days after delivery of the application denial. Such appeal shall be heard at the next regularly scheduled meeting of the Board or at a special meeting called for such purpose.

**4.2 Residential Use.** All Dwellings shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Dwelling, except that an Owner or other Resident of a Dwelling may conduct a business activity within a Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Community; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers or other business invitees or the door-to-door solicitation of Unit Owners or other Residents in the Community and; (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Community, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the Residents of a provider's Unit and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Dwelling by the Unit Owner thereof shall not be considered a trade or business within the meaning of this Section, nor shall this Section apply to any activity conducted by or on behalf of the Association for the purpose of operating, maintaining or advancing the residential and recreational character of the Community.

**4.3 Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporarily or permanently. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Review Committee shall be removed immediately after the

completion of construction, and in no event shall any such buildings, trailers, or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Review Committee.

**4.4 Nuisances; Construction Activities.** No rubbish, clippings, refuse, scrap lumber, or metal, grass, shrub, or tree clippings, plant waste, compost, bulk materials, or other debris of any kind shall be kept, placed, stored, or permitted to accumulate upon or adjacent to any Unit unless stored within an enclosed structure or container that has been approved by the Architectural Review Committee. No odors or loud noises shall be permitted to arise or emit from any Unit, and no other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or to the residents of such property. 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 landscaping maintenance) or other item that may unreasonably disturb other Unit Owners or Residents, or any equipment or item that may unreasonably interfere with television or radio reception within any Unit or the Area of Common Responsibility shall be located, used or placed on any portion of the Community without the prior written approval of the Board of Directors. 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. Each Unit 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. Normal construction activities and parking in connection with the building of Improvements on a Unit or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and attractive condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Unit or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Review Committee, which may also require screening of the storage areas. The Board of Directors, in its sole discretion, shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of Declarant.

**4.5 Diseases and Insects.** No person shall permit any thing or condition to exist upon any Unit or other property that will induce, breed or harbor infectious plant diseases or noxious insects.

**4.6 Firearms; Fireworks.** The discharge of firearms within the Community is prohibited. The term "firearms" includes BB guns, pellet guns, paint-ball guns and other firearms of all types, regardless of size. Unit Owners shall not store fireworks on Units, and the use of fireworks on a Unit or on any other portion of the Community is prohibited.

**4.7 Repair of Building.** No Dwelling, building or structure on any Unit shall be permitted to fall into disrepair and each such Dwelling, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Dwelling, building or structure is damaged or destroyed, then, subject to the approvals required by Section 4.1 of this Declaration, such Dwelling, building or structure shall be immediately repaired or rebuilt or shall be demolished.

**4.8 Antennas.** No antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation (a “**Device**”) proposed to be erected, used or maintained outdoors on any portion of the Community, whether attached to a Dwelling or structure or otherwise, shall be erected or installed without the prior written consent of the Architectural Review Committee unless (i) applicable law prohibits the requirement for review and approval by the Architectural Review Committee, or (ii) the Design Guidelines permit installation of the Device without such review and approval. Even though a Unit Owner may not be required to obtain written approval from the Architectural Review Committee for a Device, a Unit Owner is required to comply with the Design Guidelines to the extent that the Design Guidelines set forth guidelines, standards and procedures applicable to such Device. Failure by a Unit Owner to comply with the Design Guidelines with respect to a Device shall be deemed a violation of this Declaration in the same manner as if a Unit Owner had not obtained the prior written approval from the Architectural Review Committee for a Device that does require prior written approval.

**4.9 Mineral Exploration.** No Unit shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**4.10 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Unit, except in covered containers of a type, size and style that are approved by the Architectural Review Committee or as required by the applicable governmental agency. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to be made available for collection and then only for the shortest time reasonably necessary to effect such collection or as otherwise set forth in the Association Rules. All rubbish, trash, or garbage shall be removed from Units and other property and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Unit. The Board of Directors shall have the right to contract with one or more third parties (including a municipality) for the collection of garbage, trash or recyclable materials for the benefit of the Unit Owners and Residents, with any costs to be Common Expenses or billed separately to the Unit Owners at the sole discretion of the Board of Directors. The Board of Directors shall have the right to adopt rules and regulations regarding garbage, trash, trash containers and collection.

**4.11 Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Unit so as to be Visible From Neighboring Property. No clothing, towels, carpets or other items may be draped over walls, fences or gates for cleaning or drying purposes.

**4.12 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Unit unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Review Committee.

**4.13 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Unit shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Review Committee.

**4.14 Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Unit, except that a reasonable number of generally recognized house or yard pets (“**Permitted Pets**”) may be kept on a Unit if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets shall be confined to a Resident’s Unit except that a dog or cat may be permitted to leave a Resident’s Unit if such dog or cat is at all times kept on a leash and is not permitted to enter upon any other Unit. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of a Permitted Pet shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Unit Owner or Resident, the Board of Directors shall determine, in its sole and absolute discretion, whether, for the purposes of this Section, (i) the number of Permitted Pets being kept on a Unit is reasonable, (ii) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise, or (iii) a particular pet is a Permitted Pet. Any decision rendered by the Board of Directors shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Unit Owner, Resident or other person who brings or permits an animal to be on the Common Elements or any Unit shall be responsible for immediately removing any feces deposited by such animal. The Board of Directors shall have the right to adopt, amend and repeal additional rules and regulations governing the keeping of Permitted Pets in the Community.

**4.15 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit, except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; and (ii) that which Declarant or the Association may require for the operation and maintenance of the Community.

**4.16 Signs.**

4.16.1 Subject to the provisions of Subsection 4.16.2, no signs whatsoever (including commercial, political, “for sale,” “for rent,” “for lease,” “open house” and similar

signs) that are Visible From Neighboring Property shall be erected or maintained on any Unit without the prior written consent of the Architectural Review Committee except:

- (i) signs required by legal proceedings;
- (ii) signs that, by law, cannot be prohibited, provided that the Architectural Review Committee reserves the right to disallow and/or regulate the size and number of any such signs to the extent permitted by law;
- (iii) residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Review Committee; and
- (iv) signs that may be permitted in accordance with the Design Guidelines.

4.16.2 So long as Declarant owns any property described on Exhibit A or Exhibit B, “for sale,” “for rent,” “for lease,” and “open house” signs are prohibited. When Declarant no longer owns any property described on Exhibit A or Exhibit B, the Board of Directors shall have the authority, but not the obligation, to permit such signs, and if so permitted, the Board of Directors shall have the right to prescribe within the Design Guidelines the size, materials, color, and format of such signs.

**4.17 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Unit shall be further subdivided or separated into smaller units or parcels by any Unit Owner, no portion less than all of any such Unit shall be conveyed or transferred by any Unit Owner, and two or more Units shall not be combined into fewer Units than originally shown on a Plat, without the prior written approval of the Board of Directors. If two or more Units are combined into fewer Units than as originally shown on a Plat pursuant to the prior written approval of the Board of Directors and the approval of any other governmental authority that may be required, the provisions of Article 6 and Article 7 of this Declaration shall apply to such Units as originally shown on the Plat, and no diminution of voting rights or decrease in Assessments shall be applicable to the Units so combined. No Person other than Declarant shall subject any Unit to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of time. No further covenants, conditions, restrictions, or easements shall be Recorded by any Unit Owner or other Person against any Unit without the provisions thereof having been first approved in writing by the Board of Directors. No application for rezoning, variances, or use permits pertaining to any Unit shall be filed with any governmental authority by any Person unless the application has been approved by the Board of Directors and the proposed use otherwise complies with this Declaration. The provisions of this Section do not apply to, and no approval of the Board of Directors or Architectural Review Committee shall be required for, any actions made by, or on behalf of, Declarant.

**4.18 Trucks, Trailers, Recreational Vehicles, Campers and Boats.** No truck (other than pick-up trucks for the personal use of any Unit Owner or Resident), bus, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar vehicle or related equipment (collectively, “**Restricted Vehicles**”) may be parked, maintained, constructed, reconstructed or repaired on any Unit, Common Element or street so as to be Visible From Neighboring Property.

**4.19 Motor Vehicles.**

4.19.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Unit or other property in the Community, and no inoperable vehicle may be stored or parked on any such Unit so as to be Visible From Neighboring Property.

4.19.2 No unlicensed vehicle, including any unlicensed dirt bikes, motor scooters, all-terrain vehicles, off-road vehicles, golf carts, or other similar mechanized vehicles, shall be parked, maintained, or operated on any portion of the Community, except such vehicles may be parked in garages of Units. Vehicles that are licensed by the State of Nevada to operate on public streets, including any licensed dirt bikes, motor scooters, all-terrain vehicles, off-road vehicles, golf carts, or other similar mechanized vehicles, may be operated within the Community, provided that the Board of Directors shall be entitled to establish additional rules and regulations governing such vehicles, including equipment required to be installed on such vehicles in addition to equipment required by law. A Unit Owner or Resident shall not park or store any such vehicle on any portion of the Unit except in the garage.

4.19.3 Motor vehicles of Residents and guests of Residents shall be parked in the garage or on the concrete driveway of such Resident’s Unit at all times when sufficient parking area exists in the garage or on the concrete driveway. Street parking shall be limited to occasions when sufficient parking area does not exist in the garage or on the concrete driveway of a Unit. Parking on unpaved portions of Units is prohibited.

4.19.4 The Board of Directors shall have the right to establish additional rules and regulations governing the parking and operation of motor vehicles within the Community.

**4.20 Towing and Immobilization of Vehicles.** Upon compliance with applicable law, the Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle that is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Governing Documents immobilized or towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the immobilization or towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by a Unit Owner, any amounts payable to the Association shall be secured by the Assessment Lien,

and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments.

**4.21 Drainage.** No Dwelling, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Community, or any part thereof, or for any Unit as shown on the drainage plans on file with the county or municipality in which the Community is located.

**4.22 Garages.** Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Review Committee. Garages may be used for the storage of material so long as the storage of material does not result in inadequate parking for the motor vehicles of the Residents of a Unit. Garage doors shall remain closed at all times except when entering and exiting the garage and for a reasonable length of time during daytime hours while performing regular home maintenance activities.

**4.23 Outdoor Fires.** Outdoor cooking and outdoor fires shall be permitted only in devices prescribed in the Design Guidelines or as otherwise approved by the Architectural Review Committee.

**4.24 Window Coverings.** No window that would be Visible From Neighboring Property shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials. No reflective materials, including reflective screens or glass, mirrors or similar items shall be installed or used on any Improvement without the prior written consent of the Architectural Review Committee.

**4.25 Insurance Rates; Violation of Law.** No Unit Owner or Resident shall permit anything to be done or kept in or upon a Unit that will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any Unit Owner or the Association. No immoral, improper, offensive, or unlawful use shall be made of any part of the Community. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Community shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

**4.26 Rooftop Air Conditioners and Evaporative Coolers Prohibited.** No air conditioning units, evaporative coolers or appurtenant equipment may be mounted, installed or maintained in any window or on the roof of any Dwelling or other building so as to be Visible From Neighboring Property without the prior written consent of the Architectural Review Committee.

**4.27 Sports Equipment; Play Structures.** No basketball hoop or backboard, jungle gym, play equipment, sports court or other sports apparatus, whether temporary or permanent, shall be constructed, erected or maintained on any Unit without the prior written approval of the Architectural Review Committee.

**4.28 Exterior Lighting** Any lights installed on a Unit shall comply with the applicable governmental ordinances and the Design Guidelines and shall be consistent with the style of architecture prevalent in the Community, provided that no spotlights or other high intensity lighting shall be placed or utilized upon any Unit that in a manner that will allow light to be directed or reflected unreasonably upon any other Unit or Common Element.

