

Inst #: 20151125-0000777

Fees: \$109.00

N/C Fee: \$0.00

11/25/2015 08:57:28 AM

Receipt #: 2618732

Requestor:

NORTH AMERICAN TITLE MAIN

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CLARK COUNTY RECORDER

APN: 125-30-112-012

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

**FOR**

**EMERALD CREST**

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

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

THIS DECLARATION ("Declaration") is made as of the 24<sup>th</sup> day of November, 2015, by GREYSTONE NEVADA, LLC, a Delaware limited liability company ("Declarant").

WHEREAS:

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

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

C. Declarant intends that, upon Recordation of this Declaration, the Original Property shall be a Nevada Common-Interest Community, as defined in NRS § 116.021, and a Nevada Planned Community, as defined in NRS § 116.075 ("Community"); and

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

E. Declarant further reserves the right from time to time to add all or any portion of certain other real property, from time to time described more particularly in Exhibit "B" hereto ("Annexable Area"); and

F. The total maximum number of Units that may (but need not necessarily) be created by Declarant in the Community is expected not to exceed eighty-four (84) aggregate Units ("Units That May Be Created"); and

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

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

I. Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Properties pursuant to the provisions of this Declaration, to organize the Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements (as defined herein), administering and enforcing the



covenants and restrictions, and collecting and disbursing the Assessments and charges hereinafter created. Declarant will cause, or has caused, the Association to be formed for the purpose of exercising such functions; and

J. This Declaration is intended to set forth a dynamic and flexible plan for governance of the Community, and for the overall development, administration, maintenance and preservation of a unique residential community, in which the Owners enjoy a quality life style as "good neighbors";

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

## **ARTICLE 1** **DEFINITIONS**

Section 1.1 "Act" shall mean NRS Chapter 116, as defined below. Except as otherwise indicated, capitalized terms herein shall reasonably have the same meanings ascribed to such terms in the Act.

Section 1.2 "Allocated Interests" shall mean the following interests allocated to each Unit: a non-exclusive easement of enjoyment of all Common Elements in the Properties; allocation of Limited Common Elements, if any, pursuant to the Plat and as set forth herein; liability for Assessments pro-rata for Common Expenses in the Properties and allocation of Annual Assessments and any Capital Assessments pursuant to the allocation formula set forth in this Declaration (in addition to any Special Assessments as set forth herein); and membership and one vote in the Association, per Unit owned, which membership and vote shall be appurtenant to the Unit. These foregoing allocations may not discriminate in favor of Units owned by Declarant or affiliate thereof.

Section 1.3 "Annexable Area" shall mean all or any portion of that real property described in Exhibit "B" attached hereto and incorporated by this reference herein, all or any portion of which real property may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof. At no time shall any portion of the Annexable

Area be deemed to be a part of the Community or a part of the Properties until such portion of the Annexable Area has been duly annexed of Record hereto pursuant to Article 15 hereof.

Section 1.4 "Annexed Property" shall mean any and all portion(s) of the Annexable Area from time to time added to the Properties covered by this Declaration, by Recordation of Annexation Amendment(s) pursuant to Article 15 hereof.

Section 1.5 "ARC" shall mean the Architectural Review Committee created pursuant to Article 8 hereof.

Section 1.6 "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the office of the Nevada Secretary of State, as such Articles may be amended from time to time.

Section 1.7 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments and/or Special Assessments.

Section 1.8 "Assessment, Annual" shall mean the annual or supplemental charge against each Owner and his or her Unit, representing a portion of the Common Expenses, which are to be paid in equal periodic (monthly or quarterly, as determined from time to time by the Board) installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner and at the times and proportions provided herein.

Section 1.9 "Assessment, Capital" shall mean a charge against each Owner and his or her Unit, representing a portion of the costs to the Association for installation, construction, or reconstruction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.10 "Assessment, Special" shall mean a charge against a particular Owner and his or her Unit, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, plus interest and other charges on such Special Assessments as provided for herein, subject to applicable law.

Section 1.11 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.12 "Association" shall mean EMERALD CREST HOMEOWNERS ASSOCIATION (or substantially similar name), a Nevada non-profit corporation, and its successors and assigns.

Section 1.13 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article 6 hereof.

Section 1.14 "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.15 "Board or Board of Directors" shall mean the Board of Directors of the Association, elected or appointed in accordance with the Bylaws and this Declaration. The Board of Directors is an "Executive Board" as defined by NRS § 116.045.

Section 1.16 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared and approved pursuant to the provisions of this Declaration, including, but not limited to, Section 6.4 below.

Section 1.17 "Bylaws" shall mean the Bylaws of the Association which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.18 "City" (or "CLV") shall mean the City of Las Vegas, Nevada, in which City the Community is located.

Section 1.19 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser.

Section 1.20 "Common Elements" shall mean all real property or interests therein owned or leased in the Properties by the Association, but shall exclude fee title in and to Units. Without limiting the foregoing, Common Elements shall include all of that real property designated on the Plat as "Common Lots" or "C-\_", and Improvements respectively thereon, and shall include, but are not necessarily limited to: private entry areas and monumentation; Private Streets; 10' wide public drainage easement granted to the City per the Plat, "to be privately maintained by the homeowners association"; 30' wide public pedestrian access easement and public utility easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 20' wide public sewer easement and public drainage easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 5' wide public pedestrian access easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 20' wide private pedestrian access easement "to be privately maintained by the homeowners association"; certain emergency access easement(s), and any and all other Common Elements as respectively designated as such on the Plat; and shall or may also include certain Common Element landscape (which may be desert landscape). The Common Elements shall constitute Common Elements with respect to the Properties, as provided in NRS §116.017. Public Pedestrian Access Easements are certain easements over certain Common Elements as set forth on the Plat, but shall be open to public use, without charge or restriction, pursuant to governmental requirement, and as set forth in further detail in this Declaration.

Section 1.21 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, insurance, management, operation, repair and replacement of the Common Elements; painting over or removing graffiti on Exterior Walls, pursuant to Section 9.10 below; unpaid Special Assessments, and/or Capital Assessments; irrigation and

maintenance of landscaping and/or ground cover on Common Elements; the costs of any commonly metered utilities, if any, and any other commonly metered charges for the Properties; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to the Community Manager, accountants, attorneys, consultants, and employees; costs of all utilities, gardening, trash pickup and disposal, and other services benefitting the Common Elements; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Association, Common Elements, or Properties, or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, Community Manager, or any other Person handling the funds of the Association; any statutorily required ombudsman fees; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties or deemed prudent and necessary by the Board; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or Plat or pursuant to: (a) requirement of the City or other governmental authority with jurisdiction, and/or (b) any requirement of applicable law. Notwithstanding the foregoing, Common Expenses shall not include certain items (including, but not necessarily limited to: (a) political campaigns or contributions; (b) nuisances located outside of the boundaries of the Community); and the Association shall not spend any Association funds for or in connection with such items. Without limiting the foregoing, Common Expenses shall include all of the costs and expenses of the Association to clean, irrigate (as applicable), maintain, and keep in good repair, the 10' wide public drainage easement granted to the City per the Plat, "to be privately maintained by the homeowners association"; 30' wide public pedestrian access easement and public utility easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 20' wide public sewer easement and public drainage easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 5' wide public pedestrian access easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 20' wide private pedestrian access easement "to be privately maintained by the homeowners association"; certain other Public Pedestrian Access Areas as set forth in Section 1.58 below; and all areas set forth in or required in or by the Plat (or by the City or other relevant governmental authority) to be maintained by the Association.

Section 1.22 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.021, and a Planned Community, as defined in NRS § 116.075.

Section 1.23 "Community Manager" shall mean the Person, if any, whether an employee or independent contractor, hired as such by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 1.24 "County" shall mean Clark County, Nevada.

Section 1.25 "Declarant" shall mean Greystone Nevada, LLC, a Delaware limited liability company, and its successors and any Person(s) to which Declarant shall have assigned any rights hereunder by express written and Recorded assignment (but specifically excluding Purchasers, as defined in NRS §116.079).

Section 1.26 "Declarant Control Period" shall have the meaning set forth in Section 3.7 below.

Section 1.27 "Declarant Rights Period" shall mean the period of time (to the maximum time period and maximum extent not prohibited by applicable law) during which Declarant owns any property subject to this Declaration or in the Annexable Area (i.e., until the Close of Escrow to a Purchaser of the last residential unit in the Annexable Area); during which time, Declarant has reserved certain limited rights as expressly set forth in this Declaration.

Section 1.28 "Declaration" shall mean this instrument as it may be amended from time to time, subject to Declarant's reasonable prior written approval as required.

Section 1.29 "Deed of Trust" shall mean a Recorded mortgage or a deed of trust, as the case may be.

Section 1.30 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.31 "Dwelling" shall mean a residential building located on a Unit designed and intended for use and occupancy as a residence, subject to all applicable laws.

Section 1.32 "Eligible Holder" shall mean each Beneficiary, insurer and/or guarantor of a first Mortgage encumbering a Unit, which has filed with the Board a written request for notification as to relevant matters as specified in this Declaration.

Section 1.33 "Exterior Wall(s)" shall mean the exterior only face of Perimeter Walls (visible from public streets or other areas outside of and generally abutting the exterior boundary of the Properties).

Section 1.34 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable Ordinances.

Section 1.35 "FHA" shall mean the Federal Housing Administration.

Section 1.36 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporations.

Section 1.37 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.38 "FNMA" or "GNMA" "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation. GNMA shall mean the Government National Mortgage Association administered

by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.39 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and any Rules and Regulations and any other relevant governance documents of the Association. Any irreconcilable inconsistency among the Governing Documents shall be governed pursuant to Sections 17.10 and 17.14, below.

Section 1.40 "Identifying Number" pursuant to NRS § 116.053, shall mean the number which identifies a Unit on the relevant Plat.

Section 1.41 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, located in the Properties, including but not limited to Dwellings and other structures, walkways (if any), sprinkler pipes, garages, spas, swimming pools (if any are permitted), and other recreational facilities, Private Streets, roads, driveways, parking areas, perimeter walls, hardscape, party walls, curbs, gutters, walls, screening walls, block walls, retaining walls, fences, stairs, decks, landscaping, antennae, hardscape features, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 1.42 "Lot" shall mean the real property of any residential lot to be owned by an Owner, as shown on the relevant Plat and duly subjected of Record to the Community and to this Declaration (subject to this Declaration and the other Governing Documents, and any area shown on the Plat as a Common Element or other easement).

Section 1.43 "Member," "Membership," "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in this Declaration, and/or in the other Governing Documents.

Section 1.44 "Mortgage," "Mortgagee," "Mortgagor," "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his or her Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his or her Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor;" and "Beneficiary" shall be synonymous with "Mortgagee." For purposes of this Declaration, "first Mortgage" or "first Deed of Trust" shall mean a Mortgage or Deed of Trust with first priority over other mortgages or deeds of trust on a Unit in the Properties and "first Mortgagee" or "first Beneficiary" shall mean the holder of a first Mortgage or Beneficiary under a first Deed of Trust.

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

Section 1.46 "NRS Chapter 116" shall mean each and all (as may be applicable) of: (a) Nevada's Uniform Common-Interest Ownership Act, Chapter 116 of Nevada Revised Statutes; (b) Common Interest Communities: Regulation of Community Managers and Other Personnel, Chapter 116A of Nevada Revised Statutes; and (c) Chapters 116 and 116A of the Nevada Administrative Code; as all or any portion of which respectively from time to time may be duly amended or supplemented by appropriate legal authority with jurisdiction.

Section 1.47 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.48 "Ordinance(s)" shall mean all applicable ordinances and rules, of the City, and/or other applicable local governmental authority with jurisdiction.

Section 1.49 "Original Property" shall mean that real property described on Exhibit "A" attached hereto and incorporated by this reference herein, which shall be the initial real property made subject to this Declaration, immediately upon the Recordation of this Declaration.

Section 1.50 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees. Pursuant to Article 3 hereof, a vendee under an installment land sale contract shall be deemed an "Owner" hereunder, provided the Board has received written notification thereof, executed by both vendor and vendee thereunder.

Section 1.51 "Party Wall(s)" shall have the meaning set forth in Section 9.5 below.

Section 1.52 "Perimeter Wall(s)" shall mean the walls and/or fences located generally around the exterior boundary of the Properties, as constructed or to be constructed by or with the approval of Declarant, subject to and as set forth in this Declaration, including, but not necessarily limited to, Sections 9.6 and 9.7, below.

Section 1.53 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.54 "Plat" shall mean the final map of CENTENNIAL AND HUALAPAI, on file in Book 149 of Plats, Page 0060; in the Office of the County Recorder, Clark County, Nevada, together with any and all other plat map(s) of the Community Recorded from time to time by Declarant; as said plat maps from time to time may be amended or supplemented of Record by Declarant.

Section 1.55 "Private Streets" shall mean all private streets, rights of way, street scapes, and vehicular ingress and egress easements in the Properties, shown as such on the Plat, which Private Streets comprise a portion of the Common Elements.

Section 1.56 "Properties" shall mean all of the Original Property described in Exhibit "A," attached hereto, together with such portions of the Annexable Area, described in Exhibit "B" hereto, as may hereafter be annexed from time to time thereto pursuant to Article 15 of this Declaration.

Section 1.57 "Purchaser" shall have that meaning as provided in NRS § 116.079.

Section 1.58 "Public Pedestrian Access Easements" (or "PPAE") shall mean: (a) those certain 5' wide public pedestrian access easements, as set forth on the Plat, which PPAE are granted to the City per the Plat, "to be privately maintained by the homeowners association"; and (b) that certain 30' wide public pedestrian access easement, as set forth on the Plat, which PPAE is granted to the City per the Plat, "to be privately maintained by the homeowners association"; and (c) those certain sidewalk improvements actually located on portions of Common Lots abutting Centennial Parkway, which shall or may be deemed to comprise public pedestrian access easements and related easements, located generally between (1) the outside of Perimeter Walls along the northerly boundary of the Community, and (2) the southerly boundary of Centennial Parkway; together with any and all sidewalk or other Improvements (and associated landscaping, if any) respectively located on said PPAE. The Association is obligated by the City to clean, maintain, insure (to the extent feasible), and keep in good repair the PPAE; and the costs thereof shall be Common Expenses. Notwithstanding the foregoing, or any other provision herein, the PPAE shall be kept open to the public, without charge or restriction, for use as public sidewalks and pedestrian access areas, for as long as so required by the Plat and/or by the City. Note: certain PPAE are located along the northern perimeter of the Community, adjacent to Centennial Parkway; and certain other PPAE are located within the interior of the Community, from Centennial Parkway to Regena Avenue, along the east side of Cascade Crest Street and then across Cambridge Brook Avenue through the designated 30' wide easement area (between Lots 36 and 37).

Section 1.59 "Record," "Recorded," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.60 "Resident" shall mean any Owner, tenant, or other person, who is physically residing in a Unit.

