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08/09/2006 13:49:25 T20060139565

Book/Instr: 20060809-0003131

Restrictio Page Count: 61

Fees: \$74.00 N/C Fee: \$0.00

APN Nos. 125-18-310-001 through
035

WHEN RECORDED, RETURN TO:

Pulte Homes of Nevada
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Las Vegas, Nevada 89113-2092
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Frances Deane
Clark County Recorder

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

FOR

BRISTOL HEIGHTS, a planned community

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AND RESERVATION OF EASEMENTS**

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

FOR

BRISTOL HEIGHTS, a planned community

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR BRISTOL HEIGHTS, a planned community (this "Declaration") is made as of the 7th day of August, 2006, by PN II, Inc., a Nevada corporation d/b/a Pulte Homes of Nevada (the "Declarant").

**ARTICLE 1
DEFINITIONS**

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

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

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

1.2.2 "Architectural Review Committee" means the committee of the Association to be created pursuant to **Section 6.11** of this Declaration.

1.2.3 "Areas of Common Responsibility" means (i) all Common Elements; (ii) all real property, and the Improvements situated thereon, located within the boundaries of a Unit that the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Declarant or the Association; and (iii) all real property, and the Improvements situated thereon, within or adjacent to the Community located within dedicated rights-of-way with respect to which the State of Nevada or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Nevada or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

1.2.4 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.2.5 "Assessments" means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to **Article 7** of this Declaration.

1.2.6 “Assessment Lien” means the lien granted to the Association by the Act to secure the payment of Assessments, fines and other charges owed to the Association.

1.2.7 “Association” means Bristol Heights Homeowners’ Association, a Nevada nonprofit corporation, its successors and assigns.

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

1.2.9 “Board of Directors” means the Board of Directors of the Association.

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

1.2.11 “Common Elements” means (i) any real estate within the Community owned or leased by the Association, other than the Units, Including any real estate over which the Association owns an easement (whether exclusive or non-exclusive) for the purpose of maintaining Improvements for the benefit of the Unit Owners (Including a portion of a Unit), and (ii) any Improvements constructed or installed within the boundaries of a Unit for which the Association has an obligation to maintain, manage, operate, repair or replace pursuant to the terms and conditions of the Plat or as otherwise set forth in this Declaration.

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

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

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

1.2.15 “Community” means the real property located in Clark County, Nevada, which is described in **Exhibit A** attached to this Declaration, together with all Improvements located thereon.

1.2.16 “Declarant” means PN II, Inc., a Nevada corporation d/b/a Pulte Homes of Nevada, and its successors and any person or entity to whom it may transfer any Special Declarant’s Right.

1.2.17 “Declarant Party” or **“Declarant Parties”** means collectively Declarant, the shareholders of Declarant, parent, affiliates and subsidiaries of Declarant, the officers, directors and employees of all of the foregoing, and as to **Section 11.20** of this Declaration, to the extent such Persons agree to be bound by **Section 11.20**, any contractors, subcontractors, brokers, suppliers, architects, engineers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Community.

1.2.18 “Declaration” means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Bristol Heights, a planned community, as amended from time to time.

1.2.19 “Design Guidelines” means the rules and guidelines adopted by the Architectural Review Committee pursuant to **Section 6.11** of this Declaration, as amended or supplemented from time to time.

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

- (i) Add real estate to the Community;
- (ii) Create Units, Common Elements and Limited Common Elements within the Community;
- (iii) Subdivide Units or convert Units into Common Elements; or
- (iv) Withdraw real estate from the Community.

1.2.21 “Dwelling” means any building, or portion of a building, situated upon a Unit and designed and intended for independent ownership and for use and occupancy as a residence.

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

1.2.23 “First Mortgagee” means the holder of any First Mortgage.

1.2.24 “Governing Documents” means this Declaration together with the Articles, Bylaws, Design Guidelines and Association Rules.

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

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

1.2.27 “Include” or “Including” means include or including, without limitation.

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

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

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

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

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

(ii) Five (5) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or

(iii) Five (5) years after any right to add new Units was last exercised.

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

1.2.33 “Plans” means the plans referred to in Subsection 5 of N.R.S. § 116.2109, Including drawings of Improvements that are filed with agencies that issue permits but do not need to be Recorded.