**4.29 Flag Displays.** No flags shall be displayed or maintained on any Unit without the prior written approval of the Architectural Review Committee unless (i) applicable law prohibits the requirement for review and approval by the Architectural Review Committee, or (ii) the Design Guidelines permit display of the flag without such review and approval. Even though a Unit Owner may not be required to obtain written approval from the Architectural Review Committee for the display of a flag, a Unit Owner is required to comply with the Design Guidelines to the extent that the Design Guidelines set forth guidelines, standards and procedures applicable to the display of flags. Failure by a Unit Owner to comply with the Design Guidelines with respect to flag display shall be deemed a violation of this Declaration in the same manner as if a Unit Owner had not obtained the prior written approval from the Architectural Review Committee for display of a flag that does require prior written approval.

**4.30 Solar Energy Systems.** In connection with the residential development of Units that are annexed to the Community, Declarant may offer fixed devices, structures or devices or structures that are used primarily to transform solar energy into thermal, chemical or electrical energy including roof-integrated photovoltaic roof tiles, roof-mounted panels or other roof-mounted devices that collect solar energy and generate energy by exposure to the sun (collectively, “**Solar Energy System**”). The generation of energy will be reduced or even eliminated if trees, shrubs and other landscaping (as used in this subsection, “**Landscaping**”) or if structures, including room additions, patio structures/covers and play structures (as used in this subsection, “**Structures**”) are allowed to cause shading of the fixed devices within a Solar Energy System which are designed to collect solar energy. For purposes of this Section 4.31, the term “**Solar Collection Devices**” shall mean all fixed devices within a Solar Energy System on a Unit which are designed to collect solar energy, and the term “**Potential Shading Improvements**” shall mean all Landscaping and Structures on a Unit. For optimal operation and efficiency it is essential that the Solar Collection Devices have direct access to sunlight. To increase the potential for optimal operation of the Solar Energy Systems, Declarant desires to establish certain restrictions to limit certain obstructions to the Solar Collection Devices.

4.30.1 Shading Restrictions. The restrictions set forth in this Subsection 4.31.1 are collectively referred to herein as the “**Shading Restrictions.**”

(i) Structures. No Unit Owner shall allow any Structures to be installed within the Unit Owner’s Unit that cast or may at any time in the future cast a shadow over greater than ten percent (10%) of the Solar Collection Devices located on a neighboring Unit at any one time between the hours of 10 a.m. and 2 p.m. local standard time or which otherwise is not in conformance with the requirements set forth in Exhibit C (“**Prohibited Shading**”). Before constructing or installing any Structure on a Unit, the Unit Owner of such Unit shall ensure all Potential Shading Improvements comply with this restriction. As provided



in Subsection 4.31.2 below, this Subsection 4.31.1(i) does not apply to Structures installed by Declarant.

(ii) Landscaping. No Unit Owner shall plant any Landscaping on any portion of the Unit Owner's Unit that, at its generally-accepted mature height, will likely cause Prohibited Shading on Solar Collection Devices located on a neighboring Unit. Unit Owners shall select tree species that at maturity will not cause Prohibited Shading. As provided in Subsection 4.31.2 below, this Subsection 4.31.1(ii) does not apply to Landscaping installed by Declarant.

#### 4.30.2 Application of Restrictions.

(i) Generally: The Shading Restrictions shall not apply to any Prohibited Shading of Solar Collection Devices caused by Improvements that were installed or constructed prior to the installation of the Solar Collection Devices. Subject to Subsection 4.31.2(ii), the Shading Restrictions shall apply to any Prohibited Shading of Solar Collection Devices caused by Potential Shading Improvements that were installed or constructed by a Unit Owner other than Declarant either after the installation of the Solar Collection Devices or in violation of Subsections 4.31.6 and 4.31.7.

(ii) Declarant Exemption: Declarant is undertaking the work of developing the Community and the completion of the development is essential to the establishment and welfare of the Community. In order that the work may be completed and the Units annexed to the Community and established as occupied portions of the Community as rapidly as possible, the limitations on Structures and Landscaping established by Subsections 4.31.1(i) and (ii) shall not apply to Declarant.

4.30.3 Impact of Shading Restrictions. Depending upon the dimensions and topography of certain Units, the Shading Restrictions may prevent or severely restrict (a) the planting of any trees, or the planting of medium or large trees, in the yard area of a Unit, and (b) the installation of any upper-floor additions, roof-top Structures or other tall Structures. For example, the planting of shade trees and the construction of upper-floor additions may be prohibited as a result of the Shading Restrictions. Also, the Shading Restrictions may have the foregoing impacts on Units on which no Solar Energy Systems are installed or constructed.

4.30.4 No Restriction on Adjacent Property. In some cases the Units may be adjacent to other real property that is not encumbered by this Declaration or any other Shading Restrictions. In such cases, adjacent real property may only be subject to applicable laws and the documents of the governing homeowners' association that do not control Prohibited Shading.

4.30.5 No Restrictions on Installation of Solar Energy Systems. Nothing in this Declaration shall be interpreted to restrict the right of any Unit Owner to install or use any Solar Energy System on a Unit in conformance with applicable laws, this Declaration and the Design Guidelines.

4.30.6 Approval by Declarant of Unit Owner-Installed Improvements. If a Unit is adjacent to a Unit owned by Declarant (whether or not such Unit has been annexed to the Community), the Unit Owner shall obtain Declarant's approval before constructing any Improvement or installing any Solar Energy System on the Unit Owner's Unit, which approval shall be for the sole purpose of determining: (a) whether the Improvements will adversely impact any proposed Declarant-installed Solar Energy Systems on the adjacent Unit owned by Declarant, and/or (b) whether a Solar Energy System proposed on the Unit Owner's Unit will be adversely impacted by any proposed Declarant-installed Dwellings, Landscaping and/or other Improvements on the Unit owned by Declarant. The Unit Owner must obtain Declarant's written approval of the Improvements before submitting any application for the Improvements to the Architectural Review Committee, and Unit Owner applications to the Architectural Review Committee must include Declarant's written approval of the Improvement.

4.30.7 Design and Approval of Improvements. As provided in Section 4.1, all Improvements installed by Unit Owners shall be approved by the Architectural Review Committee prior to installation of such Improvements. If any of the Dwellings surrounding a Unit Owner's Unit contain Solar Energy Systems, the Unit Owner of the proposed Improvements shall consider whether the Improvements will result in a violation of the Shading Restrictions, including whether any trees or shrubs have the potential to grow to a height that would result in a violation of the Shading Restrictions and the height of any other Improvements as described on the attached Exhibit C. In evaluating the impact of such proposed Improvements, the Unit Owner must provide to the Architectural Review Committee a certification from a landscape architect, architect, engineer, solar or other consultant otherwise acceptable to the Architectural Review Committee ("**Shading Certification**") that the proposed Improvement will not result in Prohibited Shading of existing Solar Collection Devices, and that the requirements set forth in Exhibit C have been met. The Architectural Review Committee has the right, but not the obligation, to review the Shading Certification and any approvals required under Section 4.31.6. The Architectural Review Committee shall be entitled to rely upon such Shading Certification and shall have no obligation to conduct any other independent review and shall have no liability to any Unit Owner for any inaccuracies in the Shading Certification.

4.30.8 Resolution of Disputes. If a dispute among: (a) Unit Owner(s), on the one hand and (b) Declarant or any Declarant Parties, on the other hand, arises regarding the Shading Restrictions or any rights under this Section 4.31, including the interpretation and/or enforcement thereof ("**Solar Dispute**"), the parties shall meet to attempt to resolve the Solar Dispute and use their best efforts to resolve the dispute. The Association shall have no obligation to assist in the resolution of disputes.

#### **4.31 Leasing.**

4.31.1 A Unit may be leased to a tenant from time to time by a Unit Owner provided that each of the following conditions is satisfied:

(i) A Unit may be leased only in its entirety. No fraction or portion of a Unit or Dwelling may be leased.

(ii) The lease or rental agreement must be in writing and for a term not less than six (6) months.

(iii) The lease or rental agreement must contain a provision that the lease or rental agreement is subject to this Declaration and all other Governing Documents and that any violation of any of the foregoing shall be a default under the lease or rental agreement.

(iv) Within ten (10) days after execution of a lease or rental agreement, the Unit Owner shall provide the Association with (a) a fully executed copy of the lease, (b) the names of the tenants and each person who will reside in the Dwelling, (c) the address and telephone number of the Unit Owner, and (d) any additional information as may be required by the Board of Directors.

(v) The Unit Owner shall make available to the tenant copies of all Governing Documents.

4.31.2 Any Unit Owner that leases or rents a Unit shall keep the Association informed at all times of the Unit Owner's address and telephone number. Any lease or rental agreement shall be subject to the Governing Documents, and any breach of the Governing Documents shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any tenant breaches any restriction contained in the Governing Documents, the Unit Owner, upon demand by the Association, immediately shall take such actions as may be necessary to correct the breach, including, if necessary, eviction of the tenant. Notwithstanding the foregoing, the Association shall have all rights and remedies provided for under this Declaration and all other Governing Documents.

**4.32 Variances; Diminution of Restrictions.** The Architectural Review Committee or Board of Directors, as applicable, may, at the respective option of each and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Architectural Review Committee or the Board of Directors, as applicable, determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on a Unit Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Unit Owners and Residents and is consistent with the high quality of life intended for Residents of the Community. Notwithstanding the foregoing, the Architectural Review Committee and the Board of Directors shall not grant variances permitting uses that are not consistent with applicable law. If any restriction set forth in this

Article 4 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board of Directors, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable. Upon expiration of the Period of Declarant Control and for so long as Declarant owns any property described on Exhibit A or Exhibit B, any variance granted by the Architectural Review Committee or the Board of Directors shall be subject to review and approval by Declarant, except to the extent prohibited by Nevada law.

## **ARTICLE 5 MAINTENANCE AND REPAIR**

**5.1 Duties of the Association.** Unless otherwise provided in this Declaration, the Association shall maintain, repair and replace all Areas of Common Responsibility. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Areas of Common Responsibility, and all Unit Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Section.

**5.2 Duties of Unit Owners.** Each Unit Owner shall maintain, repair and replace, at such Unit Owner's expense, (i) all portions of such Unit Owner's Unit, (ii) all Improvements situated on the Unit, and (iii) any landscaping located between the boundary of the Unit and the pavement of a street, except for any portion of the Unit that is an Area of Common Responsibility. The foregoing Improvements shall be maintained in good condition and repair and in accordance with the Maintenance Standard. All grass, hedges, shrubs, vines and plants shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Plant materials that die shall be promptly replaced with living foliage of like kind, unless different foliage is approved by the Architectural Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property.

**5.3 Unit Common Walls.** The rights and duties of Unit Owners with respect to common walls or fences between Units (a "**Unit Common Wall**") shall be as provided in this Section 5.3. The Unit Owners of contiguous Units with a Unit Common Wall shall both equally have the right to use the Unit Common Wall provided that the use by one Unit Owner does not interfere with the use and enjoyment of Unit Common Wall by the other Unit Owner.

5.3.2 The adjoining Unit Owners shall each have the right to perform any necessary maintenance, repair, or replacement of a Unit Common Wall, and the cost of such maintenance, repair, or replacement shall be shared equally by the adjoining Unit Owners except as otherwise provided in this Section; provided, however, that if a Unit Owner elects to paint and/or stucco the side of the Unit Common Wall that faces the Unit Owner's Unit, the Unit Owner shall be solely responsible for the cost thereof.

5.3.3 If a Unit Common Wall is damaged or destroyed through the act of a Unit Owner, or the Unit Owner's agents, tenants, licensees, guests, or family, it shall be the obligation of such Unit Owner to rebuild and repair the Unit Common Wall without cost to the adjoining Unit Owner(s).