Section 1.61 "Rules and Regulations" or "Rules" shall mean the rules and regulations, if any, which may, but need not necessarily, be adopted by the Board pursuant to this Declaration and Bylaws, as such Rules and Regulations from time to time may be amended, subject to applicable law.

Section 1.62 "Unit" shall mean that residential portion of this Community to be separately owned by each Owner (as shown and separately identified as such on the Plat, subject to any and all easements shown on the Plat and/or any and all easements and/or restrictions set forth in this Declaration or other applicable Recorded instrument), and shall include such Lot and the Dwelling and all other Improvements thereon. With regard to certain Units, such Improvements shall include the portion of Perimeter Walls located on or within the Unit's boundaries, pursuant to Section 9.6 below. Subject to the foregoing, and subject further



to Section 9.5 hereof, the boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

Section 1.63 "Units That May Be Created" shall mean the total "not to exceed" maximum number of aggregate Units within the Original Property and the Annexable Area (which Declarant has reserved the right, in its sole discretion, to create) (i.e., 84 Units), subject to Section 14.1(h) below.

Section 1.64 "VA" shall mean the United States Department of Veterans Affairs.

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

## **ARTICLE 2**

### **OWNERS' PROPERTY RIGHTS**

Section 2.1 Ownership of Units; Owners' Easements of Enjoyment. Title to each Unit in the Properties shall be conveyed in fee to an Owner. Ownership of each Unit within the Properties shall include (a) the Unit, (b) one Membership in the Association, and (c) any easements appurtenant to such Unit over the Common Elements as described in this Declaration, the Plat, and/or in the deed to the Unit. Each Owner shall have a non-exclusive right and easement of ingress and egress and/or of use and enjoyment in, to and over the Common Elements, including, but not limited to, the Private Streets, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject applicable law and subject further to the following:

(a) the right of the Association (acting through the Board, in its discretion) to reasonably limit the number of guests and tenants an Owner or his or her tenant may authorize to use or enjoy the Common Elements;

(b) the right (but not the duty) of the Association (acting through a majority of the voting power of the Board, in its discretion) from time to time to establish and /or amend Rules and Regulations regarding use, maintenance and/or upkeep of the Common Elements; provided that any such Rules and Regulations shall not irreconcilably conflict with this Declaration or the other Governing Documents;

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

(d) subject to the voting and approval requirements set forth in subsection 2.1(c) above, and the provisions of Articles 13 and/or 14 of this Declaration, the right of the Association to dedicate, release, alienate, transfer or grant easements, licenses, permits and

rights of way in all or any portion of the Common Elements to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members;

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

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

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

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

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

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

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

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

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

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

(o) the easements reserved or referenced in this Declaration, including, but not necessarily limited to, Sections 2.2 through 2.7, inclusive, Sections 2.15 through 2.17, inclusive, Article 14, and/or in any other provision of this Declaration; and/or in the Plat or any applicable instrument of Record; and

(p) the rights of any other easement holders.

Section 2.2 Easements for Parking. Subject to the parking and vehicular restrictions set forth in Article 10 below and other portions of this Declaration, and subject further to applicable law, the Association, through the Board, shall have the right and power (but not necessarily the duty) to establish "parking" and/or "no parking" areas within the Common Elements, and to establish Rules and Regulations governing such matters, as well as to reasonably enforce such parking rules and limitations by all means which would be lawful for such enforcement by public authorities on public streets, including the removal of any violating vehicle, by those so empowered, at the expense of the owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

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

Section 2.4 Easement Rights of Declarant Incident to Construction, Marketing and/or Sales Activities. An easement is hereby reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective purchasers of Units, guests, and other invitees, for access, ingress, and egress over, in, upon, under, and across the Properties, including Common Elements (and all Private Streets), including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, advertising, marketing and/or sales related to the Properties, or any portions thereof, or any other project of Declarant; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his or her Family, guests, or invitees, to or of that Owner's Lot, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 14.1(a) below. Without limiting the generality of the foregoing, during the Declarant Rights Period: neither the

Association nor any one or more of the Owners shall at any time, or in any way (without the prior written approval of Declarant, in its sole discretion) impede, hinder, obstruct, or interfere with Declarant's marketing, sales and/or construction activities.

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

Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes. In addition to the foregoing easements, there shall be and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements reasonably upon, over and across Common Elements (and, if applicable, over portions of Lots), for installation, maintenance, repair and/or replacement of public and private utilities, electric power, telephone, cable television, water, sewer, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district, of ingress or egress over the Properties, including portions of Lots, for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Properties). There is hereby created a blanket easement in favor of Declarant and the Association upon, across, over, and under all Units and the Common Elements, for the installation, replacement, repair, and maintenance of utilities (including, but not limited to, water, sewer, gas, telephone, electricity, "smart" data cabling, if any, and master and cable television systems, if any), provided that said easement shall not extend beyond, across, over, or under any structure located on any Unit. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances in the Properties and to install, repair, and maintain water, sewer and gas pipes, electric, telephone and television wires, circuits, conduits and meters. Notwithstanding anything to the contrary contained in this Section, no sewer, electric, water or gas lines or other utilities or service lines may be installed or relocated within the Properties until the end of the Declarant Rights Period, except as approved by Declarant. This easement shall in no way affect any other Recorded easements in the Properties. There is also hereby reserved to Declarant during such period the non-exclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant in connection with the orderly development of any property in the Properties. Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant thereof. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Lots, for the control, installation, maintenance, repair and replacement of water and/or sewage lines and systems and related devices for watering or irrigation of any landscaping on, and/or sewage disposal or drainage from or related to, Common Elements. In

the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

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

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

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

Declaration. The Recording data for any and all easements and licenses shown on and created by the Plat are the same as the Recording data for the Plat.

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

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

Section 2.12 Ownership of Common Elements. The Association shall own the Common Elements. Except as otherwise limited in the Plat or in this Declaration, each Owner shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his or her Unit as a place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Unit. Notwithstanding the foregoing, or any other provision in this Declaration, Public Pedestrian Access Easements are to be kept open for public use as set forth in the Plat and in this Declaration.

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

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

Section 2.15 Avigation Easements. Declarant hereby reserves, for itself, and/or for the Association, the unilateral right, power, and authority, to grant avigation easements over Common Elements, to applicable governmental entity or entities with jurisdiction; and each Owner hereby covenants to sign such documents and perform such acts as may be reasonably required to effectuate the foregoing.

Section 2.16 Solar Energy Documents; Disclosures & Disclaimers.

(a) The Units and the Community also are or may from time to time be subject to a Recorded Declaration of Solar Energy Covenants, Conditions and Restrictions ("Solar Energy CCRs"), and subject to related instruments and documents, including, but not limited to, a Recorded Grant of Easements for Solar Energy Equipment ("Solar Easements");

and a Solar Energy System Addendum ("Solar Energy System Addendum"), together with a Solar Payment Election Addendum; and a Solar 20/20 Plan Agreement and Covenants ("Solar Plan"); as well as a document entitled "Special Disclosures Addendum – Residential Solar Energy Program." Copies of all of these instruments and documents (collectively, "Solar Energy Documents") have been delivered to the initial Purchaser of each Unit covered by the Solar Energy Documents. Each prospective Owner of a Unit in this Community needs to thoroughly review the Solar Energy Documents, which provide, among other things, for either: (a) the mandatory participation of each covered Owner ("Homeowner") in the Solar Plan for Homeowner to purchase all of the solar energy generated electricity from SunStreet Energy Group, LLC and its successors and assigns ("System Owner") for 20 years; or (b) the mandatory purchase by Homeowner of the photovoltaic system ("PV System") consisting of roof panels and hardware and other components in or on the Homeowner's Unit ("Home"). The Solar Energy Documents also set forth certain restrictions on use, occupancy, and/or improvement of the Units, and on use and/or improvement of Common Elements. All of the Solar Energy Documents need to be carefully reviewed by each prospective Homeowner.

Nothing set forth in this Section 2.16 or in any of the Solar Energy Documents (including, but not limited to, the Solar Energy CCRs and the Solar Easements) shall be deemed to require Declarant or the System Owner to install any Solar Energy Equipment on or related to any Unit(s) or Home(s). Installation of Solar Energy Equipment on or related to any particular Unit(s) or Home(s) shall not be deemed to require installation of Solar Energy Equipment on or related to any other Unit(s) or Dwelling(s). Without limiting the foregoing, Declarant has been informed and, accordingly, discloses, that, in the event the Public Utilities Commission of Nevada and/or relevant public utility from time to time should adopt or promulgate materially adverse rule or rate changes, Solar Energy Equipment may not necessarily be installed on any Unit(s) or Home(s) subject to such materially adverse rule or rate.

Section 2.17 Additional Easements Per Plat. Certain additional easements are set forth on the Plat and incorporated herein by this reference, including, but not limited to: 10' wide public drainage easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 30' wide public pedestrian access easement and public utility easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 20' wide public sewer easement and public drainage easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 5' wide public pedestrian access easement granted to the City per the Plat "to be privately maintained by the homeowners association"; 20' wide private pedestrian access easement "to be privately maintained by the homeowners association"; and certain easements over portions of certain Common Lots; as respectively called out on the Plat; in addition to the Private Streets and the other Common Elements. Also, certain PPAE are located along Centennial Parkway over portions of certain Common Lots abutting Centennial Parkway, as set forth in Section 1.58, above. The Association shall or may have the responsibility to maintain and keep in good repair the above-referenced easement improvements, as well as the Private Streets and the other Common Elements, and the costs respectively thereof from time to time shall be a part of the Common Expenses. In addition, the Plat sets forth certain additional easements over certain Lots, including, but not necessarily limited to, an existing 30' wide easement, over portions of certain Lots and Common Elements, in favor of Century Link. Said 30' wide

Century Link easement areas, to the extent located over certain Lots, will or may affect or restrict the use of, or ability to improve, said easement areas by the Owners of said Lots.

Section 2.18 Height Restrictions & Limitations on Certain Lots. Pursuant to requirements of the City, and/or other or related restrictions, and subject to City Ordinances and/or other applicable law, those certain Lots along the south property line of the Community, abutting Regena Avenue, as shown on the Plat (i.e., Lots 27-41, inclusive) are restricted to single-story Dwellings and related Improvements, with a maximum building height of thirty-five feet (35') as determined by Declarant or ARC.

Section 2.19 Conveyance to City or Other Governmental Authority. Declarant hereby reserves, for itself, and/or for the Association, the unilateral right, power, and authority to convey portion(s) of Common Elements to the City or applicable governmental entity or entities with jurisdiction, and/or utility, at the request or with the consent of the City or governmental entity or utility (as applicable); and each Owner covenants to sign such documents and to perform such acts as may be reasonably required by Declarant to effectuate the foregoing.

### **ARTICLE 3**

#### **EMERALD CREST HOMEOWNERS ASSOCIATION**

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

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

Section 3.3 Membership. Each Owner (including Declarant, by virtue of owning title to any Unit), upon acquiring title to a Unit, shall automatically become a Member of the Association, and shall remain a Member until such time as his or her ownership of the Unit ceases, at which time his or her membership in the Association shall automatically cease. Membership shall not be assignable, except to the Person to whom title to the Unit has been



transferred, and each Membership shall be appurtenant to and may not be separated from fee ownership of the Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

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

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

- (a) the number of Directors (subject to Section 3.6 below) and the titles of the Officers;
- (b) for election by the Board of an Association president, treasurer, secretary and any other Officers specified by the Bylaws;
- (c) the qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and filling vacancies;
- (d) which, if any, respective powers the Board or Officers may delegate to other Persons or to a Community Manager;

(e) which of the Officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association;

(f) procedural rules for conducting meetings of the Association; and

(g) a method for amending the Bylaws.

Section 3.6 Board of Directors.

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

void. Each Director shall serve in office until the appointment (or election, as applicable) of his or her successor (or until such incumbent Director's resignation, if applicable).

(b) The term of office of a Director elected by the Owners shall not exceed three (3) years. A Director may be elected to succeed himself or herself. The term of office of a Director appointed by Declarant shall continue until either: (i) said Director is removed or replaced by Declarant; or (ii) said Director is replaced by a Director duly elected by the Owners pursuant to applicable Nevada law. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held at each Annual Meeting, as set forth in Section 4.3 below.

(c) If Directors entitled to cast a majority of the votes on the Board are present at the time a Board vote is taken, then a Board quorum shall be deemed present at such time, subject and pursuant to applicable law.

Section 3.7 Declarant Control Period. During the period of Declarant's control of the Association ("Declarant Control Period"), which shall be the maximum time period of control allowed by law (subject to limitations expressly set forth by applicable law), Declarant shall have the right and power to control the Association, to the fullest extent not prohibited by applicable law (which may include, but not necessarily be limited to, NRS 116.31032). Without limiting the preceding sentence, during the Declarant Control Period: (a) Declarant may at any time and from time to time appoint and remove the Association's officers ("Officers") and Directors; and (b) Officers and Directors appointed by Declarant need not be Owners.

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

#### **ARTICLE 4**

#### **MEMBERS' VOTING RIGHTS; MEMBERSHIP MEETINGS**

Section 4.1 Owners' Voting Rights. Subject to the following provisions of this Section 4.1, and to applicable Nevada law, each Member shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member, and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. Notwithstanding the foregoing, the voting rights

of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent, subject to applicable Nevada law.

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

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

## **ARTICLE 5**

### **FUNCTIONS OF ASSOCIATION**

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

(a) Assessments. The power and duty to levy Assessments against the Owners of Units, and to enforce payment of such Assessments in accordance with the provisions of Articles 6 and/or 7 hereof.

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

(c) Removal of Graffiti. The power to remove or paint over any graffiti from Exterior Walls, pursuant and subject to Section 9.10 below.

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

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

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

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

(h) Community Manager. The power, subject to Section 5.4 below, but not the duty, to employ or contract with a certified (as required by applicable Nevada law), professional Community Manager (acting under the specific direction of the Board) to perform all or any part of the duties and responsibilities of the Association, and the power, but not the duty, of the Association (acting through the Board) to delegate powers to committees, Officers and employees (if any) of the Association. Any such management agreement, or any agreement providing for services by Community Manager to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than fifteen (15) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon thirty (30) days written notice.

(i) Rights of Entry and Enforcement. Subject to applicable Nevada law, the power, but not the duty, after Notice and Hearing (except in the event of bona-fide emergency which poses an (a) imminent and substantial threat to health, or (b) imminent and substantial threat (as verified by an engineer, architect, or professional building inspector, duly licensed in the State of Nevada) of material property damage; in which event of emergency, Notice and Hearing shall not be required), to peaceably enter upon any area of a Unit, in accordance with applicable Nevada law, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the

preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment pursuant to Article 7 below. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Dwelling without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party. Subject to Section 17.14 and Article 18 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

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

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

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

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

(n) Records and Accounting. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Reviewed or audited financial statements for the Association shall be regularly prepared and distributed to all Members in accordance with applicable Nevada law.