1.2.34 “Plat” means the Final Map of Pinnacle-Capriana, according to the plat thereof on file in Book 127 of Plats, page 24, in the office of the County Recorder of Clark County, Nevada, and all amendments, supplements and corrections thereto.

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

1.2.36 “Recording” means placing an instrument of public record in the office of the County Recorder of Clark County, Nevada, and **“Recorded”** means having been so placed of public record.

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

1.2.38 “Special Assessment” means any assessment levied against the Units pursuant to **Section 7.4** of this Declaration.

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

- (i) Construct Improvements provided for in this Declaration or shown on the Plat or the Plans;
- (ii) Exercise any Developmental Right;
- (iii) Maintain sales offices, management offices, models, and signs advertising the Community and models;
- (iv) Use easements through the Common Elements for the purpose of making Improvements within the Community;
- (v) Make the Community subject to a master association;
- (vi) Merge or consolidate the Community with another common-interest community of the same form of ownership; or

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

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

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

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

ARTICLE 2

SUBMISSION AND DEVELOPMENT OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF FRACTIONAL INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES

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

2.2 Name of Planned Community. The name of the planned community created by this Declaration is Bristol Heights.

2.3 Name of Association. The name of the Association is Bristol Heights Homeowners' Association.

2.4 Identifying Numbers of Units. The Identifying Numbers of the Units are as set forth on **Exhibit A** and defined in **Subsection 1.2.25**.

2.5 Unit Boundaries.

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

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

2.6 Allocation of Common Expense Liabilities. The liability for the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, each Unit's fractional interest in the Common Expenses of the Association shall be 1/35. Nothing contained in this **Section 2.6** shall prohibit certain Common Expenses from being apportioned to particular Unit(s) under **Articles 5, 7** and other provisions of this Declaration.

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

2.8 Allocation of Limited Common Elements.

2.8.1 Mailboxes will be Limited Common Elements allocated to the Units served.

2.8.2 A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of N.R.S. § 116.2108.

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

**ARTICLE 3
EASEMENTS**

3.1 Easement for Ingress and Egress. There is hereby created a permanent, perpetual and non-exclusive easement for the benefit of each Unit Owner and Resident and their invitees and licensees for vehicular and pedestrian ingress and egress upon, over and across each Unit in the locations designated on the Plat as "Private Road Easement" (the "Private Road Easement Area"). There also is hereby created a permanent, perpetual and non-exclusive easement for the benefit of the Association upon, over, under and across each Unit within the Private Road Easement Area for the purposes of vehicular and pedestrian ingress and egress to and from the Units and permitting the Association to maintain, repair and replace all roadway

Improvements installed within the Private Road Easement Area. The Association shall maintain, repair and replace all Improvements installed within the Private Road Easement Area, except for any landscaping or driveway Improvements, which shall be maintained by the respective Unit Owner. The Private Road Easement Area and all Improvements thereon to be maintained by the Association shall be deemed to be Common Elements. A Unit Owner (i) shall not alter, remove, replace or disturb the Improvements within the Private Road Easement Area that are to be maintained by the Association, (ii) shall not construct or install any Improvements within the Private Road Easement Area without the prior written consent of the Board of Directors, and (iii) shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Association to fulfill its obligations under this Section.

3.2 Easement for Street Lights and Traffic Control Devices. There is hereby created a permanent, perpetual and non-exclusive easement for the benefit of the Association upon, under, over and across each Unit in the locations designated on the Plat as "Street Light and Traffic Control Device Easements" (the "SLTC Easement Area") for the purpose of permitting the Association to maintain, repair and replace all street light and traffic control device Improvements installed within the SLTC Easement Area and not maintained by any county or municipality. All street light and traffic control device Improvements installed within any SLTC Easement Area that are not maintained by any county or municipality shall be deemed to be Common Elements. A Unit Owner (i) shall not alter, remove, replace or disturb the Improvements within any SLTC Easement Area, (ii) shall not construct or install any Improvements within any SLTC Easement Area without the prior written consent of the Board of Directors, and (iii) shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Association to fulfill its obligations under this Section.