5.3.4 If a Unit Common Wall is damaged or destroyed by some cause other than the act of one of the adjoining Unit Owners, or the Unit Owner's agents, tenants, licensees, guests, or family (including ordinary wear and tear and deterioration from lapse of time), then all adjoining Unit Owners shall rebuild or repair the Unit Common Wall at their joint and equal expense.

5.3.5 The right of any Unit Owner to contribution from any other Unit Owner under this Section shall be appurtenant to the land and shall pass to such Unit Owner's successors in title.

5.3.6 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Unit Owner proposing to modify, make additions to, or rebuild a Unit Common Wall shall first obtain the written consent of the adjoining Unit Owner(s).

5.3.7 If a Unit Common Wall encroaches upon a Unit or the Common Elements, a valid easement for such encroachment and for the maintenance of the Unit Common Wall shall and does exist in favor of the Unit Owners of the Units that share the Unit Common Wall.

#### **5.4 Maintenance of Walls Other Than Unit Common Walls.**

5.4.1 Except for Unit Common Walls covered by Section 5.3 and Community Walls covered by Subsection 5.4.2 below, fences or walls located on or adjacent to a Unit shall be maintained, repaired, and replaced by the Unit Owner.

5.4.2 Any wall or fence that is placed on or along the boundary line between a Unit and (i) an Area of Common Responsibility or (ii) an area outside of the Community (a "**Community Wall**") shall be maintained, repaired, and replaced by the Unit Owner in accordance with the Maintenance Standard, except that the Association shall be responsible for the repair and maintenance of the surfaces of the Community Walls that face the Area of Common Responsibility or area outside of the Community (if the Association has the right to access such area outside of the Community). Except with respect to damage caused by the Association, the Association shall have no responsibility for any structural repair or structural maintenance of any Community Wall. Notwithstanding the foregoing, if any Community Wall or portion thereof is a metal view fence, the Association shall maintain the entire metal view portion of the Community Wall. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments. A perpetual, nonexclusive easement in favor of the applicable Unit Owner and the Association is hereby created on, over, under, through, and across any such Unit and Area

of Common Responsibility, to the extent reasonably necessary, for the purpose of the applicable Unit Owner and/or the Association maintaining, repairing, and replacing any Community Wall subject to this Subsection 5.4.2. Any damage to the Common Elements resulting from the exercise of any easement right granted to a Unit Owner in this subsection shall be promptly restored or repaired by, and at the expense of, the Unit Owner. If any Community Wall described in this Subsection 5.4.2 encroaches upon a Unit or the Area of Common Responsibility, a valid easement for such encroachment and for the maintenance of the Community Wall shall and does exist in favor of the Unit Owner or the Association, as applicable.

**5.5 Maintenance of Retaining Walls.** Retaining walls are designed to support and retain soil. If retaining walls have been constructed on a Unit, the Unit Owner shall not permit excess water to saturate the retained soil and shall maintain the Unit so that surface waters flow freely away from retaining walls. No grass or other heavily irrigated landscape materials may be installed closer than five (5) feet from a retaining wall. Any landscaping closer than five (5) feet from a retaining wall shall be irrigated with a drip system. A Unit Owner shall take all corrective action necessary to immediately repair any leaking irrigation pipes and correct any excess irrigation of plant materials that may cause the retained soil to become saturated. Each Unit Owner shall be responsible for any damage to retaining walls resulting from the failure to comply with this Section 5.5.

**5.6 Installation of Landscaping.** Unless previously installed by Declarant, within ninety (90) days after acquiring a Unit from Declarant, each Unit Owner shall install trees, grass, plants, or other landscaping Improvements (together with any sprinkler system or drip irrigation system sufficient to adequately water the trees, grass, plants, or other landscaping Improvements) within the front yard of the Unit and within any area adjacent to any view fencing. Within one (1) year after acquiring a Unit from Declarant, each Unit Owner shall install trees, grass, plants, or other landscaping Improvements (together with any sprinkler system or drip irrigation system sufficient to adequately water the trees, grass, plants, or other landscaping Improvements) within the rear yard of the Unit. Prior to installing the landscaping, a Unit Owner shall maintain all such yard areas in a weed-free and attractive manner.

## **ARTICLE 6 THE ASSOCIATION**

**6.1 Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Person other than Declarant, the Association shall be organized as a Nevada nonprofit corporation. The Association shall be the entity through which the Unit Owners shall act with respect to all matters contained in this Declaration. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Governing Documents, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Act. The Association shall have the right to finance capital Improvements in the Community by encumbering future Assessments if such action is approved by (i) the written consent or affirmative vote of Unit Owners representing more than fifty

percent (50%) of the votes in the Association and, (ii) upon the expiration of the Period of Declarant Control and for so long as Declarant owns any property described on Exhibit A or Exhibit B, the written consent of Declarant, to the extent permitted by Nevada law.

## **6.2 Directors and Officers.**

6.2.1 During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association. Members of the Board of Directors and officers of the Association appointed by Declarant are not required to be Unit Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors, which must consist of at least three (3) members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

6.2.3 Declarant, after giving notice to Unit Owners, may Record an instrument voluntarily surrendering its right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in such Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

6.2.4 Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Unit Owners other than Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant, not less than one-third (1/3) of the members of the Board of Directors must be elected by Unit Owners other than Declarant. Any member of the Board of Directors elected by Unit Owners pursuant to this Subsection shall be (i) a Unit Owner, or (ii) an officer, employee, agent or director of a corporate Unit Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, a member or manager of a limited liability company that owns a Unit or a fiduciary of an estate that owns a Unit. Prior to having a person's name placed on a ballot for election of directors, such person shall take all actions required by Nevada law to prove such person's eligibility to serve on the Board of Directors. A person shall not be eligible to serve on the Board of Directors if, at the time a person's name is proposed to be placed on a ballot for election of directors, such person (or the Unit Owner if such person is an officer, employee, agent or director of a corporate Unit Owner) is not in compliance with the provisions of the Governing Documents, including the current payment of all Assessments, charges and other fees required thereunder, or any other provision of Nevada law governing the eligibility of directors.

6.2.5 The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with

the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given and taken by the Board of Directors. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, shall have the power to levy reasonable fines against a Unit Owner for a violation of the Governing Documents by the Unit Owner, a guest of the Unit Owner, a tenant of the Unit Owner, or by any Resident of the Unit Owner's Unit, provided that (i) a fine may not be levied for a violation of the Governing Documents committed by an invitee or tenant of the Unit Owner unless the Unit Owner participated in or authorized the violation, had prior notice of the violation or had an opportunity to stop the violation and failed to do so, and (ii) a fine may not be levied for a violation of the Governing Documents that involves a vehicle and is committed by a person who is delivering goods to, or performing services for, the Unit Owner or Unit Owner's tenant or an invitee of the Unit Owner or Unit Owners' tenant. If the Association adopts a policy imposing fines for any violations of the Governing Documents, the Association shall prepare and cause to be delivered by any means allowed by law, including hand-delivered, or sent prepaid by United States mail to the mailing address of each Unit, or to any other mailing address designated in writing by the Unit Owner, a schedule of the fines that may be imposed for those violations.

**6.3 Association Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal rules and regulations (collectively, the "**Association Rules**"). Except as otherwise provided in this Declaration or under the Act, the Association Rules may, among other things, restrict and govern the use of any area within the Community by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or tenant of such Unit Owner. Upon expiration of the Period of Declarant Control and for so long as Declarant owns any property described on Exhibit A or Exhibit B, the adoption, amendment and repeal of any rules and regulations by the Board of Directors shall be subject to review and approval of Declarant, to the extent permitted by Nevada law.

**6.4 Composition of Members.** Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. A Unit Owner (including Declarant) of a Unit shall automatically, upon becoming the Unit Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as the Unit Owner's ownership of the Unit ceases for any reason, at which time the Unit Owner's membership in the Association shall automatically cease.

**6.5 Personal Liability.** Neither Declarant Parties nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant Parties, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided,



however, the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**6.6 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

**6.7 Voting Rights.** Subject to Section 6.8 below, each Unit Owner, including Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit Owner on any Association matter that is put to a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.

**6.8 Voting Procedures.** No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit Owner was acting with the authority and consent of all other Unit Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

**6.9 Transfer of Membership.** The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit and then only to the transferee of ownership to the Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of Record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Nevada. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit Owner thereof. Each purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming a Unit Owner.

**6.10 Suspension of Voting Rights.** If any Unit Owner fails to pay any Assessment or other amounts due to the Association under the Governing Documents within fifteen (15) days after such payment is due, or if any Unit Owner or the Unit Owner's tenant or invitee violates any other provision of the Governing Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit Owner of the violation, the Board of Directors shall have the right to suspend the Unit Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current and until any other infractions or violations of the Governing Documents are corrected.

**6.11 Architectural Review Committee.** The Association may, in the discretion of the Board of Directors from time to time, form an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration. In the event no Architectural Review Committee is formed, the Board of Directors shall perform the functions of the Architectural Review Committee. The Architectural Review Committee will be a Committee of the Board of Directors. The Architectural Review Committee shall consist of such number of regular members and alternate members as may be provided for by resolution of the Board of Directors. So long as Declarant owns any property described on Exhibit A or Exhibit B, Declarant shall have the sole right to appoint and remove the members of the Architectural Review Committee. At such time as Declarant no longer owns any property described on Exhibit A or Exhibit B, the members of the Architectural Review Committee may be appointed by the Board of Directors. Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Review Committee, and in that event Declarant may require, for so long as Declarant owns any property described on Exhibit A or Exhibit B, that specified actions of the Architectural Review Committee, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

**6.12 Conveyance or Encumbrance of Common Elements.** The Common Elements shall not be mortgaged, transferred, dedicated, or encumbered without the prior written consent or affirmative vote of Unit Owners representing at least a majority of the votes in the Association, including a majority of the votes allocated to Units not owned by Declarant. Upon the expiration of the Period of Declarant Control and for so long as Declarant owns any property described on Exhibit A or Exhibit B, the Common Elements shall not be mortgaged, transferred, dedicated, or encumbered without the prior written consent of Declarant, to the extent not prohibited by Nevada law.

**6.13 Change of Use of Common Elements.** Upon (i) adoption of a resolution by the Board of Directors stating that in the opinion of the Board of Directors the then present use of a designated part of the Common Elements is no longer in the best interests of the Unit Owners, (ii) the approval of such resolution by Unit Owners casting at least sixty-seven percent (67%) of the votes entitled to be cast by Unit Owners who are present in person, by proxy or by absentee ballot at a meeting duly called for such purpose and who are entitled to use such part of the Common Elements under the terms of this Declaration, and (iii) the prior written consent of Declarant after the expiration of the Period of Declarant Control and for so long as Declarant owns any property described on Exhibit A or Exhibit B, to the extent permitted by Nevada law, the Board of Directors shall have the power and right to change the use of such property (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board of Directors to accommodate the new use), provided such new use shall be (a) for the benefit of the Members and Residents, as determined by the Board of Directors, and (b) consistent with any deed restrictions, zoning and other municipal regulations restricting or limiting the use of the land. Notwithstanding the foregoing, if the new use requires the expansion of an existing building or structure or construction of a new building or structure, the Board of Directors shall first obtain

the written consent of a majority of the Unit Owners and Residents who own Units or reside within five hundred (500) feet of the proposed location of such building or structure.

**6.14 Contracts with Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, and subject to applicable law, the Association may enter into contracts and transactions with others, including Declarant and its affiliates, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board of Directors or committee of which such person is a member that shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant, its affiliates or any competitor thereof and may vote at the meeting to authorize any such contract, transaction or approval with like force and effect as if such person were not so interested.