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

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

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

(r) Compliance with Governmental Requirements. The power and the duty to comply with requirements and/or conditions of the City or other applicable governmental authority with jurisdiction.

Section 5.2 Rules and Regulations. Subject to this Declaration and subject further to applicable law, the Board, acting on behalf of the Association, shall have the right and power, but not the duty, from time to time, to adopt, amend, repeal, and/or enforce Rules and Regulations, pertaining to the use and occupancy of the Properties. The Rules and Regulations shall not unreasonably discriminate among Members.

Section 5.3 Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association, subject to applicable Nevada law:

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

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

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

Section 5.4 Community Manager. The Association shall have the power to employ or contract with a certified Community Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents and applicable Nevada law, for the purpose of operating and maintaining the Properties. No Community Manager, or any director, officer, shareholder, principal, partner, or employee of the Community Manager, or related family member, may be a Director or Officer of the Association. By execution of its agreement with the Association, each and every Community

Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, prompt and full and faithful accounting for all Association funds within the possession or control of Community Manager) required of the Community Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Community Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Community Manager's error or omission shall be paid (or reimbursed to the Association) by the Community Manager; (3) to comply fully, at its expense, with applicable Nevada law, including, but not necessarily limited to, NRS Chapter 116; (4) to refrain, without specific prior written direction of a majority of the voting power of the Board, from referring or introducing to the Association, or contacting directly or indirectly for or on behalf of the Association, any attorney regarding any matter in any way related to the Community or any portion thereof; (5) prior to time of hire, and from time to time thereafter upon request of the Board: (a) to disclose to the Board, in writing, the identities of any and all other communities, managed by Community Manager (at such time, and within the three year period preceding such time), and involved in litigation involving any claim of construction defect, and the current status of any and all such litigation, and (b) to certify in writing to the Board that Community Manager, and its then current and prior employees, have had no relationship to, and have received no benefit or thing of value from, the attorney(s) commencing and/or prosecuting such litigation, and/or any attorney referred to the Association at the specific written direction of the Board (or if there was or is any such relationship or benefit, to disclose and identify the same); and (6) at Community Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Community Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Community Manager until such time as the Community Manager turnover in good faith has been completed).

Section 5.5 Continuing Rights of Declarant. For a period of fifteen (15) years following the end of the Declarant Rights Period (the "Relevant Period"), Declarant shall have the continuing right, power, standing and authority, in its sole and absolute discretion (but without obligation to do so) to enter upon and inspect the Community and Properties (including, but not limited to, the Common Elements) and/or to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations), and/or all rights and remedies at law and in equity, regarding any alleged violation by the Association (or any Owner) of the Governing Documents (including, but not limited to, this Declaration) and/or applicable law. After the end of Declarant Control Period, for the remainder of the Relevant Period, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall also have the right, without obligation, to attend such meetings, on a non-voting basis. During the Relevant Period, the Board shall also deliver to Declarant reasonable advance notice of all inspections of the Properties or any portion(s) thereof, and Declarant shall have the right (without obligation) to attend such inspections. The Board shall also, during the Relevant Period, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, all Reserve Studies prepared in accordance with Section 6.3



below, and all audited or reviewed annual reports, as required in Section 5.1(n) above. The Board shall deliver such notices and information to Declarant at the address from time to time most recently designated by Declarant.

Section 5.6 Compliance with Applicable Laws. The Association and its governance shall comply with all applicable laws (including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person) relating thereto. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or applicable Ordinance. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law. Note: Certain provisions in this Declaration and/or other Governing Documents from time to time may be superseded by contrary provisions of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the internet address: <http://www.leg.state.nv.us/nrs/>.

## ARTICLE 6 COVENANT FOR ASSESSMENTS

Section 6.1 Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, (b) Special Assessments, and (c) any Capital Assessments; such Assessments to be established and collected as provided in this Declaration. To the fullest extent permitted by applicable Nevada law, the Association shall have a continuing lien on each Unit for Assessments and such interest, charges, costs, fees, and/or other amounts related thereto, subject to and in accordance with applicable Nevada law. Each such Assessment, together with interest thereon, late charges, costs, reasonable attorneys' fees, and other amounts reasonably related thereto, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors in title of any Owner unless expressly assumed by such successors.

Section 6.2 Association Funds. The Board shall establish at least the following separate accounts (the "Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as accounts, in the name of the Association, in compliance with applicable law, at a federally or state insured banking or savings institution located in the State of Nevada, and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, and (2) a reserve fund ("Reserve Fund") for capital repairs and replacements, as set forth in Section 6.3 below, and (3) any other fund(s) which may be required from time to time by applicable Nevada law; or any other fund(s) from time to

time which the Board may deem prudent and/or appropriate, in its business judgment. Subject to applicable Nevada law, to qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than the Reserve Fund, which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate savings or checking account, at any federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Community Manager shall not be authorized to make withdrawals from the Reserve Fund. Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer (or, in the absence of either the President or Treasurer, the Secretary may sign in place of the absent Officer). The President, Treasurer, and Secretary must all be Directors and (after the Declarant Control Period) must also all be Owners.

Section 6.3      Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements (including, without limitation, Private Streets and Public Pedestrian Access Easements; (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any purpose whatsoever other than as specifically set forth in (ii) above; (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing; (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); and (vi) under no circumstances shall the Community Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund.

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

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event as required from time to time by applicable Nevada law. The Board shall review the results of the most current Reserve Study at least annually to determine whether those reserves are sufficient; and shall at least annually make adjustments to the Association funding plan as necessary to provide adequate funding for the required reserves (i.e., by increasing Assessments). It shall be an obligation of the

Community Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

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

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

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

(g) Notwithstanding the foregoing or any other provision in this Declaration, the Association (upon Recordation of this Declaration, and/or by the Association's interest in and/or ownership of the Common Elements) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally accepted and agreed to each and every one of the following subsections, subject to applicable law:

(1) the Reserve Fund shall be adequately funded ("Adequately Funded Reserves," as defined and described further in the following subsections) on that date ("Turnover") which is within thirty (30) days after the end of the Declarant Control Period;

(2) "Adequately Funded Reserves" shall mean a Reserve Fund at Turnover sufficient to maintain the Common Elements at an adequate level (which reasonably may be less than an "ideal" or "optimal" level) (without using the Operating Fund or without special assessments, except for occurrences that are a result of unforeseen catastrophic events) as determined by the Board in its business judgment, prior to the end of the Declarant Control Period;

(3) the amount of the Adequately Funded Reserves shall be determined by the Board in its business judgment, prior to the end of the Declarant Control Period, as an amount reasonably adequate (which reasonably may be less than an "ideal" or "optimal" amount) under the circumstances to meet the reserve needs of the Association as of the date of Turnover;

(4) the Adequately Funded Reserves shall be based on the Reserve Study commissioned by the Board prior to the end of the Declarant Control Period (or, by Declarant, prior to, or at a time reasonably following the end of, the Declarant Control Period) ("Turnover Reserve Study"); and

(5) delivery by Declarant to the Association of Adequately Funded Reserves at Turnover shall be deemed to fully satisfy any and all requirements under Nevada law (including NRS 116.31038) that the Declarant deliver to the Association "a reserve account that contains the declarant's share of the amounts then due" (or similar requirements under applicable law) at Turnover (or at the end of the Declarant Control Period).

Section 6.4      Budget; Reserve Budget.

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

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

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

(2) the Reserve Budget, which must include all estimates and statements required by applicable Nevada law.

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

(d) From and after the end of the Declarant Control Period, the Board shall be prohibited from reducing the Budget and/or Reserve Budget by five percent (5%) or more for any Fiscal Year from the immediately prior Fiscal Year, in the absence of: (i) unusual and extenuating circumstances, (ii) a written finding by the Board that such reduction would not diminish the quality or quantity of services provided by the Association, and (iii) prior written consent of Declarant in its sole and absolute discretion. This Section 6.4 may not be amended in the absence of specific prior written consent of Declarant in its sole and absolute discretion.

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

Section 6.6 Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant, to a Purchaser, the Purchaser of such Unit shall be required to pay an initial capital contribution to the Association, in an amount equal to the greater of: (a) two (2) full monthly installments of the initial or then-applicable Annual Assessment; or (b) such other sum as may be established and/or changed from time to time prospectively (but not retroactively) by Declarant in its sole discretion, with regard to Units not yet conveyed to Purchasers. Such initial capital contribution is in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and shall be deposited at each Close of Escrow into the relevant fund of the Association, and may be applied to working capital needs and/or the Reserve Fund, in the Board's business judgment. Additionally, at the close of escrow for each resale of a Unit by an Owner (other than Declarant), the resale purchaser of such Unit shall be required to pay a resale capital contribution to the Association, in an amount equal to the greater of: (a) two (2) full monthly installments of the then-applicable Annual Assessment; or (b) such other sum as may be established and/or changed from time to time prospectively (but not retroactively) by Declarant in its sole discretion during the Declarant Rights Period (or, after the Declarant Rights Period, by the Association Board, in its reasonable business judgment, but in any event not less than two (2) full monthly installments of the then applicable Annual Assessment). Such resale capital contribution is in addition to the foregoing described initial capital contribution, and is further in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and may be applied to working capital needs and/or the Reserve Fund, in the Board's business judgment. Initial and resale capital contributions are in addition to each other, and to all assessments and

account setup fees, and any other fees or charges of the Association. Initial and resale capital contributions may be changed or increased from time to time by the Association Board, pursuant and subject to the Governing Documents and applicable law.

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

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

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

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

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

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

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

Section 6.12 Subsidies and/or Advances by Declarant. To the maximum extent not prohibited by applicable Nevada law, Declarant shall have the right, in its sole and absolute discretion, from time to time during the Declarant Control Period, to: (a) subsidize the Association, by direct payment of any and all Excess Common Expenses ("Declarant Subsidies"); and/or (b) advance funds and/or make loan(s) to the Association, to be used by the Association for the sole purpose of paying Excess Common Expenses ("Declarant Advances"). "Excess Common Expenses" for purposes of this Section 6.12 shall mean such amount, if any, of Common Expenses in excess of Assessments and non-Reserve funds reasonably available at such time to pay Common Expenses. The aggregate amount of any and all Declarant Subsidies and/or Declarant Advances, or portions from time to time respectively thereof, together with interest thereon at the rate of eighteen percent (18%) per annum, subject to applicable Nevada law, shall be repaid by Association to Declarant as soon as non-Reserve funds are reasonably available therefor (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Assessments and/or contributions to Reserve Funds, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration or under applicable Nevada law). Each Owner, by acceptance of a deed to his or her Lot, shall be conclusively deemed to have acknowledged and agreed to all of the foregoing provisions of this Section 6.12, whether or not so stated in such deed.

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

Section 7.1 Subject to Applicable Law. Without limiting any other provision herein, this Article 7, and the provisions hereof, shall be subject to applicable Nevada law, as may be revised from time to time. In the event of any irreconcilable conflict, applicable law shall prevail.

Section 7.2 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Assessment, shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment(s) shall bear interest from the date of delinquency until paid, at the maximum rate from time to time permitted by applicable Nevada law (or at such lower rate as may be approved from time to time by the Board in its business judgment). In addition, the Board may require the delinquent Owner to pay reasonable fees, as determined by the Board, for collecting any past due obligations; provided that no such reasonable fees or interest on any delinquent installment may exceed the maximum rate or maximum amount which may be allowable from time to time under applicable law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Elements or by abandonment of his or her Unit.

Section 7.3 Notice of Delinquent Installment. If any installment of an Assessment is delinquent, the Board shall mail to the Unit Owner, in accordance with applicable Nevada law, a notice of delinquent Assessment. The notice of delinquent Assessment shall specify: (a) the amount of Assessments and other sums which are due in accordance with applicable Nevada law; (b) a description of the Unit against which the lien is imposed; and (c) the name of the record Owner of the Unit; and (d) such other matters as required from time to time by applicable Nevada law; and shall in all regards comply with requirements of applicable law.

Section 7.4 Notice of Default and Election to Sell. Subject to applicable Nevada law, not less than 30 days after mailing the notice of delinquent Assessment, the Association shall cause to be executed and Recorded a notice of default and election to sell the Unit to satisfy the lien. The notice of default and election to sell shall also be mailed in accordance with applicable Nevada law. The notice of default and election to sell must contain the same information as the notice of delinquent Assessment and must also comply with all other requirements of applicable Nevada law.

Section 7.5 Foreclosure Sale. No action shall be brought to enforce any Assessment lien herein, unless at least the minimum applicable requisite period required by law has passed and all other applicable requirements of applicable law have been satisfied. Any notice of foreclosure, and foreclosure sale, shall be subject to and shall comply with applicable law. Notwithstanding any other provision in this Declaration or in the other Governing Documents, the Association shall comply with applicable law and may not contravene applicable law in foreclosing a lien.

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



faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

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

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

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for Assessments and/or fines and certain other amounts. The Association has a lien on a Unit for Assessments and/or fines, and certain other amounts in accordance with applicable Nevada law ("Assessment Lien"), and such Assessment lien shall be prior to all other liens and encumbrances on a Unit, other than certain specified exceptions, all as set forth in NRS §116.3116 and/or other applicable Nevada law. The sale or transfer of any Unit shall not affect an Assessment lien, which shall be subject to applicable Nevada law.

## **ARTICLE 8**

### **ARCHITECTURAL REVIEW COMMITTEE**

Section 8.1 ARC. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC," shall consist of three (3) committee members; provided, however, that such number may be increased or decreased from time to time by resolution of the Board. Notwithstanding the foregoing, Declarant shall have the sole right and power to appoint and/or remove all of the members to the ARC during the Declarant Rights Period; provided that Declarant, in its sole discretion, by written instrument, may at any earlier time turn over to the Board the power to appoint the members to the ARC; thereafter, the Board shall appoint all members of the ARC. Subject to the preceding sentence, a member of the ARC appointed by Declarant may be removed at any time, without cause, by Declarant (and a member of the ARC appointed by the Board may be removed at any time, without cause, by the Board). Unless changed by resolution of the Board, the address of the ARC for all

purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board.

Section 8.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 8, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including the inspection of construction in progress to assure conformance with plans and specifications approved by the ARC. The ARC shall have forty-five (45) days from its date of receipt within which to review plans and specifications received; provided that if the ARC has not responded by such forty-fifth day, then the ARC shall be deemed to have disapproved such plans and specifications (and the applicant shall then be required to re-apply).

(a) With the exception of any activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, repair or reconstruction of an Improvement, including Dwelling and landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval.

(b) The ARC shall promulgate from time to time ARC rules, requirements, and procedures governing submission, review, and approval of plans and specifications submitted for ARC approval, and reasonably related matters, subject to Board approval and compliance with applicable Nevada law.