3.3 Easements for Landscape and Trails. There is hereby created a permanent, perpetual and non-exclusive easement for the benefit of the Association upon, under, over and across each Unit in the locations designated on the Plat as "Pedestrian Access Easement and Trail Easement" and "Landscape Easement and Trail Easement" and "Landscape Easement" (the "Landscape and Trail Easement Areas") for the purpose of permitting the Association to maintain, repair and replace all landscaping and trail or sidewalk Improvements installed within the Landscape and Trail Easement Areas. All landscaping and trail or sidewalk Improvements installed within the Landscape and Trail Easement Areas shall be deemed to be Common Elements. A Unit Owner (i) shall not alter, remove, replace or disturb the Improvements within the Landscape and Trail Easement Areas that are to be maintained by the Association, (ii) shall not construct or install any Improvements within the Landscape and Trail Easement Areas without the prior written consent of the Board of Directors, and (iii) shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Association to fulfill its obligations under this Section.

3.4 Easements for Drainage Facilities. There is hereby created a permanent, perpetual and non-exclusive easement for the benefit of the Association upon, under, over and across each Unit in the locations designated on the Plat as "Drainage Easement" (the "Drainage Easement Areas") for the purpose of permitting the Association to maintain, repair and replace the drainage facilities and all other Improvements installed within the Drainage Easement Areas.

All Improvements installed within the Drainage Easement Areas shall be deemed to be Common Elements. A Unit Owner (i) shall not alter, remove, replace or disturb the Improvements within the Drainage Easement Areas, (ii) shall not construct or install any Improvements within the Drainage Easement Areas without the prior written consent of the Board of Directors, and (iii) shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Association to fulfill its obligations under this Section.

3.5 Easements for Mailboxes. There is hereby created a permanent, perpetual and non-exclusive easement for the benefit of each Unit Owner and Resident upon, over and across a portion of any Unit that is designated by the United States Postal Service as the location(s) on which United States Post Office mailboxes will be installed (the "Mailbox Easement Area"). A Mailbox Easement Area situated on a Unit may be used for locating mailboxes that have been allocated to Unit Owners as Limited Common Elements other than the Unit Owner's Unit on which the Mailbox Easement Area is located. There also is hereby created a permanent, perpetual and non-exclusive easement for the benefit of the Association upon, over, under and across each Unit within a Mailbox Easement Area for the purpose of permitting the Association to maintain, repair and replace all Improvements within the Mailbox Easement Area that are required by the United States Postal Service. The Association shall maintain, repair and replace all Improvements installed within the Mailbox Easement Area. The Mailbox Easement Area and all Improvements thereon shall be deemed to be Common Elements. A Unit Owner (i) shall not alter, remove, replace or disturb the Improvements within the Mailbox Easement Area, (ii) shall not construct or install any Improvements within the Mailbox Easement Area without the prior written consent of the Board of Directors, and (iii) shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Association to fulfill its obligations under this Section.

3.6 Unit Owners' Easements of Enjoyment.

3.6.1 Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements described in **Sections 3.1, 3.3 and 3.5** of this Declaration, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

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

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

(iii) All rights and easements set forth in this Declaration, including the rights and easements granted to the Declarant by **Sections 3.7 and 3.8** of this Declaration.

3.6.2 If a Unit is leased or rented, the lessee and the Residents residing with the lessee shall have the right to use such Common Elements during the term of the lease, and the Unit Owner shall have no right to use such Common Elements until the termination or expiration of the lease, except for the right to use the Private Road Easement for ingress and egress to and from the Unit Owner's Unit

3.6.3 The guests and invitees of any Unit Owner or other person entitled to use such Common Elements pursuant to **Subsection 3.6.1** of this Declaration or of any lessee who is entitled to use such Common Elements pursuant to **Subsection 3.6.2** of this Declaration may use such Common Elements as permitted by the Association Rules.

3.6.4 A Unit Owner's right and easement of enjoyment in and to such Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.6.5 The provisions of this **Section 3.6** shall not apply to any of the Limited Common Elements that are allocated to one or more but less than all of the Units.

3.7 Declarant's Use for Sales And Leasing Purposes.

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

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

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

3.7.4 The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Community that has not been represented in writing to the Association as property of the Association. The

Declarant reserves the right to remove from the Community any and all goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

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

3.8 Declarant's Rights and Easements.

3.8.1 Declarant shall have the right and an easement on and over the Common Elements to construct the Common Elements and the Units shown on the Plat, the Plans and all other Improvements the Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Community.