**6.15 Commencement of Civil Action.** With respect to any disputes or claims not subject to the requirements of Section 12.20 of this Declaration, the Association may not commence a civil action without the prior written consent or affirmative vote of Unit Owners to which at least a majority of the votes of the Members of the Association are allocated. In addition to the notice and meeting requirements set forth in the Act, at least ten (10) days before the Association commences a civil action, the Association shall provide a written statement to all Unit Owners that includes a reasonable estimate of the costs of the civil action, including reasonable attorneys' fees, an explanation of the potential benefits of the civil action and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and all other disclosures required by law. The provisions of this Section do not apply to a civil action that is commenced to (i) enforce the payment of an Assessment, (ii) enforce the Governing Documents, (iii) enforce a contract with a vendor, (iv) proceed with a counterclaim, or (v) protect the health, safety and welfare of the Members of the Association.

## **ARTICLE 7 ASSESSMENTS**

### **7.1 Preparation of Budgets.**

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt (i) a budget for the Association containing an estimate of the annual revenue of the Association and an estimate of the total amount of funds that the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses (other than Common Expenses that are to be assessed against less than all of the Units pursuant to Subsections 7.2.3 and 7.2.4, and except as otherwise expressly provided for in this

Declaration), including contributions to be made to the reserve fund, and (ii) a budget to provide adequate funding for the reserves for the repair, replacement and restoration of the major components of the Areas of Common Responsibility prepared in accordance with applicable law.

7.1.2 Within thirty (30) days after the adoption of the budgets, the Board of Directors shall send to each Unit Owner a summary of the budgets (with the complete budgets available for review and/or copying at the Association's office upon request) and a statement of the amount of the Common Expense Assessment assessed against each Unit in accordance with Section 7.2 of this Declaration and shall set a date for the meeting of the Unit Owners to consider ratification of the budgets not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budgets, the budgets are ratified, whether or not a quorum is present. If the proposed budgets are rejected, the periodic budgets last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify subsequent budgets proposed by the Board of Directors. The failure or delay of the Board of Directors to prepare or adopt budgets for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay such Unit Owner's allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against the Unit Owner's Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

## **7.2 Common Expense Assessment.**

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for Common Expenses that are to be assessed against less than all of the Units pursuant to Subsections 7.2.3 and 7.2.4, and except as otherwise expressly provided for in this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration, for the purpose of providing funds for the Association to pay Common Expenses. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 Except as otherwise expressly provided for in this Declaration, all Common Expenses shall be assessed against all of the Units in accordance with Subsection 7.2.1 of this Declaration.

7.2.3 If damage to a Unit or other part of the Community is caused, or if any other Common Expense is caused, by the willful misconduct or gross negligence of any Unit Owner or tenant or invitee of a Unit Owner or tenant, the Association shall assess that Common Expense exclusively against such Unit Owner's Unit as a Maintenance Assessment, even if the Association maintains insurance with respect to that damage or Common Expense.

7.2.4 Assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.

7.2.5 All Assessments, fines and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, fines or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, fines and other fees and charges levied against such Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by the successor, provided that any lien on such Unit Owner's Unit shall remain in effect and shall be enforceable according to the terms of this Declaration and the Act.

**7.3 Special Assessments.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special 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 of the Common Elements or any other Areas of Common Responsibility, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Unit Owners representing at least sixty-seven percent (67%) of the votes in the Association who are voting in person, by proxy or by absentee ballot at a meeting duly called for such purpose, which meeting was noticed in compliance with the requirements set forth in N.R.S. 116.3115(9), as amended from time to time. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners. After the expiration of the Period of Declarant Control and for so long as Declarant owns any property described on Exhibit A or Exhibit B, any Special Assessment may be levied only if consented to or approved by Declarant, to the extent permitted by Nevada law.

#### **7.4 Maintenance Assessments.**

7.4.1 If a Dwelling is vacant and the Unit Owner has failed to pay Assessments for more than sixty (60) days, and the Association has provided the Unit Owner with notice and an opportunity for a hearing in the same manner as provided for in the Bylaws for the imposition of a fine, the Association, including its employees, agents and community manager, may, but is not required to, enter the Unit to maintain the exterior of the Dwelling in accordance with the Maintenance Standard or abate a public nuisance as described in N.R.S. 116.310312 if the Unit Owner refuses or fails to do so.

7.4.2 If an action or notice described in Section 9.3 of this Declaration has been filed or Recorded regarding a Unit and the Association has provided the Unit Owner with notice and an opportunity for hearing in the same manner as provided for in the Bylaws for the imposition of a fine, the Association, including its employees, agents and community manager, may, but is not required to, enter the Unit, whether or not the Dwelling is vacant, to maintain the exterior of the Dwelling in accordance with the Maintenance Standard or abate a public nuisance as described in N.R.S. 116.310312 if the Unit owner refuses or fails to take any action or comply with any requirement imposed on the Unit Owner within the time specified by the Association.

7.4.3 If a Unit Owner otherwise fails to maintain the Unit Owner's Unit (including landscaping) in good condition and repair and in accordance with the Maintenance Standard; or if any portion of a Unit is so maintained as to present a public nuisance as described in N.R.S. 116.310312; or if any portion of a Unit is being used in a manner that violates this Declaration; or if damage to a Unit is caused by the willful misconduct or gross negligence of any Unit Owner or tenant or invitee of a Unit Owner or tenant; or if a Unit Owner is failing to perform any of the Unit Owner's obligations under the Governing Documents, the Association, after providing the Unit Owner with notice of such infraction and an opportunity for hearing in the same manner as provided for in the Bylaws for the imposition of a fine, may, but is not required to, enter the Unit and perform the required maintenance, repair or replacement if the Unit Owner refuses or fails to take any action or comply with any requirement imposed on the Unit Owner within the time specified by the Association.

7.4.4 The costs of any maintenance, repair, replacement or abatement authorized pursuant to this Section 7.4, including reasonable inspection fees, notification and collection costs and interest, may be levied against the Unit. The Association shall keep a record of such costs and interest charged against the Unit and has a lien on the Unit for any unpaid amount of the charges. The lien may be foreclosed by the Association in accordance with the provisions of Section 7.11 of this Declaration.

**7.5 Declarant Subsidy.** Declarant may, but shall not be obligated to, reduce the Common Expense Assessment for any fiscal year by payment of a subsidy, which shall be in addition to the Assessments paid by Declarant pursuant to Section 7.2 and may be either a contribution or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget, and if Declarant elects to provide the subsidy as a loan to the Association, such loan also shall be disclosed on the financial statement of the Association. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

**7.6 Assessment Period.** The period for which the Common Expense Assessments are to be levied (the "**Assessment Period**") shall be the calendar year. The first Assessment Period, and the obligation of the Unit Owners to pay Common Expense Assessments, shall commence upon the conveyance of the first Unit to a Purchaser and shall be adjusted according

to the number of months remaining in the fiscal year of the Association. The Board of Directors, in its sole discretion from time to time may change the Assessment Period.

**7.7 Commencement Date of Assessment Obligation.** Until the conveyance of the first Unit to a Purchaser, Declarant shall pay all Common Expenses. All Units described on Exhibit A to this Declaration shall be subject to Assessments upon the conveyance of the first Unit to a Purchaser. Units annexed pursuant to Article 2 of this Declaration shall be subject to Assessments on the date that the Declaration of Annexation annexing the additional Units is Recorded or upon the conveyance of the first Unit to a Purchaser, whichever is later.

**7.8 Rules Regarding Billing and Collection Procedure.**

7.8.1 Common Expense Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board of Directors. Special Assessments may be collected as specified by the Board of Directors. The Board of Directors shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of Assessments, fees, fines and any other costs imposed against a Unit Owner (the “**Collection Policy**”), provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of liability for any Assessment or charge under this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Unit changes during an Assessment Period, but successor Unit Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Unit Owners. Any such credits shall be paid directly between the applicable Unit Owners upon conveyance of the Unit.

7.8.2 The Board of Directors shall, at the same time and in the same manner that the Board of Directors makes the budgets described in Section 7.1 available to each Unit Owner, make available to each Unit Owner the Collection Policy. The Collection Policy must include the responsibility of the Unit Owner to pay the Assessments, fees, fines and other costs imposed against the Unit Owner in a timely manner and the Association’s rights concerning the collection thereof if the Unit Owner fails to pay such Assessments, fees, fines and other costs in a timely manner.

**7.9 Effect of Nonpayment of Assessments; Remedies of the Association.**

7.9.1 Any Assessment, or any installment of an Assessment, not paid within sixty (60) days after the Assessment, or the installment of the Assessment, first became due shall bear interest at the rate prescribed by Nevada law pursuant to N.R.S. 116.3115(3) until the balance is satisfied. In addition, the Board of Directors may establish a late fee to be charged to any Unit Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

7.9.2 The Association shall have a lien on each Unit for: (i) all Assessments levied against the Unit; (ii) all interest, lien fees, late charges and other fees and charges

assessed against the Unit or payable by the Unit Owner of the Unit to cover the costs of collecting any past-due obligation; (iii) all fines levied against the Unit Owner of the Unit; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to a Unit Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by a Unit Owner; (v) any amounts payable to the Association pursuant to Subsection 7.2.3 or any other provision of this Declaration; and (vi) any other costs of collecting any of the foregoing as permitted by the Act. The Recording of this Declaration constitutes Record notice and perfection of the Assessment Lien, and no further Recordation of any claim of lien shall be required. The Association may, at its option, Record a Notice of Lien setting forth the name of the delinquent Unit Owner as shown in the records of the Association, the legal description or street address of the Unit against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including interest, lien Recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Unit, the Association shall make a written demand to the delinquent Unit Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Unit.

7.9.3 Unless otherwise provided by applicable law, the Assessment Lien shall have priority over all liens and encumbrances except for: (i) liens and encumbrances Recorded prior to the Recordation of this Declaration; (ii) liens for real property taxes and other governmental assessments and charges; and (iii) the lien of any bona fide First Mortgage Recorded before the date on which the Assessment sought to be enforced by the Association became delinquent; provided, however, that the Assessment Lien is prior to any such First Mortgage to the extent of any charges incurred by the Association on a Unit pursuant to N.R.S. 116.310312 and also to the extent of the Common Expense Assessment that became due during the nine (9) months immediately preceding the institution of an action to enforce the Assessment Lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Association ("FNMA") require a shorter period of priority for the Assessment Lien. If federal regulations adopted by FHLMC or FNMA require a shorter period of priority for the Assessment Lien, the period during which the Assessment Lien is prior to the lien of any bona fide First Mortgage described in (iii) above must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the Assessment Lien must not be less than the six (6) months immediately preceding institution of an action to enforce the Assessment Lien, unless otherwise provided by applicable law. All Assessments and charges against the Unit, including those that accrue before the six (6) month or nine (9) month period, as applicable, prior to the institution of an action to enforce the Assessment Lien, shall remain the obligation of the defaulting Unit Owner. Any delinquent Assessments, fines and other fees and charges that are extinguished or otherwise uncollectible by the Association pursuant to this Section may be reallocated and assessed to all Units as a Common Expense.



7.9.4 Except as otherwise provided in the Act, the Association shall not be obligated to release the Assessment Lien as to any portion of past due Assessments until all such delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, title report fees, collection costs and all other sums payable to the Association by the Unit Owner of the Unit have been paid in full. In no event shall such release of the Assessment Lien for past due Assessments release the lien of this Declaration as to all other Assessments to become due hereunder.