Section 8.3 Scope of Review. Notwithstanding the foregoing or any other provision herein, the ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety, method of construction, or conformance with building or other codes or legal requirements. ARC approval shall be subject to all applicable requirements of applicable government authority, drainage, and other similar matters, and shall not be deemed to encompass or extend to possible impact on neighboring Lots. Each Owner shall be responsible for obtaining all necessary permits and for complying with all applicable governmental (including, but not necessarily limited to, City) requirements. ARC shall promulgate from time to time ARC rules, requirements, and procedures governing submission, review, and approval of plans and specifications submitted for ARC approval, and reasonably related matters, subject to Board approval and compliance with applicable Nevada

Section 8.4 Non-Liability for Approval of Plans. The ARC's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the ARC, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in the structure constructed from such proposals or

plans or specifications. Neither the ARC, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings.

Section 8.5 Deposit Requirement. The ARC may require an Owner other than Declarant (such Owner, a "Homeowner") to post a cash deposit ("Deposit"), with and as required by the ARC, in an amount from time to time reasonably to be determined by the ARC, prior to commencing any installation of an Improvement or other work pertaining to landscaping or other Improvement on any Lot (if space permits, and subject to all ARC provisions). Said Deposit shall be held by the ARC, and returned to the Homeowner after completion of the Homeowner work, provided that the ARC shall use the Deposit to repair any damage to any curb, street, other Common Element, Perimeter Wall, Party Wall, or other area, and if the Deposit is insufficient to repair all such damage, then the additional cost, and any related cost, shall be assessed against the Homeowner as a Special Assessment levied against such Homeowner and his or her Lot.

Section 8.6 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 8 shall not apply to Improvements built by Declarant, or, until such time as Declarant conveys title to the Unit to a Purchaser, to Units owned by Declarant. This Article 8 shall not be amended without Declarant's written consent set forth on the amendment.

## **ARTICLE 9**

### **MAINTENANCE AND REPAIR OBLIGATIONS**

Section 9.1 Maintenance Obligations of Owners. It shall be the duty of each Owner, at his or her sole cost and expense, subject to the Governing Documents, to reasonably maintain, repair, replace and restore all Improvements located on his or her Unit, and the Unit itself, in a neat, sanitary and attractive condition (and at a minimum, in accordance with the strictest of: (a) standards adopted from time to time by the Architectural Review Committee (as set forth in the Governing Documents); and/or (b) commonly accepted standards), except for any areas expressly required to be maintained by the Association under this Declaration. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, or unsightly, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Unit to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment, enforceable as set forth in this Declaration.

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

install any Improvement on a Common Element, and not to hinder, obstruct, modify, change, add to or remove, partition, or seek partition of, any Common Element or any Improvement installed by Declarant or the Association thereon.

Section 9.2 Maintenance and Repair Responsibilities of the Association. No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than initially by Declarant, or by the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to this Declaration (including, but not limited to the provisions of Sections 9.3 and 11.1(b) hereof), upon the Assessment Commencement Date, the Association shall provide for the periodic maintenance, repair, and replacement of the Common Elements, and the costs thereof shall be Common Expenses. The Common Elements shall be maintained by the Association in a safe, sanitary and attractive condition, and in good order and repair. The Association shall also provide for any utilities serving the Common Elements, and shall ensure that any landscaping on the Common Elements is regularly and periodically maintained in good order and in a neat and attractive condition. The Association shall not be responsible for the maintenance of any portions of the Common Elements which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its business judgment to be appropriate. Without limiting the foregoing: from and after the end of the Declarant Control Period, the Board promptly shall cause to be developed and observed a regular, periodic maintenance schedule for all Common Elements, and shall not less than annually submit to Declarant a written report, specifying in reasonable detail all maintenance performed on the Common Elements during the previous year (or during such shorter period since the last such report was submitted to Declarant). Without limiting the foregoing, the Association also shall clean, maintain, irrigate (as applicable), insure (to the extent reasonably feasible) and keep in good repair: (a) Public Pedestrian Access Easements, (b) all areas set forth in or described in the Plat as areas "to be maintained by the homeowners association" or words of similar import, (c) any other areas required to be maintained by the Association pursuant to the Plat or the Declaration, and (d) any other areas as required by relevant governmental authority.

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

Section 9.4 Damage and Destruction Affecting Dwellings and Duty to Rebuild. If all or any portion of any Unit or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore the Unit substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the ARC and the Board. The Owner of any damaged Unit shall be obligated to proceed promptly with all due diligence hereunder, and such Owner shall cause reconstruction to commence and to be completed promptly in compliance with applicable law and legal requirements, unless prevented by causes beyond his or her reasonable control. A transferee of title to the Unit which is damaged shall commence and complete reconstruction in the respective periods which would have remained

for the performance of such obligations if the Owner at the time of the damage still held title to the Unit.

Section 9.5 Party Walls. Each wall or fence which is built as a part of the original construction by Declarant and placed approximately on the property line between Units shall constitute a "Party Wall." In the event that any Party Wall is not constructed exactly on the property line, the Owners affected shall accept the Party Wall as the property boundary. The cost of reasonable repair and maintenance of Party Walls shall be shared by the Owners who use such Party Wall in proportion to such use (e.g., if the Party Wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If a Party Wall is destroyed or damaged by fire or other casualty, the Party Wall shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the Party Wall. Subject to the foregoing, any Owner whose Unit has or had use of the Party Wall may restore the Party Wall to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the Party Wall shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligence or willful acts or omissions. Notwithstanding any other provision of this Section 9.5, an Owner who by his or her negligence or willful act causes a Party Wall to be exposed to the elements, or otherwise damaged or destroyed, shall bear the entire cost of furnishing the necessary protection repair or replacement. The right of any Owner to contribution from any other Owner under this Section 9.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. The foregoing, and any other provision in this Declaration notwithstanding, no Owner (other than Declarant) shall alter, add to, or remove any Party Wall constructed by Declarant, or portion of such wall or fence, without the prior written consent of the other Owner(s) who share such Party Wall, which consent shall not be unreasonably withheld, and the prior written approval of the ARC. Notwithstanding the foregoing, or any other provision in this Declaration: with regard to any block wall constructed on the approximate boundary line of a Lot (even though such Lot may have already been conveyed to another Owner), Declarant shall have the unfettered right, in its sole and absolute discretion, and an easement, from time to time to enter upon such Lot and to construct, extend, shorten, or otherwise adjust, such block wall and/or related Improvement on such Lot and/or on any adjoining Lot. In the event of any dispute arising concerning a Party Wall under the provisions of this Section 9.5, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

Section 9.6 Perimeter Walls. Portions of Perimeter Walls, constructed or to be constructed by Declarant, abutting or located on individual Units, are Improvements which are located, or conclusively deemed to be located, within the boundaries of the abutting Units. By acceptance of a deed to his or her Unit, each Owner on whose Unit a portion of the Perimeter Wall is located, covenants, at the Owner's sole expense, with regard to said portion of Perimeter Wall located or deemed located on his or her Unit ("Unit Wall"): to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Unit Wall at all times in good repair; and, if and when reasonably necessary, to replace the Unit Wall to its condition and appearance as originally constructed by Declarant. No changes or alterations (including, without limitation, temporary alterations, such as removal of the Unit Wall for construction of a permitted Improvement) shall be made

to any Perimeter Wall, or any portion thereof, without the prior written approval of the ARC (and any request therefor shall be subject to the provisions of Article 8 above, including, but not necessarily limited to, any conditions imposed by the ARC). The foregoing and any other provision herein notwithstanding, under no circumstances shall any wall, or portion thereof, originally constructed by Declarant, be changed, altered or removed by any Owner (or agent or contractor thereof) if such wall, or portion thereof, is shown on any improvement plan as a flood control wall, or any other wall, or if such change, alteration or removal in the sole judgment of Declarant or the ARC (as applicable) (without obligation to make such judgment) would adversely affect surface water, drainage, or other related considerations or requirements. If any Owner shall fail to insure, or to maintain, repair or replace his or her Unit Wall within sixty (60) days when reasonably necessary, in accordance with this Section 9.6, the Association shall be entitled (but not obligated) to insure, or to maintain, repair or replace such Unit Wall, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration.

Section 9.7 Additional Wall Provisions. Units initially may be developed by Declarant and conveyed to Purchasers with or without Party Walls or Perimeter Walls. In the event one or more Lots is or are initially developed and conveyed without such walls or fences (i.e., "open landscaping"), Declarant reserves the right (but not the obligation) thereafter at any time, in its discretion, following notice to the Owners thereof, to enter upon such Lots and to construct thereon Party Walls and/or Perimeter Walls (and Declarant expressly reserves an easement upon all Lots for itself, and its agents, employees, and contractors, for such purpose). Construction by Declarant of a Party Wall or Perimeter Wall on any Lot shall raise absolutely no presumption or obligation to construct a similar or any wall or fence on any other Lot. Walls or fences initially installed by Declarant shall not be added to, removed, modified, changed, or obstructed by any Owner without prior written approval of the ARC, and shall not in any manner or degree relieve any Owner of his or her obligation to maintain the entire Lot, regardless of the location of such wall or fence, as well as such wall or fence.

Section 9.8 Installed Landscaping.

(a) Declarant shall have the option, in its sole and absolute discretion, to install landscaping (which may be desert landscaping) on certain front yard areas of certain Lots sold by Declarant to a Purchaser ("Declarant Installed Landscaping").

(b) Subject to Subsection 9.8(a) above and Section 9.9 below, and the requirements of Article 8 (Architectural and Landscaping Control), above, each Owner shall have, following the Close of Escrow on his or her Lot, a period of not more than one (1) year within which to have applied for and obtained approval of plans for initial landscaping (other than any Declarant Installed Landscaping) and to have commenced and completed installation of such permitted landscaping on his or her Lot ("Owner Installed Landscaping").

(c) Each Owner shall be responsible, at his or her sole expense, for: (1) maintenance, repair, replacement, and watering of all landscaping (whether Declarant Installed Landscaping or Owner Installed Landscaping) on his or her Lot in a neat and attractive condition; and (2) maintenance, repair, and/or replacement of any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping, subject to Section 9.8(d) below.

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

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

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

(g) Absent prior written approval of the ARC, in its sole discretion, no Owner (other than Declarant) may add to, delete, alter, modify, or change, any landscaping, irrigation, or related system or Improvement, on any portion of the Owner's Lot.

(h) In light of current and possible future drought conditions and restrictions, each Owner shall be familiar with and fully adhere to water conditions and restrictions from time to time. Each Owner is required to immediately familiarize himself or herself with all present and from time to time with all anticipated or changed water use, watering restrictions, fines, and planting limitations, as relate or may relate to such Owner's Lot (including, but not necessarily limited to, landscaping and uses thereon). Further information regarding the foregoing may be obtained from time to time from the Southern Nevada Water Authority, which currently maintains a public information website at "[www.snwa.com](http://www.snwa.com)".

(i) Notwithstanding any of the above provisions, the Board shall not, and the Governing Documents must not prohibit an Owner from installing or maintaining drought tolerant landscaping in areas which the Owner has the right to occupy and use exclusively, so long as said landscaping is selected to the maximum extent practicable to be compatible with

the style of the Community. For purposes of this Section 9.8, "Drought Tolerant Landscaping" shall mean landscaping which conserves water, protects the environment, and is adaptable to local conditions.

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

Section 9.10 Graffiti Removal. The Association may, at its discretion, remove or paint over any graffiti from or on Exterior Walls (and the costs of such removal or painting shall be a Common Expense).

Section 9.11 Maintenance of Coach Lights. Each Owner shall at all times maintain in good and operating condition any and all coach lights installed by Declarant on the exterior of the Owner's Dwelling or Garage (all of the foregoing described lights, collectively, "Coach Lights"). Such Owner maintenance shall include, but not be limited to, immediate replacement of burnt-out light bulbs (with new bulbs of like wattage and appearance) and broken coach light fixtures, and prompt periodic replacement of photoelectric cells (if applicable) in or controlling the Coach Lights, when and as needed. Absent prior written approval of the ARC, in its sole discretion, no Owner may delete, modify, or change any Coach Light or part thereof as initially installed by Declarant. If any Owner shall fail to so maintain such Coach Lights, or permit such lighting to fall into disrepair, or delete or modify such lighting without prior approval of the ARC, the Association shall have the right to immediately correct such condition, due to the importance of such lighting, and the Owner shall be solely liable for the costs thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Without limiting the foregoing, in the event that an Owner does not immediately replace a burnt-out Coach Light bulb, the Association shall have the right to enter upon the Lot and to replace such light bulb with a new bulb of like wattage and appearance, and to assess the Owner the sum of up to Fifty Dollars (\$50.00) for each such replacement, as a Special Assessment. Nothing in this Section 9.11 shall be construed as requiring or mandating initial installation by Declarant of Coach Lights.

Section 9.12 Compliance by Owners with EPA and other Requirements. Notwithstanding any other provision in this Declaration, the following are strictly prohibited with regard to Owners (which term, for purposes of this section, shall include the families, contractors, agents, invitees, and guests of Owners, but shall specifically exclude Declarant) anywhere in the Community (including, but not limited to, any Lot, Common Element, and/or adjacent street: (a) the piling of any dirt or construction materials or debris (all dirt or construction materials or debris must be hauled in and hauled out on impermeable



membranes; (ii) the dripping or running off of any dirt or construction materials or debris, from any Lot, Common Element, and/or adjacent street, into any drainage or runoff area; and/or (b) any activity which violates, or which reasonably could result in a violation of, the Federal Clean Water Act, EPA regulation, and/or any other applicable law or regulation; and/or (c) any activity which violates, or which reasonably could result in a violation of, any Ordinance, or Southern Nevada Water Authority, and/or Las Vegas Valley Water or other similar rule or regulation. Any Owner who violates any the foregoing, and causes Declarant or the Association to incur a fine or penalty under the Federal Clean Water Act, EPA regulation, and/or any other applicable law, ordinance, or regulation, shall be subject to a Special Assessment hereunder in the amount of such fine or penalty, plus any applicable attorneys fees and costs. All such amounts shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 6.11 hereof.

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

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

Section 10.1 Residential Use. Each Unit shall be improved and used solely as a residence and for no other purpose. No Unit or part of a Unit shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, primarily for any manufacturing, mercantile, primary storage, vending, "reverse engineering", destructive construction testing, or any similar primarily nonresidential purpose; provided that Declarant may exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-Family children, when added to the number of Family children being cared for at the Lot, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 10.5 below, and no external evidence of any such occupation; for so long as such occupation is conducted in conformance with all applicable Ordinances and such occupation is merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his or her entire Unit (but any ancillary Improvement or structure or related area shall not be rented or leased separately or apart from the entire Unit) by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than six (6) consecutive months. Except as otherwise provided in this Declaration, the Association may not require an Owner to secure or obtain any approval from the Association in order to rent or lease such Owner's Unit. Notwithstanding the

preceding sentence, the Association shall not be prohibited from enforcing any provisions which govern the renting or leasing of Units and which are contained in NRS Chapter 116 or in any other applicable federal, state or local laws or regulations.

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

Section 10.3 Insurance Rates. Without the prior written approval of the Board, nothing shall be done or kept in the Properties which would substantially increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any applicable law. Any other provision herein notwithstanding, the Board shall not have any power whatsoever to waive or modify this restriction.