7.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, fees, charges, late charges, penalties and fines, together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, or (ii) bringing an action to foreclose the Assessment Lien against the Unit in the manner provided under the Act. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

**7.10 Notice of Delinquent Assessment.** No action shall be brought to foreclose the Assessment Lien unless a "**Notice of Delinquent Assessment**" is deposited in the United States mail, certified or registered, postage prepaid with return receipt requested, to the delinquent Unit Owner. Such Notice of Delinquent Assessment must state (i) the amount of the Assessment and other sums that are due (including interest, costs and attorneys' fees), (ii) a description of the Unit against which the Assessment was made, (iii) the name of the Record Unit Owner, and (iv) all other information required by the Act. The Notice of Delinquent Assessment shall be signed and acknowledged by an officer of the Association. If a Unit Owner subject to the lien under this Article files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

**7.11 Foreclosure Sale.** The Association may enforce the lien by sale of the applicable Unit. In exercising its power of sale, the Association shall comply with such requirements and conditions and shall follow such procedure as may be established under the Act relative to the enforcement of such liens. Unless otherwise permitted by law, no sale to foreclose an Assessment Lien may be conducted until (i) the Association, its agent or attorney has first executed and Recorded a notice of default and election to sell the Unit to satisfy the Assessment Lien ("**Notice of Default**"), which contains all information required by the Act, and (ii) the delinquent Unit Owner or such Unit Owner's successor in interest has failed to pay the amount of the delinquent Assessment and interest, costs (including attorneys' fees) and expenses incident to its enforcement for a period of ninety (90) days. Such ninety (90) day period shall commence on the later of (a) the date on which the Notice of Default is Recorded, or (b) the date on which a copy of the Notice of Default is mailed by certified or registered mail with postage prepaid and return receipt requested to the Unit Owner or such Unit Owner's successor in interest at the Unit Owner's address, if the address is known, and otherwise to the

address of the Unit. The Association, its agent or attorney shall, after the expiration of such ninety (90) day period and before the foreclosure sale, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting, by certified or registered mail with postage prepaid and return receipt requested, to the Unit Owner or such Unit Owner's successor in interest at the Unit Owner's address if known, and otherwise to the address of the Unit, and a copy of the notice of sale must be served on or before the date of first publication or posting in the manner prescribed by law.

**7.12 Curing of Default.** Upon the timely curing of any default for which a Notice of Lien or a Notice of Delinquent Assessment was Recorded by the Association, the Association shall Record an appropriate release of the applicable Notice(s) upon payment by the defaulting Unit Owner of a reasonable fee to be determined by the Board of Directors to cover the cost of preparing and Recording such release.

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

**7.14 Exemption of Unit Owner.** No Unit Owner may claim an exemption from liability for payment of Assessments, fines and other fees and charges levied pursuant to the Governing Documents by waiver and nonuse of any of the Areas of Common Responsibility and facilities or by the abandonment of the Unit Owner's Unit.

**7.15 Certificate of Payment.** The Association on written request shall furnish to a lienholder, Unit Owner, or person designated by a Unit Owner a statement setting forth the amount of unpaid Assessments against the Unit Owner's Unit. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

**7.16 No Offsets.** All Assessments, fines and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, fines, other fees and charges shall be permitted for any reason, including a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents or the Act.

**7.17 Capital Fund.** To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person acquiring a Unit from Declarant shall pay to the Association immediately upon becoming a Unit Owner the sum of \$200.00. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be

considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**7.18 Reserve Assessments.** The Association shall establish and maintain, from Common Expense Assessments, an adequate reserve fund to provide for the replacement of Improvements to the Areas of Common Responsibility. In addition to the funds collected through Common Expense Assessments, each Person acquiring a Unit from Declarant shall pay to the Association immediately upon becoming a Unit Owner the sum of \$200.00. Funds paid to the Association pursuant to this Section shall be deposited in the reserve fund of the Association. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Notwithstanding any provision of the Governing Documents to the contrary, to establish adequate reserves, the Board of Directors may, without seeking or obtaining the approval of the Unit Owners, impose any necessary and reasonable Reserve Assessments against the Units. Any Reserve Assessments imposed by the Board of Directors must be based on the reserve study prepared in accordance with applicable law.

**7.19 Surplus Funds.** Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any additional reserves may, in the discretion of the Board of Directors and with the written approval of Declarant during the Period of Declarant Control, either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability or be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments.

**7.20 Administrative Fee.** Each Person acquiring a Unit (other than Declarant) shall pay to the Association, or to its community manager if directed to do so by the Board of Directors, immediately upon becoming a Unit Owner an administrative fee in such amount as is established from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit.

## **ARTICLE 8 INSURANCE**

### **8.1 Scope of Coverage.**

8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Person other than Declarant, the Association shall maintain, to the extent reasonably available and subject to reasonable deductibles, the following insurance coverages in accordance with the requirements of the Act:

(i) Property insurance on the Areas of Common Responsibility issued under a form that provides "All Risk of Direct Physical Loss" coverage in an amount equal to the maximum insurable replacement value of the Areas of Common Responsibility as determined by the Board of Directors; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the

current replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy.

(ii) Commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than \$2,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or relating to the use, ownership or maintenance of the Areas of Common Responsibility or arising out of or relating to the performance by the Association of its maintenance and other obligations under the Governing Documents, whether on the Common Elements, any Unit or any public or private right-of-way. Such policy shall include a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Nevada.

(iv) Directors' and officers' liability and errors and omissions insurance with limits to be determined by the Board of Directors but not less than \$1,000,000, covering all the directors, officers, committee members, employees, agents, and volunteers of the Association, naming the Association as the owner and named insured.

(v) Crime insurance that includes coverage for dishonest acts by members of the Board of Directors and the officers, employees, agents and volunteers of the Association and that extends coverage to any business entity that acts as the community manager of the Association and the employees of that entity. Such insurance may not contain a conviction requirement, and the minimum amount of the policy must be not less than an amount equal to three (3) months of aggregate Common Expense Assessments on all Units plus reserve funds, or \$5,000,000, whichever is less.

(vi) Such other insurance (including employment practices liability insurance) as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the officers and the members of any committee of the Board of Directors or the Unit Owners.

8.1.2 If the insurance described in Subsections 8.1.1(i) through (v) is not reasonably available, the Association promptly shall cause notice of that fact to be delivered by any means allowed by law, including hand delivered or sent prepaid by United States mail to all Unit Owners.

8.1.3 The insurance policies purchased by the Association shall name the Association as the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer) and contain the following provisions:

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements and the Unit Owner's membership in the Association.

(ii) The insurer waives its rights to subrogation under the policies against Unit Owners and members of their household.

(iii) No act or omission by any Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy.

(iv) If, at the time of a loss insured under an insurance policy purchased by the Association the loss is also insured under an insurance policy purchased by a Unit Owner, the Association's policy shall provide primary coverage

8.1.4 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) A "severability of interest" endorsement that shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

(ii) "Agreed Amount" and "Inflation Guard" endorsements.

**8.2 Payment of Premiums.** Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be included in the budget of the Association and shall be paid for by the Association.

**8.3 Allocation of Insurance Deductible.** The Association shall maintain in its reserve account an amount sufficient to pay the deductible amounts applicable to its insurance policies. If the Association submits a claim to an insurance carrier that is then or later determined by the Board of Directors to be the result of negligence or willful misconduct of a Unit Owner, the cost to the Association of any insurance deductible shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

**8.4 Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association or an insurance trustee designated for that purpose and not to any mortgagee or beneficiary under a deed of trust. The Association or insurance trustee shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in N.R.S. 116.31135.

**8.5 Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to Section 8.1 of this Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**8.6 Annual Insurance Review.** The Board of Directors shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Areas of Common Responsibility in light of increased construction costs, inflation, practice in the area of which the Community is located or any other factor that tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Unit Owners and of the Association. If the Board of Directors determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

**8.7 Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Common Responsibility that are damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Unit Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association, and the Board of Directors may, without the necessity of a vote of the Unit Owners, levy an equal assessment against all Unit Owners. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction. Any assessment levied pursuant to this Section 8.7 will be deemed to be a part of the Assessments and will be secured by the Assessment Lien. If all of the Areas of Common Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Common Responsibility shall be used to restore the damaged area to a condition compatible with the remainder of the Community and that is not in violation of any state or local health or safety statute or ordinance. The remainder of the proceeds shall either (a) be distributed to all Unit Owners or lien holders in proportion to the allocated interest of each Unit Owner as determined pursuant to Section 2.6 of this Declaration, or (b) be retained by the Association as an additional capital reserve or used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

## **ARTICLE 9 RIGHTS AND OBLIGATIONS OF MORTGAGEES**

**9.1 First Mortgagee's Right of Inspection of Records.** Any First Mortgagee will be entitled, upon written request, to: (i) inspect the books and records of the Association during

normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

**9.2 No Priority over First Mortgagees.** No provision of this Declaration gives or shall be construed as giving any Unit Owner or other Person priority over any rights of a First Mortgagee of a Unit in the case of the distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Elements.

**9.3 Obligations of Mortgagees.** A Person who holds a security interest in a Unit shall provide the Association with the Person's contact information as soon as reasonably practicable, but not later than thirty (30) days after the Person: (i) files an action for recovery of a debt or enforcement of any right secured by the Unit pursuant to N.R.S. 40.430; or (ii) Records or has Recorded on such Person's behalf a notice of a breach of obligation secured by the Unit and the election to sell or have the Unit sold pursuant to N.R.S. 107.080.

## **ARTICLE 10 RESERVATION OF DEVELOPMENTAL AND SPECIAL DECLARANT'S RIGHTS**

Pursuant to N.R.S. 116.2105(1)(h), Declarant reserves all of the developmental and special declarant's rights in the Community afforded under N.R.S. 116.039 and N.R.S. 116.089, subject to the expiration deadlines set forth below. Specifically, but without limitation, Declarant reserves the following rights:

**10.1 Developmental Rights.** Declarant hereby reserves, for a period of twenty-five (25) years following the Recordation of this Declaration, all developmental rights under N.R.S. 116.039. Declarant specifically reserves the right to withdraw real estate described on Exhibit A from the Community until the first Unit has been conveyed to a Purchaser. If Declarant elects to add any portion of the Additional Property to the Community pursuant to Article 2 of this Declaration, each Unit and Common Element within such portion of the Additional Property, when annexed, shall be deemed a "separate portion" of the Community (for purposes of N.R.S. 116.211(4)), and Declarant hereby reserves the right to withdraw any such Unit or Common Element so annexed until the first Unit in such separate portion has been conveyed to a Purchaser.

**10.2 Right to Complete Improvements and Construction Easement.** Declarant hereby reserves (i) the right, for a period of twenty-six (26) years following the Recordation of this Declaration, to complete the construction of Improvements in the Community and (ii) an easement over the Community for the purpose of doing so. Any damage caused to a Unit or the Common Elements by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

**10.3 Offices, Model Homes and Promotional Signs.** Declarant reserves the right to maintain offices for sales and management and models as provided in Article 3 above, and to maintain signs in the Areas of Common Responsibility until Declarant no longer owns any property described on Exhibit A or Exhibit B, or for a period of twenty-six (26) years following Recordation of this Declaration, whichever occurs first.

**10.4 Use of Easements.** Declarant reserves the right to use easements through the Common Elements and all other Areas of Common Responsibility for the purpose of making Improvements within the Community or within the Additional Property until Declarant no longer owns any property described on Exhibit A or Exhibit B, or for a period of twenty-six (26) years following the Recordation of this Declaration, whichever occurs first.

**10.5 Master Association.** Declarant reserves the right to make the Community subject to any master homeowners association at any time during the Period of Declarant Control.

**10.6 Merger or Consolidation.** Declarant reserves the right to merge or consolidate the Association with another common-interest community of the same form of ownership at any time during the Period of Declarant Control.

**10.7 Appointment and Removal of Directors and Officers.** Declarant reserves the right to appoint and remove the Board of Directors and the officers of the Association or any master association or any member of the Board of Directors as set forth in Section 6.2 above, for the time period set forth therein.

## **ARTICLE 11 ADDITIONAL DISCLOSURES, DISCLAIMERS AND RELEASES**

**11.1 Post Tension Concrete System.** Due to expansive soil conditions, Dwellings will be built using a post-tension concrete system (“**System**”). The System involves placing steel cables under high tension in the concrete slab located beneath the Dwelling. Therefore, any attempt to alter or pierce the foundation (e.g., sawing, cutting or drilling) could damage the integrity of the System and/or cause serious injury or damage to persons and personal property. Each Unit Owner and Resident hereby agrees (i) to not cut into or otherwise tamper with the System; (ii) to not knowingly permit or allow any other person to cut into or tamper with the System so long as the Unit Owner or Resident owns or occupies the Unit; (iii) to disclose the existence of the System to any person who rents, leases or purchases the Unit; and (iv) that such Unit Owner and/or Resident will not be able to install a floor safe.

### **11.2 High Power Electric Transmission Lines; Release of Claims.**

11.2.1 High power electric transmission lines and related towers, systems and other equipment are located immediately adjacent to the northern boundary of the Community, and may be upgraded and supplemented from time to time. The high power electric transmission lines, related towers, systems and other equipment are hereinafter referred to as



the “**Electric Facilities.**” Each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges and agrees as follows:

(i) The Community may now or in the future be exposed to electromagnetic fields from the Electric Facilities.

(ii) The Declarant Parties do not claim any expertise concerning such conditions and make no representations, warranties or statements, express or implied, regarding such Electric Facilities (except to note their existence), or regarding any damage or injury that may occur as a result of the proximity of the Electric Facilities to the Property.

11.2.2 Each Unit Owner and Resident, for himself or herself and his or her family, invitees, and licensees, assumes any and all risks as may now or hereafter be or become associated with Electric Facilities or any new or replacement equipment or systems. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Unit Owner or Resident or the family, invitees, or licensees of any Unit Owner or Resident for any claims or damages to persons or property resulting, directly or indirectly, from the existence, operation or maintenance of the Electric Facilities.

**11.3 Flood Control Channel.** A flood control/drainage channel is located approximately 1/10 mile to the west of the Community, which can pose dangerous or life threatening situations for unsupervised children and adults.

**11.4 No Access to Adjacent Community.** Adjacent to the Community at the northwest corner of Centennial Parkway and Losee Road is a community known as “Del Webb North Ranch.” Del Webb North Ranch is not part of the Community, and the community center and other amenities located within Del Webb North Ranch are not amenities of the Community and may not be accessed by the residents of the Community.

**11.5 Views Not Guaranteed.** Although certain Units in the Community at any point in time may have particular views, no express or implied easements exist for views or for the passage of light and air to any Unit. Declarant Parties and the Association make no representations or warranties whatsoever, express or implied, concerning the view that any Unit will have whether at the date this Declaration is Recorded or thereafter. Further, the payment of any premium for any Unit does not constitute a guarantee of any view the Unit may have now or in the future. Any view that exists at any point in time for a Unit may be impaired or obstructed by further construction within the Community, including by construction of Improvements (including landscaping) by Declarant, construction of Improvements by third parties and by the natural growth of landscaping. No third party, including any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Unit or any view of a Unit from any other property.

**11.6 Release.** Each Unit Owner and Resident hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including strict liability) arising out of or relating to any nuisance,

inconvenience, disturbance, injury or damage to persons and property resulting from activities, conditions, or occurrences described in this Article 11.

## **ARTICLE 12 GENERAL PROVISIONS**

### **12.1 Enforcement.**

12.1.1 The Association or any Unit Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

12.1.2 All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In the event Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Governing Documents, the prevailing party in any such action (including any such action maintained under Section 12.20) shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in the action.

12.1.3 The Association shall be obligated to investigate allegations of violations of any covenant, restriction, or rule set forth in any of the Governing Documents; provided that the Association may, but shall not be obligated to, investigate anonymous allegations. Following such investigation, the decision to take or not take enforcement action shall, in each case, be in the discretion of the Board of Directors, in the exercise of its business judgment. Without limiting the generality of the Board of Directors' discretion, if the Board of Directors reasonably determines that, under the facts and circumstances (i) a covenant, restriction, or rule is, or is likely to be construed as, inconsistent with the applicable law; (ii) the Association's position is not strong enough to justify taking enforcement action, (iii) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests to pursue an enforcement action, the Board of Directors shall not be obligated to take such action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, or estop the Association from enforcing any other covenant, restriction, or rule. Notwithstanding the above, if, in the discretion of Declarant as long as Declarant owns any property described in Exhibit A or Exhibit B, the Association fails to take appropriate action to enforce any provision of the Governing Documents in accordance with its rights and responsibilities, Declarant may take such enforcement action on behalf of the Association. Declarant shall not take such action without first providing the Association written notice and a reasonable opportunity to take such action on its own.

**12.2 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof, and the remainder of the Declaration shall remain in full force and effect. If any provision herein is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulations, then a court or the Association, as applicable, may interpret, construe, rewrite or revise such provision to the fullest extent allowed by law, so as to make such provision valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

**12.3 Duration.** Unless amended in accordance with the provisions of Section 12.5 below, the covenants and restrictions of this Declaration shall run with and bind the Community, for a term of fifty (50) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

**12.4 Termination of Community.** The Community may be terminated only in the manner provided for in the Act.

**12.5 Amendment.**

12.5.1 Except as otherwise provided by the Act, and except in cases of amendments that may be executed by a Declarant under N.R.S. 116.2109 or 116.211, by the Association under N.R.S. 116.1107, 116.2106, Subsection 3 of N.R.S. 116.2108, Subsection 1 of N.R.S. 116.2112 or N.R.S. 116.2113, or by certain Unit Owners under Subsection 2 of N.R.S. 116.2108, Subsection 1 of N.R.S. 116.2112, Subsection 2 of N.R.S. 116.2113 or Subsection 2 of N.R.S. 116.2118, and except as limited by Subsections 12.5.2, 12.5.3 and 12.20.9 of this Declaration, and subject to the provisions of Subsection 12.5.4 of this Declaration, this Declaration, including the Plat, may be amended only by the affirmative vote or written consent, or any combination thereof, of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

12.5.2 Except to the extent expressly permitted or required by the Act, an amendment to the Declaration shall not change the boundaries of any Unit, change the allocated interests of a Unit or change the uses to which any Unit is restricted, in the absence of unanimous consent of only those Unit Owners whose Units are affected and the consent of a majority of the Unit Owners of the remaining Units in the Community.

12.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Developmental Right, Special Declarant's Right or Period of Declarant Control unless Declarant approves the amendment in writing.

12.5.4 During the Period of Declarant Control, Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Act or any other applicable law if the amendment does not materially and adversely affect the rights of any Unit Owner, (ii) correct any error or inconsistency in the Declaration if the amendment does not materially

and adversely affect the rights of any Unit Owner, (iii) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, or (iv) comply with the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Community, the Plat or the Governing Documents is required by law or requested by Declarant.

12.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 12.5.1 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Declarant pursuant to Subsection 12.5.4 of this Declaration or the Act shall be executed by Declarant and shall be Recorded. Any amendment shall be effective only upon Recordation.

**12.6 Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

**12.7 Notices.** Except as otherwise provided in this Declaration or applicable law, all notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be delivered to any mailing or electronic mail address designated by the Unit Owner. If a Unit Owner has not designated a mailing or electronic mail address to which a notice must be delivered, the Association may deliver notices by (i) hand delivery to each Unit Owner, (ii) United States mail, postage paid, or commercially reasonable delivery service to the mailing address of the Unit, (iii) electronic means, if the Unit Owner has given the Association an electronic mail address, or (iv) any other method reasonably calculated to provide notice to the Unit Owner. A Unit Owner may change the Unit Owner's address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one (1) person, notice to one (1) of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file the Unit Owner's correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

**12.8 Binding Effect.** By acceptance of a deed or by acquiring any ownership interest in any portion of the Community, each Person, for such Person and such Person's heirs, personal representatives, successors, transferees, and assigns, binds himself or herself, his or her heirs, personal representatives, successors, transferees, and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Governing Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Governing Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences such

Person's intent that all the restrictions, conditions, covenants, rules and regulations contained in the Governing Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Governing Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Governing Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

**12.9 Gender.** The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

**12.10 Topic Headings.** The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

**12.11 Survival of Liability.** The termination of membership in the Association shall not relieve or release any such former Unit Owner or Member from any liability or obligation arising out of or relating to the Association during the period of such ownership or membership, or impair any rights or remedies that the Association may have against such former Unit Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

**12.12 Joint and Several Liability.** In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Governing Documents shall be joint and several.

**12.13 Guests and Tenants.** Each Unit Owner shall be responsible for compliance by the Unit Owner's agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Governing Documents. A Unit Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

**12.14 Number of Days.** In computing the number of days for purposes of any provision of the Governing Documents, all days shall be counted including Saturdays, Sundays and legal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the next day that is not a Saturday, Sunday or legal holiday shall be deemed to be the final day.

**12.15 Notice of Violation.** The Association shall have the right to Record a written notice of a violation by any Unit Owner of any restriction or provision of the Governing

Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps that must be taken by the Unit Owner to cure the violation. Recordation of a notice of violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Governing Documents. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall Record a notice of compliance that shall state the legal description of the Unit against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

**12.16 No Absolute Liability.** No provision of the Governing Documents shall be interpreted or construed as imposing on any Unit Owner absolute liability for damage to the Common Elements or the Units. A Unit Owner shall only be responsible for damage to the Common Elements or Units caused by the Unit Owner's negligence or intentional acts.

**12.17 Governing Law.** The provisions of this Declaration shall be liberally construed to promote and effectuate the purpose of the Association as set forth in this Declaration. The provisions of this Declaration shall be construed and governed by the laws of the State of Nevada. This Declaration is intended to comply with the provisions of the Act. In the event any provision of this Declaration is held to be in violation of the Act, this Declaration shall be deemed amended to the extent necessary to comply with the Act.

**12.18 Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Design Guidelines or Association Rules, this Declaration shall control except to the extent the Declaration is inconsistent with the Act. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Design Guidelines, the Bylaws shall control.

**12.19 References to this Declaration in Deeds.** Deeds to and instruments affecting any Unit or any other part of the Community may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee, Unit Owner or other Person claiming through any instrument and such grantee's, Unit Owner's or other Person's heirs, executors, administrators, successors and assigns.

**12.20 Dispute Notification and Resolution Procedure.** All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Unit Owner(s) against any one or more of the Declarant Parties (other than claims under the limited warranty provided by Declarant to a Unit Owner (the “**Limited Warranty**”) to the extent applicable), or (iii) by both the Association and any Unit Owner(s) against any one or more of the Declarant Parties (other than claims under the Limited Warranty to the extent applicable), arising out of or relating to the Community, including the Declaration or any other Governing Documents, the use or condition of the Community or the design or construction of or any condition on or affecting the Community, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Dwellings) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Community or any Improvements (collectively, “**Dispute(s)**”) shall be subject to the provisions of this Section 12.20. Declarant and each Unit Owner acknowledge that the provisions set forth in this Section 12.20 shall be binding upon current and future Unit Owners of the Community and upon the Association, whether acting for itself or on behalf of any Unit Owner(s). Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of the Limited Warranty, and claims under the Limited Warranty will, subject to the terms of the Limited Warranty, be arbitrated in accordance with the arbitration provisions set forth in the Limited Warranty (to the extent applicable).