Section 10.4 Animal Restrictions. A reasonable number of normal household pets (generally including dogs, cats, household birds, or fish) may be kept in a Unit, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any applicable Ordinance or any other provision of the Declaration, and are subject to such limitations as may be set forth in the Rules and Regulations. As used in the preceding sentence, "reasonable number" shall ordinarily mean not more than three (3) normal household pets per Unit; provided, however, that the Board or ARC may determine that a reasonable number in any instance may be more or less, subject to applicable Ordinances. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board or ARC, a nuisance to other Owners or Residents. Without limiting the foregoing, or any other provision herein, excessively barking dog(s) may be prohibited or restricted by the ARC and/or Board, if either the ARC or the Board determines in its respective business judgment that such dog(s) is or are barking excessively, with regard to times of the day, duration of time periods, and/or level of noise, and that such dog(s) constitute a nuisance or unreasonable annoyance to the neighbor(s) of the owner of the excessively barking dog(s) and/or to the Community. Subject to the foregoing, animals belonging to Owners, Residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal.

Furthermore, it shall be the absolute duty and responsibility of each Owner and Resident to clean up after his or her animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar Improvement pertaining to animals shall be placed or permitted in any Unit, unless approved by the ARC in advance and in writing (and, in any event, any such "dog run" or similar Improvement shall not exceed the height of any party wall on the Lot, and shall otherwise not be permitted, or shall be immediately removed, if it constitutes a nuisance in the judgment of the ARC or Board); and (b) all Owners shall comply fully in all respects with all applicable Ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

Section 10.5 Nuisances. No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings; and no plant waste, compost, bulk materials or other debris of any kind; (all, collectively, hereafter, "rubbish and debris") shall be placed or permitted to accumulate anywhere within the Properties unless stored within an enclosed structure or container which has been approved by the ARC, or unless such matter is screened from view in a manner approved by the ARC, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. Without limiting the foregoing, all rubbish and debris shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purposes. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time to permit garbage or trash pickup. No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no 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, inoperable vehicle, unlicensed off-road motor vehicle, or other item or equipment which may unreasonably disturb other Owners or Residents, or any equipment or item which unreasonably interferes with regular television or radio reception within any Unit, shall be located, used or placed on any portion of the Properties without the prior written approval of the Board. No unusually loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Common Elements without the prior written approval of the Board and/or ARC, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce frequently occurring false alarms in a manner annoying to neighbors. The Board shall have the right to determine if any noise, odor, or activity or circumstance reasonably constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his or her Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

Section 10.6 Exterior Maintenance and Repair; Owner's Obligations. No Improvement anywhere within the Properties shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. If any Owner or Resident shall permit any Improvement, the maintenance of which is the responsibility of such Owner or Resident, to fall into disrepair so as to create a dangerous, unsafe, or unsightly condition, the Board, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.11 above, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment for all purposes of Articles 6 and 7, above. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or action may be taken against the Owner in the manner set forth in this Declaration. The Association and its directors, officers, employees and agents shall have no liability whatsoever for any damage done to an Owner's Unit in connection with or as a result of such entry and/or repair, provided that the Association acted in good faith and without gross negligence.

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

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

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

Section 10.10 No Unsightly Articles. No rubbish, brush, weeds, undergrowth, or debris of any kind or character shall ever be placed or permitted to accumulate upon any Lot or any portion thereof so as to render said premises a fire hazard, or unsanitary, unsightly, offensive, or detrimental to any other property in the vicinity or the occupants thereof. No unsightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, and garden and maintenance equipment, or inoperable vehicle) shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, Common Elements, or neighboring property. There shall be no placement of indoor furniture (including, but not limited to, couches, sofas, and similar items) in any area outside the interior of the Dwelling as to be visible from any street or from any other Unit or from any Common Element.

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

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

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

Section 10.14 Signs; Flags. Subject to NRS 116.320, as amended from time to time, and subject further to the reserved rights of Declarant set forth in Article 14 below, the display by an Owner, on his or her Lot, of the flag of the United States or of the State of Nevada shall not be prohibited, provided that such flag: (a) is displayed in a manner respectively consistent with the Federal Flag Code and applicable Nevada law and Ordinances, (b) is of normal residential proportions and properly and respectfully displayed and maintained; (c) is not displayed for commercial advertising purposes; and (d) (if illuminated) is with such illumination and improvements related thereto subject to ARC requirements, to the maximum extent permitted from time to time by applicable law, to minimize any negative effect on neighbors. Subject to the preceding sentence: no other flag, flag pole, balloon, beacon, banner, sign, poster, display, billboard or other advertising device

or other display of any kind shall be installed or displayed to public view from any Lot or any other portion of the Properties, without the prior written approval of the ARC except for: (a) one (1) sign for each Unit, not larger than eighteen (18) inches by thirty (30) inches, advertising the Unit for sale or rent; and/or (b) political signs, subject to applicable law, not larger than twenty-four (24) inches by thirty-six (36) inches on a Lot (for the purposes of this Section 10.14, "political sign" shall mean a sign that expresses support for or opposition to a candidate, political party, or ballot question), and/or (c) traffic and other signs installed by Declarant as part of the original construction of the Properties. Signs may be regulated to the maximum extent from time to time permitted by applicable law. All signs or billboards and the conditions promulgated for the regulation thereof shall conform with applicable Ordinances. Further use restrictions governing and pertaining to signs may be set forth from time to time in Rules and Regulations.

Section 10.15 Improvements.

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

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

Section 10.16 Satellite Dishes. Satellite dishes may be installed without ARC approval, if all of the following conditions are met: (a) the satellite dish shall be no larger than 39" in diameter; (b) the satellite dish cable/cord color shall match the body color of the home; (c) the cable wiring, casing must be installed in a professional manner and cord, cables, wires and dish must be properly and tightly mounted and secured without gap; and (d) the satellite dish must be located in an inconspicuous location at the rear of the Dwelling near the roof eaves. If all of these conditions cannot be met, then ARC review and approval will be required, subject to applicable law.

Section 10.17 Landscaping. Each Owner shall maintain the landscaping on his or her Lot in a neat and attractive condition. The Board may adopt Rules and Regulations

proposed by the ARC to regulate landscaping permitted and required in the Properties, but shall not prohibit an Owner from installing or maintain drought tolerant landscaping that is selected to the maximum extent practicable to be compatible with the style of the Community and which is submitted to the ARC for approval (for the purposes of this Section 10.17, "drought tolerant landscaping" shall mean landscaping which conserves water, protects the environment, and is adaptable to local conditions").

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

Section 10.19 Parking and Vehicular Restrictions.

(a) No Person shall park, store or keep, anywhere within the Properties, any inoperable or similar vehicle, or any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck); any recreational vehicle (including, but not limited to, any camper unit, house car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; or any inoperable vehicle or any other similar vehicle; provided that:

(1) A pickup truck or van up to and including one (1) ton, when used for daily transportation (and occasional incidental personal hauling of items) of the Owner or Residents or Family respectively thereof, may be kept or parked entirely within a driveway (so as not to extend beyond the driveway) or an enclosed garage; and

(2) "RV" is hereby defined as a recreational vehicle, boat, camper, motor home, or other similar vehicle or item specifically designed or intended for recreational use and not for normal every-day transportation. An RV shall not be permitted to be kept in the Community unless the RV is and must be: (A) parked wholly within an enclosed garage as originally constructed by Declarant (or wholly within an enclosed garage as may be specifically approved from time to time by the ARC in its discretion subject to Board approval); or (B) space permitting, parked in a rear yard or side yard, behind a screened RV fence or gate or structure as originally constructed by Declarant or as may be specifically approved from time to time by the ARC in its discretion subject to Board approval); and further subject to Rules which may be established from time to time by the ARC or Board. No RV shall be permitted to be parked in a driveway or street (except reasonably for temporary and short loading or unloading periods).

(b) No parking of any vehicle shall be permitted along any curb or otherwise on any street within the Properties, for any uninterrupted period longer than seventy-two (72) hours, subject to such further rules and regulations as may be established from time to time by the Board; subject to the foregoing, street parking is to be utilized only after the full capacity of the driveway (without extending beyond the driveway) has been achieved.

(c) Without limiting the foregoing, or any other provision herein, no Owner or any other Person may park or keep any motor vehicle, boat, trailer, or similar item on any

landscaping (including, but not necessarily limited to desert landscaping on a Lot adjacent to a roll-up curb) in view of a street, without the specific prior written approval of the ARC in its sole discretion.

(d) No Person shall park, store or keep anywhere within the Properties any vehicle or vehicular equipment, mobile or otherwise, which is deemed by the Board to be a nuisance. Garages shall normally be kept closed at all times, except as reasonably required for ingress to and egress from the interior thereof.

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

(f) The Board shall have the power, but not the obligation, from time to time to establish rules and regulations further governing parking and/or vehicle restrictions.

(g) Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner as to permit any activity which would be prohibited by applicable law or Ordinance (or to prohibit any activity which is mandatorily required by applicable law or Ordinance); including, but not necessarily limited to, statutorily permitted parking related to the following (subject to definitions and requirements set forth in NRS 116.350): (i) law enforcement vehicles; (ii) emergency services vehicles; and/or (iii) utility services vehicles; provided that, with regard to such vehicles, any person parking or seeking to park any such vehicle must first provide written confirmation from his or her employer that such person is qualified to park such vehicle in Association areas in accordance with applicable law; and provided further that such vehicle parking reasonably does not comprise a safety hazard (as, for example, to neighbors backing in or out of their respective driveways). Notwithstanding the foregoing (absent irreconcilable conflict with applicable law) such vehicles shall not be entitled to park in private parking areas owned and/or controlled by Declarant related to Declarant's sales offices, management offices, and/or models, inasmuch as such private parking areas are owned and/or controlled by Declarant and are not Common Elements and not Association areas.

(h) These vehicle and parking rules may be enforced on any Private Street within the Properties. Notwithstanding any of the foregoing, the Association shall not have



jurisdiction over, and these restrictions shall not be enforced on, any public road, street, or other thoroughfare, the right-of-way of which is accepted by the State of Nevada or a local government for dedication for public use.

(i) As set forth on the Plat, direct vehicular access to Centennial Parkway and/or Regena Avenue from abutting Lots through Common Elements (other than in a normal manner over Private Streets) is prohibited.

Section 10.20 Holiday Lights. Traditional holiday lights and/or decorations which may be viewed from other portions of the Properties may be attached or installed by an Owner in a reasonable manner and in reasonable locations on the exterior of his or her Dwelling or other portion of a Lot, provided that such installation shall not be permitted to alter or damage the Dwelling or any Improvement on the Lot itself. Such holiday lights and/or decorations must be installed and removed in a reasonably seasonal manner (but in any event not earlier than thirty (30) days before and not later than thirty (30) days after the holiday), and, during the appropriate period of display, shall be maintained in a neat and orderly manner, and shall be subject to all Ordinances and subject further to such Rules as may be promulgated from time to time by the Board in its reasonable discretion.

Section 10.21 Vehicle Washing. Washing of vehicles from time to time shall or may be prohibited in the Properties, in accordance with applicable Ordinances, and/or drought/water conservation measures of the Southern Nevada Water Authority or other authority with jurisdiction.

Section 10.22 No Security/Monitoring; Hazardous Conditions. NO SECURITY OR MONITORING IS PROVIDED FOR THE COMMUNITY AND/OR PERSONS OR ACTIVITIES WITHIN OR RELATED TO THE COMMUNITY (INCLUDING, BUT NOT LIMITED TO, THE UNITS AND COMMON ELEMENTS). All persons entering upon the Community or any portion thereof shall do so AT THEIR OWN RISK and shall conclusively be deemed to have fully and unconditionally assumed the risk of property damage and/or bodily injury from dangerous or hazardous conditions, Improvements, activities, and/or occurrences on, or the use by others of, such areas, and shall indemnify and hold Declarant, the Association, and their respective directors, officers, employees, committee members, and agents, harmless from and against any and all liability arising from or in any way related to the absence of security or monitoring for the Community (including, but not limited to, the Common Elements). Without in any way limiting the foregoing: (a) parents shall at all times personally supervise any minor child or children on or about the Community (including, but not limited to, the Common Elements); (b) such animals as may be allowed from time to time in the Common Elements must at all times be kept on a leash held by a person capable of controlling the animal, and such person must immediately clean up and reasonably remove any and all droppings or waste deposited by such animal; and (c) the Board shall have the right, in its sole discretion (but not the obligation), to establish additional Rules and Regulations pertaining to the Community and/or use of the Common Elements, and to prohibit any activity thereon deemed to be a nuisance.

Section 10.23 Conduct in the Community; Bullying Not Allowed. There shall be a fundamental overall "good neighbor" policy of courtesy and reasonability underlying and controlling this Declaration and the other Governing Documents and this Community, in which the Owners seek to enjoy a quality lifestyle. Subject to protected Constitutional and First

Amendment rights and other applicable law, the following "Bullying" provisions are set forth. "Bullying" shall not be allowed during or related to any Association Membership or Board or ARC meeting or function or activity, or on any Common Element. "Bullying" shall mean conduct (which may include oral harassment and/or intimidation, and/or physical act or gesture, by one or more person(s) ("Perpetrator(s)"), directed at one or more other person(s) ("Victim(s)"), that causes harm or serious emotional distress to the Victim, or places the Victim in reasonable apprehension of fear of harm or serious emotional distress to himself, or creates an unreasonably hostile environment for a Victim. These "Bullying" provisions apply to: Owners, Residents, and/or their respective Families; guests; Association Directors, Officers, ARC members, other committee members, Community Manager, contractors, and their respective employees (if any) and agents. Bullying will be deemed a nuisance that imminently threatens the health, safety, and welfare of the Community, subject to applicable law. Note: NRS 116.31184 (entitled "Threats, harassment and other conduct prohibited; penalty), effective as of October 1, 2013, provides that violation of such statute will or may also comprise a misdemeanor under Nevada law. In the event of any irreconcilable conflict between this section and applicable statute, the statute shall prevail.

Section 10.24 No Views. Each Owner, by accepting a deed to his or her Unit, whether or not specifically so stated in such deed, acknowledges and agrees that any construction or installation by Declarant or third parties, or growth of trees or other plants, may impair or eliminate the view, if any, of such Owner, and hereby accepts and consents to view impairment or elimination, and releases, and holds all other Owners, Declarant and the Association and their respective members, managers, directors, officers, employees, and agents, harmless from and against any and all claims for or related to alleged or actual view impairment or elimination.

Section 10.25 Post Tension Slabs. The concrete slab for certain Units in the Properties are or may be reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Unit and/or personal injury. By accepting a deed to a Unit in the Properties, each Owner specifically covenants and agrees that: (a) such Owner shall not cut into or otherwise tamper with any Post Tension Slab; (b) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Residence; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Unit; and (d) such Owner shall indemnify and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including attorneys' fees) arising from any breach by such Owner of this Section.