12.20.1 Claim Notice. Any Person (including the Association) with a Dispute claim shall notify the applicable Declarant Party (the “**Notified Declarant Party**”) in writing within sixty (60) days after becoming aware of the Dispute by certified mail, return receipt requested, of the claim, which writing shall include (i) in reasonable detail, the defects or any damages or injuries to each Improvement that is the subject of the Dispute, (ii) in reasonable detail, the cause of the defects if the cause is known, the nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each Improvement, and (iii) an expert opinion concerning the cause of the defects and the nature and extent of the damage or injury resulting from the defects based on a representative sample of the components of the Improvements involved in the Dispute (the “**Claim Notice**”).

12.20.2 Right to Inspect. Within forty-five (45) days after receipt of the Claim Notice, the Notified Declarant Party and the Notified Declarant Party’s representatives, upon written request to the claimant, shall be entitled to inspect the property that is the subject of the Dispute to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. After reasonable notice to the claimant and at reasonable times, the Notified Declarant Party and the Notified Declarant Party’s representatives shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by the Notified Declarant Party (provided the Notified Declarant Party shall repair or replace any property damaged or destroyed during such inspection or testing), provided that all such activities are reasonably necessary to establish the existence of the defect, which right shall continue until such time as the Dispute is resolved as provided in Subsection 12.20.3.

12.20.3 Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Notified Declarant Party and the claimant shall meet at a mutually acceptable place within the Community or some other mutually acceptable place to discuss the Dispute. The parties shall negotiate in good faith in an attempt to resolve the Dispute. If the Notified Declarant Party elects to take any corrective action, the Notified Declarant Party and the Notified Declarant Party's representatives and agents shall be provided full access to the Community and the property that is the subject of the Dispute at reasonable times and upon reasonable notice to the claimant to take and complete corrective action.

12.20.4 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Subsections 12.20.2 and 12.20.3 shall be construed to impose any obligation on the Notified Declarant Party to inspect, test, repair or replace any item of the Community for which the Notified Declarant Party is not otherwise obligated under applicable law or the Limited Warranty. The right of the Notified Declarant Party to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and Recorded by the Notified Declarant Party.

12.20.5 Mediation. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Subsection 12.20.3 above within ninety (90) days after delivery of the Claim Notice, the Person who delivered the Claim Notice shall select a mediator within ten (10) days after such ninety (90) day period. The mediator shall be subject to the approval of the Notified Declarant Party. If the Notified Declarant Party and the claimant fail to agree upon a mediator within twenty (20) days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator qualified in the area pertaining to the Dispute. If the Person who delivered the Claim Notice fails to timely submit the Dispute to mediation, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. No person shall serve as a mediator in the Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Notified Declarant Party or any other Declarant Party without complying with the procedures described in this Subsection 12.20.5.

(i) Position Memoranda; Dispute Materials; Pre-Mediation Conference. Within fifteen (15) days after the selection of the mediator, each party shall (i) submit a brief memorandum setting forth its position with regard to the issues that need to be resolved, and (ii) provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the Dispute that are not



privileged. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within thirty (30) days following the submittal of the memoranda and shall be concluded within forty-five (45) days following the submittal of the memoranda unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Community is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable contractors, subcontractors, brokers, suppliers, architects, engineers and any other Persons providing materials or services in connection with the construction of any Improvement upon or benefiting the Community designated by a Notified Declarant Party may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. Before the mediation begins, the Person who delivered the Claim Notice shall deposit \$50.00 with the mediation service, and each other party to the mediation shall deposit with the mediation service, in equal shares, the remaining amount estimated by the mediation service as necessary to pay the fees and expenses of the mediator for the first session of mediation and shall deposit additional amounts demanded by the mediation service as incurred for that purpose. Unless otherwise agreed, the total fees for each day of mediation and the mediator must not exceed \$750.00 per day. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

12.20.6 Arbitration. Should mediation pursuant to Subsection 12.20.5 above not be successful in resolving the Dispute, then the Person who delivered the Claim Notice shall have ninety (90) days after the date of termination of the mediation to submit the

Dispute to binding arbitration. If timely submitted, such Dispute shall be resolved by binding arbitration through the American Arbitration Association in accordance with the Construction Industry AAA Rules, as modified or as otherwise provided in this Subsection 12.20.6. If the Person who delivered the Claim Notice fails to timely submit the Dispute to arbitration within the ninety (90) day period, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. A Person with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No Person may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. All Declarant Parties and any Person(s) with a Dispute and/or submitting a Claim Notice, together with any additional Persons who agree to be bound by this Subsection 12.20.6, such as contractors, subcontractors, brokers, suppliers, architects, engineers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Community (collectively, the "**Bound Parties**"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Subsection 12.20.6, and waive the right to have the Dispute resolved by a court, including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause any Person who may be liable to any other Bound Party to be included in the arbitration proceeding. Subject to the limitations imposed in this Subsection 12.20.6, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Community is located.

(ii) Arbitrator. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Community. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein or in the manner prescribed by the American Arbitration Association.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay. The arbitrator shall, not later than five (5) days after selection provide to the parties to the Dispute an informational statement relating to the arbitration of the Dispute. The written informational statement (a) must be written in plain English; (b) must explain the procedures and applicable law relating to the arbitration of the Dispute, including the procedures, timelines and applicable law relating to confirmation of an award pursuant to N.R.S. 39.239, vacation of an award pursuant to N.R.S. 38.241, judgment on an award pursuant to N.R.S. 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and (c) must be accompanied by a separate form acknowledging that the party has received and read the informational

statement, which must be returned to the arbitrator by the party not later than ten (10) days after receipt of the informational statement.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 12.20.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) Arbitration Award. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after conclusion of the arbitration hearing. The arbitrator's award may be enforced as provided for in N.R.S. 38.105 and Nevada Arbitration Rule 19, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held, or, as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

12.20.7 WAIVERS. NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH PERSON, FOR SUCH PERSON AND SUCH PERSON'S HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 12.20 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 12.20. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND ALSO WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES

AS PROVIDED IN THIS SECTION 12.20, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE OR SHE IS GIVING UP ANY RIGHTS HE OR SHE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

12.20.8 Statutes of Limitation and Repose. Except as otherwise provided under N.R.S. 40.695, nothing in this Section 12.20 shall be considered to toll, stay, reduce or extend any applicable statute of limitation or repose.

12.20.9 Required Consent of Declarant to Modify. This Section 12.20 shall not be amended except in accordance with Subsection 12.5.1 of this Declaration and with the express written consent of Declarant.


**12.21 Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest. The “lives in being” for computing the period of perpetuities shall be (i) those that would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board of Directors who are living at the time the period of perpetuities starts to run on the challenged interest.

**12.22 Unit Owner’s Acknowledgment of Limited Warranty.** Each Unit Owner, by accepting any interest in any portion of the Community and becoming a Unit Owner, acknowledges and agrees that Declarant has provided a Limited Warranty protecting the Unit Owner against deficiencies and structural defects in the construction of the Unit and the Common Elements as more particularly set forth in the Limited Warranty (the “**Defects**”). The Limited Warranty describes the terms and conditions of the Unit Owner’s rights and remedies with respect to the Defects. Each Unit Owner agrees to comply with the terms and conditions of the Limited Warranty in the event any Defects occur during the term of the Limited Warranty.

**12.23 Limitation of Liability.** Notwithstanding anything to the contrary in this Declaration, each Unit Owner, by accepting any interest in any portion of the Community and becoming a Unit Owner, acknowledges and agrees that the Declarant Parties shall not have any personal liability to the Association or any Unit Owner, Member or any other Person, arising out of, relating to or resulting from (including resulting from action or failure to act with respect to) this Declaration or the Association, except, in the case of Declarant (or its assignee) to the extent of its interest in the Community and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets or be a lien upon such other assets of the judgment debtor.

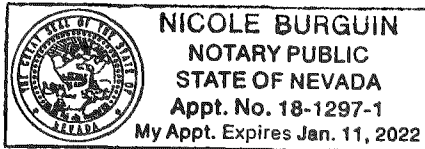
**DECLARANT:**

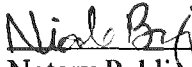
PN II, INC., a Nevada corporation d/b/a Pulte Homes of Nevada

By:   
Quincy Edwards, Vice President of Land

STATE OF NEVADA            )  
  ) ss.  
County of Clark            )

The foregoing instrument was acknowledged before me this 3<sup>RD</sup> day of SEPTEMBER, 2019 by Quincy Edwards, the Vice President of Land for PN II, INC., a Nevada corporation d/b/a Pulte Homes of Nevada, on behalf of the corporation.



  
Notary Public   NICOLE BURGUIN

**EXHIBIT A**  
**PROPERTY SUBMITTED TO COMMUNITY**

UNITS:

Lots 32, 33, 34 and 35, BINION 20, as shown by final map thereof on file in Book 159 of Plats, page 91, Official Records of Clark County, Nevada.

COMMON ELEMENTS:

Common Elements A, B, C, D, F, G, H and I, BINION 20, as shown by final map thereof on file in Book 159 of Plats, page 91, Official Records of Clark County, Nevada.

**EXHIBIT B**  
**ADDITIONAL PROPERTY**

UNITS:

Lots 1 through 31 and 36 through 109, BINION 20, as shown by final map thereof on file in Book 159 of Plats, page 91, Official Records of Clark County, Nevada.

## EXHIBIT C

### APPLICATION OF SHADING RESTRICTIONS

This Exhibit describes the steps that must be taken to determine the maximum allowable height of landscaping, structures and Improvements (as applicable an “Obstacle”) to insure that it does not interfere with the output of neighboring Solar Collection Devices resulting in Prohibited Shading.

There are three pieces of information that are needed to determine the maximum allowable height of an Obstacle (“Maximum Obstacle Height”):

- The horizontal distance between the closest point of the Obstacle and the Solar Collection Devices (“D”)
- The height of the lowest point of the Solar Collection Devices from the ground (“H1”)
- The difference in height between the base of the house and the base of the Obstacle (“H2”)

The distances in Figure 1 will be referenced throughout this Exhibit.