Section 10.26 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Community Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be

deemed a waiver of such breach, and no waiver by the Board or Community Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Community Manager.

Section 10.27 Declarant Exemption. Each Unit owned by Declarant shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Unit to a Purchaser, and activities of Declarant related to Declarant's development, construction, advertising, marketing and sales efforts, shall be exempt from the provisions of this Article 10, for a period of twelve (12) years after conveyance of the last Unit in the Properties to a Purchaser. Until the end of such time period, this Article 10, including but not limited to this Section 10.27, may not be amended without Declarant's prior written consent, in its sole discretion, and any purported amendment without Declarant's written consent shall be null and void.

## ARTICLE 11 DAMAGE TO OR CONDEMNATION OF COMMON ELEMENTS

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

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

(b) Damage by Owner. To the full extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Elements not fully reimbursed to the Association by insurance proceeds, provided the damage is sustained as a result of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any Improvement by said Owner or the Persons deriving their right and easement of use and enjoyment of the Common Elements from said Owner, or by his or her respective Family and guests, both minor and adult. The Association reserves the right, acting

through the Board, after Notice and Hearing, to: (1) determine whether any claim shall be made upon the insurance maintained by the Association; and (2) levy against such Owner a Special Assessment equal to any deductible paid and the increase, if any, in the insurance premiums directly attributable to the damage caused by such Owner or the Person for whom such Owner may be responsible as described above. In the case of joint ownership of a Unit, the liability of the co-owners thereof shall be joint and several, except to any extent that the Association has previously contracted in writing with such co-owners to the contrary. After Notice and Hearing, the Association may levy a Special Assessment in the amount of the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, against any Unit owned by such Owner, and such Special Assessment may be enforced as provided herein.

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

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

## **ARTICLE 12** **INSURANCE**

Section 12.1 Casualty Insurance. The Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with, NRS Chapter 116. Subject to the preceding sentence, the Board shall cause to be obtained and maintained a master policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements of the Association on the Common Elements, for the full insurable value replacement cost thereof without deduction for depreciation or coinsurance, and, in the Board's business judgment, shall obtain insurance against such other hazards and casualties, as the Board deems reasonable and prudent. The Board, in its reasonable judgment, may also insure any other property, whether real or personal, owned by the Association or located within the Properties, against loss or damage by fire and such other hazards as the Board may deem reasonable and prudent, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Elements shall be maintained for the benefit of the Association, the Owners, and the Eligible Holders, as their interests may appear as named insured, subject however to the loss payment requirements as set forth herein. Premiums for all insurance

carried by the Association are Common Expenses included in the Annual Assessments levied by the Association.

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

Section 12.2 Liability and Other Insurance. The Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with, NRS Chapter 116. Subject to the preceding sentence, the Association shall have the power and duty to and shall obtain commercial general liability insurance, including insurance for medical payments and malicious mischief, in such limits as it shall deem prudent (but in no event less than \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Community Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests and invitees, against liability for bodily injury, death and property damage arising out of or in connection with activities of the Association or the use, ownership, or maintenance of the Common Elements, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available and reasonably necessary, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Worker's Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Community Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

Section 12.3 Fidelity Insurance. The Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with, NRS Chapter 116. Subject to the preceding sentence, the Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance coverage, or crime insurance coverage (which includes coverage for dishonest acts by Directors, Officers, Association employees (if any), agents, and volunteers, and which extends coverage to the Community Manager and its employees), in an amount at least equal to the lesser of: (a) three (3) months of aggregate Assessments on all Units plus Reserve Funds; or (b) \$5,000,000); and such other insurance as it deems prudent, insuring the Board, the Directors,

and Officers, and Community Manager against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof, if reasonably feasible, in the amount of not less than \$1,000,000.00. Said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period, if reasonably available. The Association shall require that the Community Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From and after the end of the Declarant Control Period, blanket fidelity insurance coverage which names the Association as an obligee shall be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Community Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (¼) of the Annual Assessments on all Units, plus Reserve Funds) (or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable).

Section 12.4 Other Insurance Provisions. Notwithstanding any other provision herein, the Board shall cause the Association to obtain and maintain any and all insurance coverage required from time to time by, and in compliance with, NRS Chapter 116. Subject to the preceding sentence, the Board shall also obtain such other insurances customarily required with respect to projects similar in construction, location, and use, or as the Board may deem reasonable and prudent from time to time, including, but not necessarily limited to, Worker's Compensation insurance (which shall be required if the Association has any employees). All premiums for insurances obtained and maintained by the Association are a Common Expense included in the Annual Assessment levied upon the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its sound business judgment. In addition, the Association shall continuously maintain in effect such casualty, flood (if applicable), and liability insurance and fidelity insurance coverage necessary to meet the requirements for similar developments, as set forth or modified from time to time by any governmental body with jurisdiction, except to the extent such coverage is not reasonably available or has been waived by the applicable agency.

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his or her Unit, at his or her sole expense to have obtained, and to have furnished his or her Mortgagee and the Board (or, in the event of a cash transaction involving no Mortgagee, then only to the Board) with duplicate copies of a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his or her Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and, upon the Board's request (without obligation of the Board to do so) shall promptly provide the Board with duplicate copies of such insurance policy at Close of Escrow, and periodically thereafter prior to expiration from time to time of such policy. Nothing herein shall preclude any Owner from carrying any public liability insurance as he or she deems desirable to cover his or

her individual liability, damage to person or property occurring inside his or her Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him or her to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein: (a) each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance; and (b) this Section 12.5 is intended only to set forth certain insurance-related duties and obligations of Owners; and (c) nothing in this Section 12.5 shall impose any duty or obligation or liability whatsoever on the Association or on the Board.

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

Section 12.7 Notice of Expiration Requirements. In compliance with NRS Chapter 116, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and each Eligible Holder who has filed a written request with the carrier for such notice, and every other Person in interest who requests in writing such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 12, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his or her interest in the Common Elements or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his or her Family; (c) no act or omission by any Owner or member of his or her Family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**ARTICLE 13**  
**MORTGAGEE PROTECTION**

Section 13.1 Mortgagee Protection Provisions. In order to induce FHA, VA, FHLMC, GNMA and FNMA and any other governmental agency or other Mortgagees to participate in the financing of the sale of Units within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

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

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

(c) In all instances subject to and in accordance with applicable law (including, but not necessarily limited to, NRS §116.3116, as may be applicable): each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title to such Unit free and clear of any claims of unpaid Assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee.

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

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

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

(3) by act or omission change, totally waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior



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

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

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

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

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

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

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

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

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

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

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

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

Section 13.2 FHA/VA Approval. So long as Declarant has effective control of the Board, the following actions will require the prior confirmation of the FHA and/or VA, as applicable: (a) annexation or deannexation of additional property in the Project (other than the Annexable Area); (b) dedication, conveyance or Mortgage of Association Property; (c) except as provided in Section 17.5 below, amendment of this Declaration; and (d) mergers, consolidations or dissolutions of the Association; provided, however, that such prior confirmation shall not be a condition precedent if FHA or VA has ceased to regularly require or issue such written confirmations.

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

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

(a) Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating at the end of the Declarant Rights Period, the right, in

Declarant's sole discretion, to complete the construction of the Improvements on the Properties and an easement over the Properties for such purpose.

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

(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to install and maintain models, sales offices, management offices, construction trailers, and/or related private parking areas on any Lot or Unit owned or leased by Declarant in the Properties, and to install and maintain signs, flags, and/or banners anywhere on the Common Elements, respectively during the Declarant Rights Period. Declarant further expressly reserves the right during such period to use said signs, flags, and/or banners, offices, models, construction trailers, and/or private parking areas (which are not Common Elements, and are not Association areas), in connection with marketing and/or sales of other projects of Declarant in the Las Vegas Valley. Without limiting the foregoing, during the Declarant Rights Period, Declarant reserves the right and an easement to place and maintain signs, flags and banners throughout the Properties for Declarant's marketing and advertising purposes, and to periodically enter upon the Properties to maintain said signs, flags, and banners and to keep them in good repair.

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

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

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

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

(h) Conveyance to City or Other Governmental Authority. Declarant hereby reserves, for itself, and/or for the Association, the unilateral right, power, and authority to convey portion(s) of Common Elements to the City or applicable governmental entity or entities with jurisdiction, and/or utility, at the request or with the consent of the City or governmental entity or utility (as applicable); and each Owner covenants to sign such documents and to perform such acts as may be reasonably required by Declarant to effectuate the foregoing.

(i) Certain Other Rights. Notwithstanding any other provision of this Declaration, Declarant additionally reserves the right (but not the obligation), in its sole and

absolute discretion, at any time and from time to time, to unilaterally: (1) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (2) modify, expand, or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community (i.e., the Units That May Be Created).

(j) Restriction of Traffic. Declarant reserves the right, until the end of the Declarant Rights Period, subject to applicable law, to control, restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to at least one dedicated street adjacent to the Properties. Neither the Association nor any one or more of the Owners may at any time or in any way (without the prior written approval of Declarant, in its sole discretion) impede, hinder, obstruct, or interfere with Declarant's marketing, sales, and/or construction activities.

(k) Marketing Names and Certain Other Rights. During the Declarant Rights Period, Declarant shall have the right (but not the obligation), at any time and from time to time, in its sole and absolute discretion, to: (a) design, build, market, and/or sell new homes in the Community from time to time as or under separate or different neighborhoods or areas and/or marketing names, which may, but need not necessarily, include "EMERALD CREST" and/or any other name(s), in Declarant's sole discretion; (b) design, build, market, and/or sell different or varying product types, plans, or designs for new homes and/or other Improvements in the Community and/or portions thereof (including, but not limited to, new homes in the Community from time to time significantly different in size, number of bedrooms or other rooms, number of floors or height, architectural styling or features, embellishments, price, value, and/or any other feature or aspect of any future product); (c) establish and/or adjust sales prices or price levels up or down for homes and/or Lots; (d) have the Association budget initially and from time to time computed on numbers of Lots significantly less than the maximum number of Units That May Be Created; (e) supplement and/or modify of Record all or any parts of the descriptions set forth in Exhibit "A" and/or "B" hereto; and/or (f) unilaterally modify and/or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community, and the Annexable Area which may, but need not necessarily, from time to time be annexed hereto.

(l) Control of Private Parking Areas and Parking Spaces. During the Declarant Rights Period, Declarant reserves the sole right to control all private parking areas and all parking spaces located on Lot(s) owned and/or controlled by Declarant, and related to Declarant's models, offices, and/or construction trailers, and to tow unauthorized vehicles at such vehicle owner's expense. Such private parking areas are located on Lots owned or controlled by Declarant, and are not Common Elements, and not Association areas. Declarant shall have the sole right to control parking on such privately owned areas.

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

(n) Amendment of Plat. To the maximum extent not prohibited by applicable Nevada law, Declarant reserves the right from time to time to unilaterally execute, process through appropriate governmental authority, and Record amended plat map(s) for the

Community; provided that any such amended plat map shall not amend any property already conveyed to a Purchaser without the written approval of such Purchaser, which approval shall not be unreasonably delayed or withheld. Upon request by Declarant, the Association and each Owner shall promptly sign, acknowledge (as may be appropriate or required) and deliver to Declarant all documents reasonably required and to promptly do all other things reasonably required by Declarant in connection with or related to amendment of the plat map(s)

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

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

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

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

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

(d) Without limiting Section 14.1(c), above, or any other provision herein, Declarant may use any Lots or Units owned or leased by Declarant, as models, construction trailer sites, sales offices, management offices, and/or related private parking areas (which are not Common Elements, and are not Association areas) for this Community or for any other project of Declarant and/or its affiliates, subject to the time periods set forth herein. By not later than the end of such relevant time periods, Declarant shall restore or improve the relevant Lot or Unit to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

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

(f) The prior written approval of Declarant, as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 14) can be effective.

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate at the end of the Declarant Rights Period. Developmental rights may be exercised with regard to different parcels of real estate at different times, and no assurances are made in regards to the boundaries of those portions or regulating the order in which those portions may be subjected to the exercise of any developmental right. If any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right need not be exercised in all or in any other portion of the remainder of that real estate.

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

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

Section 15.1 Annexation. Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portions of the Annexable Area then owned by Declarant, by Recording an annexation amendment ("Annexation Amendment") with respect to the real property to be annexed ("Annexed Property"). Upon the recording of an Annexation Amendment covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if the Annexed Property were originally covered in this Declaration and originally constituted a portion of the Original Property; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Property shall be the same as with respect to the Original Property and the rights, obligations, privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter (and, to the maximum extent not prohibited by applicable law, appoints Declarant as attorney in fact of such grantee and his or her successors and assigns) to unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15. Each Annexation Amendment reasonably shall conform to the requirements of NRS §116.211.

Section 15.2 FHA/VA Approval. In the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) on any portion of the Annexable Area with respect to the initial sale by Declarant to a Purchaser of any Unit, then a condition precedent to any annexation of any property other than the Annexable Area shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA; provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

Section 15.3 Disclaimers Regarding Annexation. Portions of the Annexable Area may or may not be annexed, and, if annexed, may be annexed at any time by Declarant, and no assurances are made with respect to the boundaries or sequence of annexation of such portions. Annexation of a portion of the Annexable Area shall not necessitate annexation of any other portion of the remainder of the Annexable Area. Declarant has no obligation to annex the Annexable Area or any portion thereof.

Section 15.4 Expansion of Annexable Area. In addition to the provisions for annexation specified in Section 15.1 above, the Annexable Area may, from time to time, be expanded to include additional real property, not as yet identified. Such property may be annexed to the Annexable Area upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners of such property and containing thereon the approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written approvals.

Section 15.5 Contraction of Annexable Area; Withdrawal of Real Property. As long as real property ("Withdrawn Property") is not set forth on a particular subdivision map where one or more Lots on that particular subdivision map have already been conveyed to one or more Purchasers, then such Withdrawn Property may be withdrawn or deleted by Declarant from the Annexable Area. Such withdrawal or deletion of the Withdrawn Property from the Annexable Area shall be effective upon the Recordation of a written instrument describing the Withdrawn Property, executed by Declarant (and all other owners, if any, of the Withdrawn Property), and declaring that the Withdrawn Property is withdrawn or deleted from the Annexable Area. Such real property may be withdrawn or deleted from the Annexable Area unilaterally by Declarant without a vote or consent of the Association or the approval or consent of any other Person (except other owner(s), if any, of the Withdrawn Property, as set forth above).