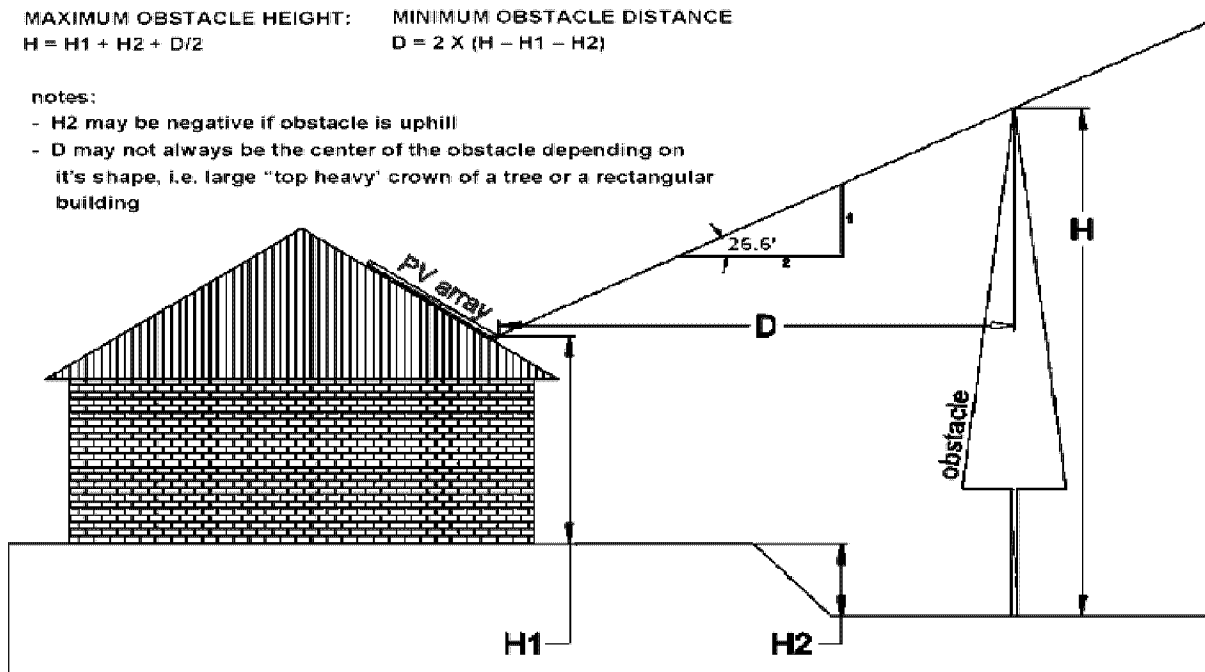


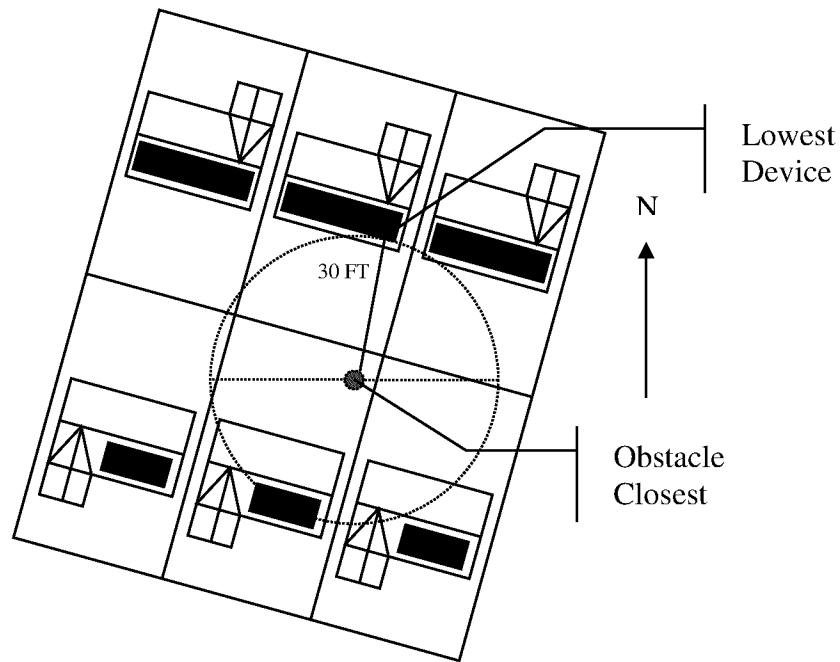
Figure 1 - Determining Height between Two Relevant Points

**STEP 1** To begin, identify the closest point of the Obstacle, where the Obstacle is at its tallest height (“Closest Obstacle Point”). For example, trees are often tallest at their trunk. For trees that are tallest at their trunk, the Closest Obstacle Point would



be the side of the trunk nearest to the Solar Array. For a second example, if the Obstacle is a rectangular building with a flat roof, then the Closest Obstacle Point would be the side of the building nearest to the Solar Collection Devices.

**STEP 2** The second step is to measure the horizontal distance (“D”) (not the angled distance) between the Closest Obstacle Point and the lowest point of the subject Solar Collection Devices (“Lowest Device Point”) (see Figure 2). The Lowest Device Point is the same as the closest point on the Solar Collection Devices. This distance should be measured for all subject Solar Collection Devices that are located within the potential shading area of the Obstacle. The potential shading area is North of due East or West of the Obstacle. In the example shown in Figure 2, the Closest Obstacle Point is 30 horizontal feet (D) from the Lowest Device Point, and the potential shading area is indicated by the top half of the circle in Figure 2.



**Figure 2 - Measuring Horizontal Distance between Lowest Device Point and Closest Obstacle Point**

**STEP 3** The third step is to measure the distance from the Lowest Device Point to the ground (as displayed in Figure 3 (“H1”)). This should be the vertical distance from the bottom of the Solar Collection Devices to the ground, and should not be angled.

**STEP 4** The fourth step is to measure the difference in ground height between the base of the subject house and the base of the Closest Obstacle Point. This

measurement is required when the ground slopes in a certain direction. If the ground slopes downward away from the subject house, then the Obstacle base will be at a lower ground level than the home.

In Figure 3, that difference in ground height is displayed as “H2”. A simple way to determine H2 is to take a string and run it from the base of the subject house to the Closest Obstacle Point. Make sure that the string is level. At the Closest Obstacle Point, measure the distance to the ground from the level string. That is the distance H2. If the Obstacle is uphill from the base of the house, run the string from the Closest Obstacle Point to the house, and measure the distance to the ground from the level string at the house. That distance is negative (-) H2.

When H1 and H2 are added together, the resulting number is the distance between the Lowest Device Point and the base of the Closest Obstacle Point.

**STEP 5.1** Now the Maximum Obstacle Height (“H” in Figure 3) can be calculated, using the information gathered above. The Maximum Obstacle Height is equal to ½ the distance (D) between the Closest Obstacle Point and the Lowest Device Point, plus H1 and H2 (the height of the Solar Collection Devices relative to the Closest Obstacle Point).

**MAXIMUM OBSTACLE HEIGHT (H) = D/2 + H1 + H2**

*where:*

- H= Maximum Obstacle Height
- D= the horizontal distance between the Closest Obstacle Point and the Lowest Device Point
- H1= distance from the Lowest Device Point to the ground
- H2= difference in ground height between the base of the house and the base of the Closest Obstacle Point

Use this formula when the base of subject house with Solar Collection Devices is LOWER than base of Obstacle:

- **MAXIMUM OBSTACLE HEIGHT (H) = D/2 + H1 – H2**

**STEP 5.2** If the maximum height of the Obstacle is known, but the minimum horizontal distance that the Obstacle can be located from the Solar Collection Devices is not known, that can be calculated using this formula:

**MINIMUM OBSTACLE DISTANCE (D) = 2 X (H - H1 – H2)**

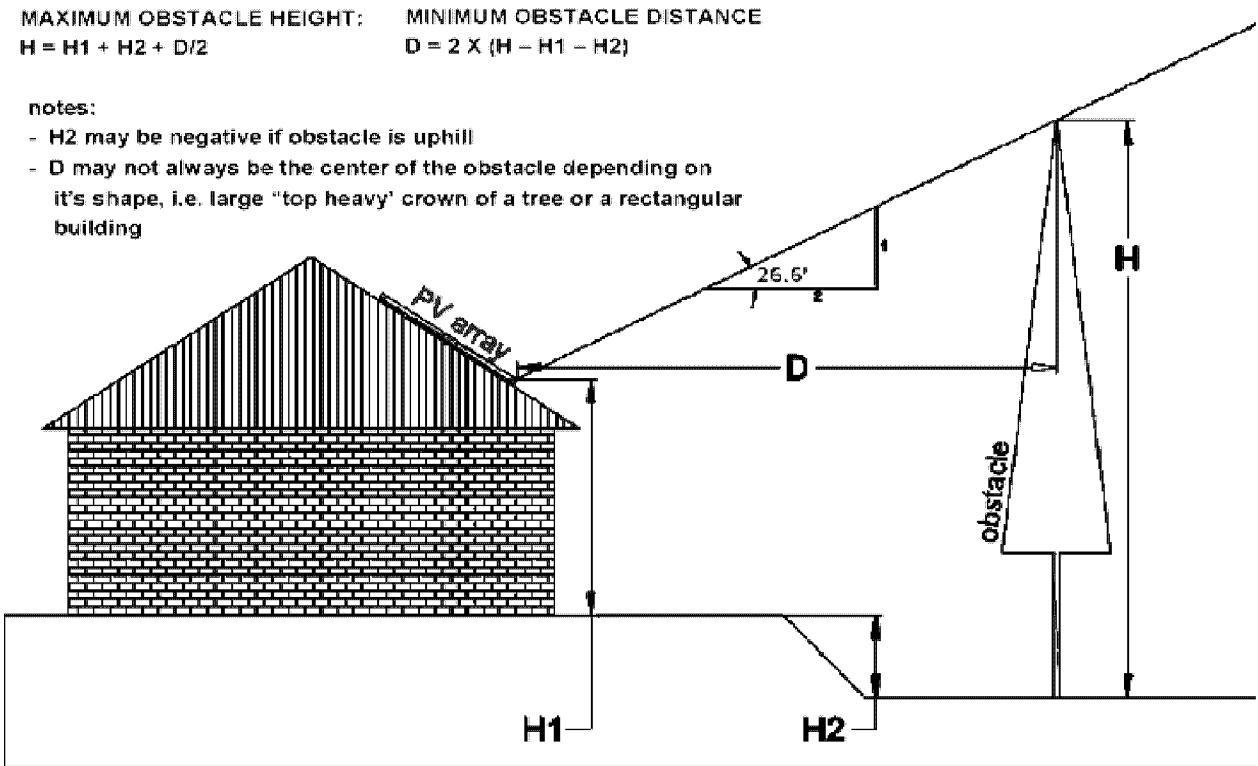
*where:*

- D= the horizontal distance between the Closest Obstacle Point and the Lowest Device Point
- H= Obstacle Height
- H1= distance from the Lowest Device Point to the ground

- $H_2$  = difference in ground height between the base of the house and the base of the Closest Obstacle Point

Use this formula when the base of subject house with Solar Collection Devices is LOWER than base of Obstacle:

- **MINIMUM OBSTACLE DISTANCE (D) = 2 X (H - H1 + H2)**



**Figure 3 - Determining Height between Two Relevant Points**

Below are examples of how the formulas from above can be applied. The distances will vary for every Obstacle.

**Example 1 - Ground slopes downward away from subject house, and Maximum Obstacle Height is to be determined:**

- The distance between the Lowest Device Point and the ground at the base of the house is 12 feet (H1).
- The ground at the base of the house is 4 feet higher than the ground at the Obstacle base (H2).
- The distance between the Lowest Device Point and the Closest Obstacle Point is 30 feet (D).
- *Outcome: The Obstacle can be no more than 15 feet taller than the Lowest Device Point (D/2).*

- Outcome: The Obstacle can be no more than **31 feet tall in total** ( $D/2 + H1 + H2$ ) (15 + 12 + 4)

**Example 2** – Ground slopes downward towards subject house, and Maximum Obstacle Height is to be determined:

- The distance between the Lowest Device Point and the ground at the base of the house is 12 feet (H1).
- The ground at the base of the Obstacle is 5 feet higher than the ground at the home base (H2).
- The distance between the Lowest Device Point and the Closest Obstacle Point is 30 feet (D).
- Outcome: The Obstacle can be no more than 15 feet taller than the Lowest Device Point ( $D/2$ ).
- Outcome: The Obstacle can be no more than **22 feet tall in total** ( $D/2 + H1 - H2$ ) (15 + 12 - 5).

**Example 3** - Ground slopes downward away from subject house, and Minimum Obstacle Distance is to be determined:

- The total Obstacle height is 24 feet (H).
- The distance between the Lowest Device Point and the ground at the base of the house is 12 feet (H1).
- The ground at the base of the house is 4 feet higher than the ground at the Obstacle base (H2).
- Outcome: The Obstacle must be at least **16 feet away** from the Lowest Device Point ( $2 \times (H - H1 - H2)$ ) ( $2 \times (24 - 12 - 4)$ ).

**Example 4** – Ground slopes downward towards subject house, and Minimum Obstacle Distance is to be determined:

- The total Obstacle height is 24 feet (H).
- The distance between the Lowest Device Point and the ground at the base of the house is 12 feet (H1).
- The ground at the base of the Obstacle is 5 feet higher than the ground at the home base (H2).
- Outcome: The Obstacle must be at least **34 feet away** from the Lowest Device Point ( $2 \times (H - H1 + H2)$ ) ( $2 \times (24 - 12 + 5)$ ).