## **ARTICLE 16**

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

Section 16.1 Additional Disclosures, Disclaimers, and Releases of Certain Matters. DECLARANT FURTHER DISCLOSES THAT NO ASSURANCES ARE MADE WITH RESPECT TO ANY OF THE FOLLOWING MATTERS, WHICH SHOULD BE CAREFULLY REVIEWED BY THE PURCHASER OF A UNIT. Note: The term "Properties" or "Community", as used throughout these disclosure and disclaimer provisions, shall include the Units, other dwellings and other improvements, and the Common Elements. All disclosures and disclaimers set forth in the Declaration shall be cumulative with, and shall not limit, any and all

disclosures and disclaimers set forth in the Declaration and other Governing Documents, the Purchase Agreement, the Public Offering Statement ("POS") and/or in the various documents described in the POS, and/or delivered to Purchaser, all of which disclosures and disclaimers are incorporated herein by this reference. Inclusion or description of certain items or matters herein shall not raise any inference whatsoever regarding the importance or lack of importance of any other item or matter not included or described herein. Without limiting any other provision in the Declaration, by acceptance of a deed to a Unit, or by possession or occupancy of a Unit, each Owner (for purposes of this Article 16, and all of the Sections thereof, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), and by residing within the Community, each Resident (including each resident of the Unit and his or her guests) shall conclusively be deemed to understand, and to have acknowledged and agreed that each such person's decision to purchase or reside in a Unit is based solely upon such person's own independent investigation, and not upon any information orally provided by any sales agent, and further to have acknowledged and agreed to, all of the following disclosures, disclaimers, and releases, all of which are cumulative and supplemental with each other and any and all other disclosures, disclaimers and releases, and none of which shall be deemed in any way or to any extent to replace or limit any other disclosure, disclaimer, and/or release:

(a) There are presently, and may in the future be other, major electrical power system components (including, but not limited to, major high voltage electrical power transmission or distribution lines, transformers, etc.) from time to time located within or nearby the Properties, which generate certain electric and magnetic fields ("EMF") around them.

(b) The Units and other portions of the Properties from time to time are or may be located nearby certain commercial and/or private airports and underneath, within, and/or nearby certain takeoff and/or landing patterns or other airplane flight patterns (including, but not necessarily limited to, those from or pertaining to McCarran International Airport, an active major airport with busy runways and airplane traffic) and underneath, within, and/or nearby, frequent and substantial commercial and/or military jet and other aircraft takeoff and/or landing patterns or other airplane flight patterns, and/or subject to frequent and substantial levels of airplane traffic, loud noise, and/or vibration. Existing and future noise levels at this location, associated with existing and future airport operations, may have an effect upon the livability, value and suitability of the property for residential use. These airports have been at their present locations for many years, and future demand and airport operations may increase significantly. For further information related to such matters, contact the Clark County Department of Aviation at P.O. Box 11005, Las Vegas, NV 89111-1005, telephone (702) 261-3694.

(c) The Units and other portions of the Properties are or may be located adjacent to or nearby certain major roads, all of which may, but need not necessarily, be constructed, reconstructed, and/or expanded in the future (all collectively, "roadways"), and subject to high and increasing levels of traffic, noise, construction, maintenance, repair, dust, and other nuisance from such roadways.

(d) The Units and other portions of the Properties are or may be located adjacent to or nearby major "water containment" or "detention basin" or "flood control" and/or drainage facilities, storm drains, channel(s) and/or washes (all of the foregoing, collectively,



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

(e) Declarant and Association respectively disclaim any and all representations or warranties, express and implied, with regard to or pertaining to views or preservation of views. Each Owner, by acquiring title to a Unit, whether or not so expressed in the deed thereto, shall be deemed to have waived and released other Owners, Declarant and Association, and their respective directors, officers, members, managers, employees and agents, with regard to and/or from and against any and all claims arising from or related to the obstruction, impairment, or elimination of any existing or future view.

(f) Residential subdivision and new home construction are an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects.

(g) The finished construction of the Units and the Common Elements, while within the standards of the industry in the Las Vegas Valley, Clark County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to variations and imperfections and expected minor flaws. Issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards.

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

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

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

(k) No private security or monitoring is provided for any part of the Community (including, but not limited to, Units, or Private Streets, or other Common Elements) and/or persons or activities within or nearby or related respectively thereto. All persons entering upon the Community shall do so at their own risk and shall conclusively be deemed to have fully and unconditionally assumed the risk of property damage and/or bodily injury from dangerous or hazardous conditions, Improvements, activities, and/or occurrences on, or the use by others of, such areas, and shall indemnify and hold Declarant, the Association, and their respective directors, officers, employees, committee members, and agents, and the ARC, harmless from and against any and all liability arising from or in any way related to the absence of private security or monitoring in or related to the Community (including, but not limited to, the Units, and the Private Streets and other Common Elements).

(l) Without in any way limiting the foregoing: (a) parents shall at all times personally supervise any minor child or children on or about the Community; (b) such animals as may be allowed from time to time in the Community must at all times be kept on a leash held by a person capable of controlling the animal, and such person must immediately clean up and reasonably remove any and all droppings or waste deposited by such animal; and (c) the Board shall have the right, in its sole discretion (but not the obligation), to establish additional Rules and Regulations pertaining to the Community and/or use of the Common Elements, and to prohibit any activity thereon deemed to be a nuisance.

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

(n) The Las Vegas Valley currently is undergoing drought conditions, and relevant water districts and authorities have announced certain water conservation measures and restrictions on outdoor watering and/or outdoor water features. It is possible that these drought conditions may continue or worsen, and/or that the relevant water districts and authorities may announce further water conservation measures and restrictions, which may affect Unit and/or Common Element landscaping and features, and the appearance and/or use of same, and further restricting what plants the Owner can plant or install on the Owner's Lot (for example, among others, the Owner may be prohibited from installing sod on the Owner's Lot or portions thereof); and further prohibiting or restricting the washing of cars or vehicles. Each Owner is required to immediately familiarize himself or herself with all present and from

time to time with all anticipated or changed water use, watering restrictions, fines, and planting limitations, as relate or may relate to such Owner's Lot (including, but not necessarily limited to, landscaping and uses thereon). Further information regarding the foregoing may be obtained from time to time from the Las Vegas Valley Water Authority or the Southern Nevada Water Authority, which currently maintains a public information website at "www.snwa.com".

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

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

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

(r) Units and other portions of the Properties are or may be located adjacent to or within the vicinity of certain other property zoned to permit the owners of such other property to keep and maintain thereon livestock, including horses or other "farm" animals, or potentially dangerous "exotic" animals, which may give rise to matters such as resultant noise, odors, insects, and other "nuisance".

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

(t) Declarant reserves the right to control certain private parking spaces or areas (if any) during Declarant's regular business or marketing hours, and to tow unauthorized

vehicles at the owner's expense, for as long as Declarant is conducting construction, marketing, or sales activities in or from the Community or any portion thereof.

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

(v) Perimeter walls on or along certain portions of the Properties ("Existing Walls") may already have been constructed, by certain other builders, and not by Declarant. With regard to any Units along such perimeters, Declarant's side walls will or may connect to the Existing Walls, and the Existing Walls may become the rear or side property walls. Declarant did not build the Existing Walls, and hereby specifically disclaims any and all responsibility and/or liability for Existing Walls, and/or any condition or matter now or subsequently arising therefrom or related thereto. Each Purchaser of a Unit which contains an Existing Wall, by acquiring title to the Unit, shall be deemed respectively to understand and accept the Existing Wall in its "as is" condition, with no warranty whatsoever, and specifically releases and holds Declarant harmless from and against any and all responsibility and/or liability therefore, arising therefrom, or related thereto.

(w) Each Purchaser acknowledges having received from Declarant: (1) information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, together with (2) a copy of the most recent gaming enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to any gaming uses or issues. Each Purchaser is hereby advised that the master plan and zoning ordinances, and gaming enterprise districts, are subject to change from time to time. If a Purchaser desires additional or more current information concerning these zoning designations, or gaming enterprise districts, the Purchaser should contact the appropriate governmental planning department.

(x) Each Purchaser acknowledges and agrees that its decision to purchase a Unit is based solely upon Purchaser's own investigation, and not upon any information provided by any sales agent.

(y) Homeowners shall be required to comply with any and all rules and requirements of both the Architectural Review Committee of the Association ("ARC") (if any), and shall be required to obtain prior written approval of the ARC before installing, adding, altering, modifying, expanding, or eliminating any landscaping or other Improvements. There will or may be filing fees and/or submission review fees or other fees charged by the ARC.

(z) Additionally, each Homeowner shall or may be required to post a cash deposit ("Deposit") with and as required by the ARC, in amount(s) reasonably to be determined from time to time by the ARC, prior to commencing any installation (if permitted) of an Improvement or other work pertaining to (if permitted) landscaping or other Improvement on any Lot (if space permits, and subject to any and all requirements of the ARC). Said Deposit shall be held by the ARC, and returned to the Homeowner after completion of the Homeowner work, provided that the ARC shall use the Deposit to repair any damage to any curb, street, other Common Element, Perimeter Wall, Party Wall, or other area, and if the Deposit is insufficient to repair all such damage, then the additional cost, and any related cost, shall be assessed against the Homeowner as a Special Assessment levied against such Homeowner and his or her Lot.

(aa) (1) Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Units; (2) proposed or contemplated residential and other developments may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or Purchaser may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or others, Declarant is under no obligation to construct such future or planned developments or units, and such developments or units may not be built in the event that Declarant, for any reason whatsoever, decides not to build same; (3) Purchaser is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; (4) Declarant makes no representation and no guarantee whatsoever regarding compatibility or similarity from time to time of future products (if any) with regard to size, number of bedrooms or other rooms, number of floors or height, architectural styling or features, embellishments, price, value, or any other feature or aspect of any future product; and (5) no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the provisions set forth in the Declaration or other Governing Documents, or in the Public Offering Statement for this Community, or in any provision of the applicable Purchase Agreement; and (6) any depictive or illustrative drawings or renderings set forth in any advertising or marketing materials are an artist's stylized visualization only, and the items or improvements shown therein **NEED NOT BE BUILT OR PROVIDED**, and under no circumstances shall be deemed to constitute any representation or warranty that all or any such items or improvements ever will be built or provided.

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

(cc) Model homes may be kept open and accessed and used by Declarant and members of the home buying public until the end of the Declarant Rights Period. Full

enjoyment of the Community will not be realized until Declarant is complete with all activities pertaining to the Community.

(dd) During the Declarant Rights Period, Declarant has reserved the right in its sole discretion at any time and from time to time to install, open and/or maintain models, sales office, management offices, construction trailers, and/or related private parking areas, and/or signs, flags, banners, within the Properties, to market and/or sell homes in one or more different projects of Declarant. Declarant shall have the right to tow unauthorized vehicles at the owner's expense from private parking areas and parking spaces owned or controlled by Declarant (which are not Common Elements and are not Association areas). Other reserved rights of Declarant are set forth in Article 14 of the Declaration, and need to be carefully reviewed by each Purchaser.

(ee) Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other development and/or construction-related "nuisances". Each Purchaser or Owner acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that the Purchaser and other Owners will experience and accepts substantial levels of development and/or construction-related "nuisances" until the subdivision (and other neighboring property being developed) have been completed and sold out; and thereafter, in connection with repairs or any new construction. Without limiting the foregoing, Declarant shall have the right to place and maintain signs, flags and banners throughout the subdivision for Declarant's marketing and advertising purposes; such signs, flags and banners may be located in close proximity to one or more Lot(s) and/or other portions of the Properties; and such signs, flags and banners may or will produce substantial "flapping" noise or "nuisance", particularly when the wind is strong.

(ff) Declarant shall have the right (but not the obligation), at any time and from time to time, in its sole and absolute discretion, to: (1) design, build, market, and/or sell new homes in the Community from time to time as or under separate or different neighborhoods or areas and/or marketing names, which may, but need not necessarily, include "EMERALD CREST" and/or any other name(s), in Declarant's sole discretion; (2) design, build, market, and/or sell different or varying product types, plans, or designs for new homes and/or other Improvements in the Community and/or portions thereof; (3) establish and/or adjust sales prices or price levels for homes and/or Lots; (4) have the Association budget initially and/or from time to time computed on number(s) of Lots less or substantially less than the maximum number of Units That May Be Created; (5) supplement and/or modify from time to time of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (6) unilaterally modify and/or limit, by Recorded instrument, the maximum total number of Units That May Be Created, and the Annexable Area which may, but need not necessarily, from time to time be annexed by Declarant to the Declaration.

(gg) The soils report applicable to the Community ("Soils Report") should be reviewed carefully in its entirety by each person intending to purchase a Unit in the Community. Without limiting the foregoing, Purchasers and/or Owners shall be required and obligated to comply, at their own cost, with any planting and/or irrigation recommendations and restrictions set forth in the Soils Report.

(hh) The Association, by Recordation of the Declaration and further by the Association's ownership interest in and to the Common Elements, shall conclusively be deemed to have reviewed and accepted, and unconditionally agreed to be subject to, and abide by, the Plat, the Declaration, and all other instruments or matters of Record affecting or related to the Common Elements. Each Owner, by acquisition of a Lot (and each Resident, by residing in a Dwelling), shall conclusively be deemed to have reviewed and accepted, and unconditionally agreed to be subject to, and abide by, the Plat, the Declaration, and all other instruments or matters of Record affecting or related to said Lot.

(ii) Subject to, and as further set forth in further detail in, Section 2.16 of the Declaration, each prospective Homeowner needs to thoroughly review the Solar Energy Documents, which, among other things (subject to said Section 2.16), requires those certain Homeowners, who have agreed to participate in the Solar Plan, to either: (a) purchase all of the solar energy generated electricity from SunStreet Energy Group, LLC and its successors and assigns for 20 years; or (b) purchase the photovoltaic system, consisting of roof panels and hardware and other components in or on the Home. The Solar Energy Documents also set forth certain restrictions on use, occupancy, and/or improvement of the Units, and on use and/or improvement of Common Elements. All of the Solar Energy Documents, subject to Section 2.16 of the Declaration, need to be carefully reviewed by Purchasers.

(jj) Without limiting the foregoing, or any other provision herein, certain additional easements are set forth on the Plat "to be privately maintained by the homeowners association" and are incorporated herein by this reference; and certain additional easements are described elsewhere in the Declaration (including, but not limited to, Declaration Sections 1.20, 1.58, and/or 2.17). The Association shall or may have the responsibility to maintain and keep in good repair the above-referenced easement improvements, as well as the Private Streets and other Common Elements, and the costs respectively thereof from time to time shall be a part of the Common Expenses. The Plat sets forth certain easements over certain Lots, including, but not necessarily limited to, an existing 30' wide easement over portions of certain Lots and Common Elements, in favor of Century Link. Said 30' wide Century Link easement areas, to the extent located over certain Lots, will or may affect or restrict the use of, or ability to improve, said easement areas by the Owners of said Lots.

(kk) Declarant reserves the right, until the end of the Declarant Rights Period, to unilaterally enter upon, and/or to control, restrict and/or re route all pedestrian and vehicular traffic within the Properties, in Declarant's discretion subject to applicable law, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(ll) The streets within the Community are Private Streets and are subject to the Declaration and the other Governing Documents; however, the streets located outside of and abutting the Community ("Outside Streets") are dedicated public rights of way (i.e., public streets) and are not private streets. Outside Streets are not Common Elements, and are not part of the Community. Declarant and Association shall have no jurisdiction or authority whatsoever over Outside Streets, and no responsibility or liability whatsoever arising from or related to Outside Streets (including, but not limited to, maintenance, repair, or regulation of or over any Outside Street).

(mm) Per City requirement, Dwellings and other Improvements on Lots located along the south property line of the Community, abutting Regena Avenue, as shown on the Plat (i.e., Lots 27-41, inclusive) are restricted to single story in height, with a maximum building height of thirty-five feet (35') as determined by Declarant or ARC, subject to relevant Ordinances and/or other applicable law.

(nn) As set forth on the Plat, direct vehicular access to Centennial Parkway and/or Regena Avenue from abutting Lots through Common Elements (other than in a normal manner over Private Streets) is prohibited.

(oo) Public Pedestrian Access Easements are set forth on the Plat and in the Declaration. The Association is obligated to clean, irrigate (as applicable), maintain, insure (as reasonably feasible), and keep in good repair the PPAE; and the costs thereof are Common Expenses. The PPAE in part are located on certain Common Elements outside the northerly Perimeter Walls, along Centennial Parkway; and in part within the interior of the Community, along the east side of Cascade Crest Street and then across Cambridge Brook Avenue, from Centennial Parkway to Regena Avenue. PPAE shall be kept open to the public, without charge or restriction, for use as public sidewalk areas, for as long as so required by the City.

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

(qq) The Units and other portions of the Properties are or may be located nearby a church or religious facility, and subject to levels of sound, noise, traffic, and/or other "nuisance" related thereto.

(rr) Declarant does not intend to install street lights in this Community.

(ss) Each Purchaser and Owner shall be fully responsible for reviewing fully all title matters and all instruments of record pertaining to the Unit.

(tt) Declarant reserves the right to correct or repair any Improvement, as set forth in Declaration Section 17.15 and/or as provided by applicable law.

(uu) Subject to applicable law, certain dispute resolution provisions are or may be set forth in the Declaration (including, but not necessarily limited to, Declaration Article 18) and/or as provided by applicable law.

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

(ww) Each Purchaser and/or Owner understands, acknowledges, and agrees that Declarant has reserved certain rights, powers, authority and easements in the



Declaration, all or any of which may limit certain rights of the Association, and Owners other than Declarant.

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

## **ARTICLE 17** **ADDITIONAL PROVISIONS**

Section 17.1 Enforcement. Subject to Sections 5.2 and 5.6 above, and Section 17.14 and Article 18 below, the Governing Documents may be enforced by the Association, as follows:

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

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

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

(1) the person alleged to have violated the material provision of the Declaration must have had written notice (either actual or constructive, by inclusion in a

Recorded document) of the provision for at least thirty (30) days before the alleged violation;  
and

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

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

(4) any fine imposed under this Section shall not contravene applicable law and shall not exceed the maximum amount(s) permitted from time to time by applicable provision of Nevada law for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Sections 5.2 and 5.6 above and/or Article 18 below);

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

(6) subject to Article 18 below, and to applicable Nevada law (which may first require mediation or arbitration), the Association may also take judicial action against any Owner or Resident to enforce compliance with provisions of the Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

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

utilized only as a "last resort", after all reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed, and in all instances shall be subject to applicable law.

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

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

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

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

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

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

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

Section 17.5 Amendment. Except as otherwise provided in this Declaration, and except in cases of amendments that may be executed by Declarant or by the Association or by

certain Owners (as enumerated in NRS §116.2117), this Declaration, including the Plat, may only be amended by both: (a) the affirmative vote and/or written consent of Owners constituting at least two-thirds (2/3) of the total voting power of the Association, and (b) the written consent of at least a majority of the total voting power of the Board. Notwithstanding the preceding sentence, if an amendment fails to receive the number of votes and/or consents required in the preceding sentence, but, receives a majority of the total voting power of the Membership, then the Association, or any Owner, may file a petition with the Eighth Judicial District Court, Clark County, Nevada, seeking a Court order to amend the Declaration and to confirm the amendment as validly approved, subject to applicable law. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by at least sixty-seven percent (67%) of the Eligible Holders at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned (or pursuant to Court order as described above):

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

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

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

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

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

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

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

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved

the proposed termination, amendment or amendments. Notwithstanding anything contained in this Declaration to the contrary, nothing contained herein shall operate to allow any Mortgagee to: (a) deny or delegate control of the general administrative affairs of the Association by the Members or the Board; (b) prevent the Association or the Board from commencing, intervening in or settling any litigation or proceeding; or (c) prevent any trustee or the Association from receiving and distributing any proceeds of insurance, except pursuant to NRS §116.31133 and §116.31135.

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

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

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

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

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

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

Section 17.10 Priorities and Inconsistencies. Subject to Section 5.6 above, and Section 17.14 below: (a) the Governing Documents shall be construed to be consistent with one another to the extent reasonably possible; (b) if there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term or provision of this Declaration fails to comply with provision of NRS Chapter 116 applicable hereto; (c) in the event of any irreconcilable inconsistency between the Articles and Bylaws, the Articles shall prevail; and (d) in the event of any irreconcilable inconsistency between any Rules and Regulations and any other Governing Document, the other Governing Document shall prevail. NOTE: Certain provisions in this Declaration and/or other Governing Documents from time to time may be superseded by contrary provisions of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the internet address: <http://www.leg.state.nv.us/nrs/>.

Section 17.11 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, neither Declarant, nor the Association, nor the ARC, and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former Association committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.12 Indemnity. Each Owner shall, to the maximum extent permitted by law, indemnify and hold free and harmless each and every one of: Declarant, Association, any director, or any officer, agent, employee, or committee representative, respectively of Declarant, or Association, and/or their respective partners, members, divisions, subsidiaries and affiliated companies (if any), and their and their respective employees, officers, directors, members, shareholders, agents, professional consultants and representatives, and all of their

respective successors and assigns (collectively, "Indemnitees") from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any fault, act, or omission of the Owner, any contractor or subcontractor employed by the Owner, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with: (a) any work by or of the Owner within the Properties and/or the performance of the Owner's obligations with respect to any and all Improvements designed, installed, constructed, added, altered or remodeled by the Owner pursuant and subject to the Governing Documents, including, without limitation, any such loss, damage, injury or claim arising from or caused by or alleged to have arisen from or have been caused by (i) any use of the Lot, or any part thereof, (ii) any defect in the design, construction of, or material in, any structure or other Improvement upon the Lot, (iii) any defect in soils or in the preparation of soils or in the design and accomplishment of grading, including a spill of any contaminants or hazardous materials in or on the soil, (iv) any accident or casualty on the Lot or in the Properties, (v) any representations by Owner or any of its agents or employees, (vi) a violation or alleged violation by the Owner, its employees or agents, of any applicable law, (vii) any slope failure or subsurface geologic or groundwater condition, (viii) any work of design, construction, engineering or other work with respect to the Lot or Properties provided or performed by or for the Owner at any time whatsoever, or (ix) any other cause whatsoever in connection with Owner's use of the Lot or the Properties, or Owner's performance under this Declaration, or any other Governing Document; or (b) the negligence or willful misconduct of Owner or its agents, employees, licensees, invitees or contractors in the development, construction, grading or other work performed off the Properties by Owner pursuant to the Governing Documents, or any defect in any such work. Notwithstanding anything to the contrary contained in any of the documents referenced in the preceding sentence, Owner agrees and acknowledges that Indemnitees shall not be liable to Owner for any Liabilities caused by (i) any act or omission of Indemnitees with respect to the review of the Owner's Improvements and/or the drawings or specifications related to the Owner's Improvements, or (ii) any inspection or failure to inspect the construction activities of Owner by any of the Indemnitees, or (iii) any direction or suggestion given by any of the Indemnitees with respect to construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Owner's Improvements, or the failure to give any such direction or suggestion, or for any Liabilities which are covered by insurance or would be covered by insurance required to be maintained by the Owner, and Owner expressly waives any such Liabilities and releases Indemnitees therefrom. The covenants in this Section 17.12 and the obligations of each Owner, and shall be binding on the Owner until such date as any claim or action for which indemnification or exculpation may be claimed under this Section 17.12 is fully and finally barred (or, if applicable, fully and finally resolved, and any payment required thereby has been made in full).

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

Section 17.14 Compliance With NRS Chapter 116. It is the intent of Declarant that this Declaration and the Community shall be in all respects consistent with, and not in violation of, applicable provisions of NRS Chapter 116, as may be amended from time to time. In the event any provision of this Declaration is found to irreconcilably conflict with or violate such applicable provision of NRS Chapter 116, such offending Declaration provision shall be automatically deemed modified or severed herefrom, to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of NRS Chapter 116. Notwithstanding the foregoing or any other provision set forth herein, if any provision of NRS Chapter 116 should, in the future, be removed or made less burdensome (in Declarant's sole judgment), then the future change in such provision shall be deemed to have been automatically made and reflected in this Declaration as of the effective date of such statutory change. NOTE: Certain provisions in this Declaration and/or other Governing Documents from time to time may be superseded by contrary provisions of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the internet address: <http://www.leg.state.nv.us/nrs/>.

Section 17.15 Declarant's Right to Repair. Whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall conclusively be deemed to have agreed: (a) [notice] to promptly provide Declarant with specific written notice from time to time of any Improvement requiring correction or repair(s) for which the Owner/Association asserts Declarant is or may be responsible. (The notice must: (1) include a statement that the notice is being given to satisfy NRS 40.645, and (2) specify with detail any defects or damages, and (3) describe the cause of the defect if known); (b) [inspection] following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant Improvement to determine the nature and extent of the defect and repairs that may be necessary; (c) [repair] if the Declarant elects to repair the Improvement, the Owner/Association shall reasonably permit entry by Declarant (and Declarant's contractors and agents) upon the Unit or Common Element (as applicable) from time to time in connection therewith, to take steps to perform corrective or repair work. If the Owner/Association fails to provide Declarant with notice or fails to permit Declarant to inspect or repair at Declarant's election, then Declarant shall not be held responsible for any such corrective or repair work. The foregoing portion of this Section 17.15 shall not be deemed to modify or toll any applicable statute of limitation or repose, or any contractual or other limitation pertaining to such work.

Section 17.16 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article 17 and its provisions may not be amended except with the written consent of the Declarant, and any purported amendment in violation of the foregoing shall be null and void.

## **ARTICLE 18**

### **CIVIL PROCEEDINGS; MEDIATION & ARBITRATION; WAIVER OF JURY TRIAL**

Section 18.1 Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). Subject to Section 5.6 and Section 17.14, above, and in all instances subject to applicable law, the Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute,



maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Elements and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

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

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 18.1 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board.

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

Section 18.2 Mediation & Arbitration. Notwithstanding anything contained in this Declaration to the contrary, to the maximum extent permitted by and in all instances in conformance with applicable law (which may include, if and to the extent mandatorily applicable, the provisions of AB 370 (2013), effective October 1, 2013, amending NRS Chapter 38 as may apply to disputes concerning common-interest communities, and providing that parties may choose either mediation or to participate in a separate program administered by the Nevada Real Estate Division), the following provisions shall apply: Non-Operational Controversies shall be submitted to the American Arbitration Association (the "AAA") for mediation by one mediator under its Commercial Mediation Rules. If the matter is not resolved through mediation, then it shall be submitted to arbitration administered by the AAA under its Commercial Arbitration Rules. Unless the parties agree otherwise, there shall be one

arbitrator, who shall be a retired Clark County Nevada District Court Judge. The arbitrator may grant any remedy or relief that the arbitrator considers just and equitable and is permitted by applicable law. The decision of the arbitrator shall be final, and judgment upon the arbitral award may be entered in any court having jurisdiction thereof. Except as provided herein, the mediation and arbitration provided herein are the sole way in which the aforesaid disputes, claims or controversies shall be resolved, and each party waives its right to initiate judicial proceedings, including without limitation trial by jury.

(a) The parties shall participate in good faith in all mediation and arbitration proceedings. The venue of the mediation or arbitration proceeding shall be determined by the mediator or arbitrator, as the case may be. The fees and expenses of the mediation or arbitration proceeding established by the AAA (including the fees of the mediator and arbitrator) shall be shared equally by the parties. Each party shall pay its own expenses (including without limitation attorney's fees and costs and expenses of preparation and presentation of proofs), except that the prevailing party in any arbitration proceeding shall be entitled to an award of reasonable attorneys' fees and costs.

Section 18.3 WAIVER OF JURY TRIAL FOR NON-OPERATIONAL CONTROVERSY. EACH PURCHASER OF A UNIT ACCEPTS THE TERMS OF THIS DECLARATION AND BY ACCEPTANCE OF A DEED FOR A UNIT, EACH OWNER SHALL BE DEEMED TO HAVE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVED ANY RIGHT THAT OWNER MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OF A NON-OPERATIONAL CONTROVERSY.

Section 18.4 Compliance with Applicable Law. Each and every provision of this Article 18 shall be upheld and enforceable to the maximum extent permissible under applicable law. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of this Article 18, the applicable law shall prevail, and the irreconcilably conflicting provision of this Article 18 shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict.

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IN WITNESS WHEREOF, Declarant has executed this Declaration for EMERALD CREST as of the day and year first written above.

**DECLARANT:** GREYSTONE NEVADA, LLC,  
a Delaware limited liability company

By: Joy Broddle  
Joy Broddle, Authorized Agent

STATE OF NEVADA )  
                          ) ss.  
COUNTY OF CLARK )

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for EMERALD CREST was acknowledged before me on the 19 day of October, 2015, by JOY BRODDLE, as Authorized Agent of GREYSTONE NEVADA, LLC, a Delaware limited liability company.

Nicole Milner  
NOTARY PUBLIC  
(seal)



**EXHIBIT "A"**

**ORIGINAL PROPERTY**

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

**Lot Forty (40)** as shown by final map of CENTENNIAL AND HUALAPAI, on file in Book 149 of Plats, Page 0060, Office of the County Recorder, Clark County, Nevada;

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

**EXHIBIT "B"**

**ANNEXABLE AREA**

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

All of the real property in CENTENNIAL AND HUALAPAI, on file in Book 149 of Plats, Page 0060, Office of the County Recorder, Clark County, Nevada; EXCEPTING THEREFROM: the Original Property, as described in the foregoing Exhibit "A".

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

***[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE UNILATERAL RIGHT FROM TIME TO TIME TO SELL AND/OR CONVEY, TO THIRD PARTY OR PARTIES, AND/OR TO DELETE OR DE-ANNEX OF RECORD ALL OR ANY PARCEL(S) OR ANY PART(S) (RESPECTIVELY, "RELEVANT REAL PROPERTY") OF THE REAL PROPERTY DESCRIBED IN EXHIBIT "B" ABOVE; PROVIDED THAT AT SUCH TIME, NO LOT IN SUCH RELEVANT REAL PROPERTY HAS ALREADY BEEN CONVEYED TO A BUYER]***