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

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

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

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

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

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

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

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

(iv) For correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units;

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

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

3.10 Easement Data. The Recording data required to be contained herein pursuant to N.R.S. § 116.2105(1)(m) for any easements or licenses appurtenant to or included in this common-interest community or to which any portion of this common-interest community is or may become subject by means of a reservation of this Declaration is as follows: The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any easements and licenses created by a Plat is the same as the Recording data for the Plat.

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

ARTICLE 4 PERMITTED USES AND RESTRICTIONS

4.1 Architectural Control. Subject to the provisions of **Subsection 4.1.10** and **Section 4.17** of this Declaration:

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

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

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

4.1.4 No addition, alteration, repair, change or other work that in any way alters the exterior appearance, including the exterior color scheme of any Unit, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Review Committee. No approval shall be required to repaint the exterior of a Dwelling in accordance with the originally approved color scheme.

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

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

4.1.7 Upon receipt of approval from the Architectural Review Committee for any construction, installation, addition, alteration, repair, change or other work, the Unit Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Review Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable unless the Architectural Review Committee establishes a schedule for the construction and completion of such work. A Unit Owner shall adhere to any schedule required by the Architectural Review Committee for (i) the completion of the design of a Unit or the design of an Improvement to a Unit; (ii) the commencement of the construction of a Unit or the construction of an Improvement to a Unit; (iii) the completion of the construction of a Unit or the construction of an Improvement to the Unit; or (iv) the issuance of a permit that is necessary for the occupancy of a Unit or for the use of an Improvement to a Unit. The Architectural Review Committee may impose and enforce a construction penalty against a Unit Owner who fails to adhere to a schedule as required pursuant to this Subsection if the maximum amount of the construction penalty and the schedule are set forth in a contract between the Unit Owner and the Association and the Unit Owner receives notice of the alleged violation that informs him that he has a right to a hearing on the alleged violation.

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

4.1.9 The Architectural Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section. The amount of the fee may include the reasonable costs incurred by the Architectural Review Committee for review of the request by architects, engineers or other professional persons deemed necessary by the Architectural Review Committee in its sole discretion.

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

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

4.1.12 The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Review Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation. Declarant, the Association, the Board of Directors, any party retained by the Architectural Review Committee as a consultant, any committee or member of any of the foregoing shall not be held liable for any claim whatsoever arising out of construction on or modifications to any Unit.

4.1.13 The Architectural Review Committee may condition its approval of plans and specifications upon the agreement by the Unit Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Review Committee in an amount determined by the Architectural Review Committee to be reasonably sufficient to: (i) assure the completion of the proposed construction, installation, addition, alteration, repair, change or other work or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such construction, installation, addition, alteration, repair, change or other work, and (ii) to repair any damage that might be caused to any Area of Common Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Unit Owner upon: (a) the completion of the construction, installation, addition, alteration, repair, change or other work in accordance with the plans and specifications approved by the Architectural Review Committee; and (b) the Unit Owner's written request to the Architectural

Review Committee, provided that there is no damage caused to any Area of Common Responsibility by the Unit Owner or its agents or contractors.

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

4.3 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporarily or permanently. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Review Committee.

4.4 Nuisances; Construction Activities. No rubbish, clippings, refuse, scrap lumber or metal, grass, shrub or tree clippings, plant waste, compost, bulk materials or other debris of any kind (all collectively referred to hereinafter as “rubbish and debris”) shall be kept, placed, stored or permitted to accumulate upon or adjacent to any Unit unless stored within an enclosed structure or container that has been approved by the Architectural Review Committee. No odors or loud noises shall be permitted to arise or emit from any Unit, and no other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or to the residents of such property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security

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or fire protection purposes), noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscaping maintenance), inoperable vehicle, unlicensed off-road motor vehicles or other item that may unreasonably disturb other Unit Owners or Residents, or any equipment or item that may unreasonably interfere with television or radio reception within any Unit or the Area of Common Responsibility shall be located, used or placed on any portion of the Community without the prior written approval of the Architectural Review Committee. No loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Areas of Common Responsibility without the prior written approval of the Architectural Review Committee, 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 annoying sounds or conditions as a result of frequently occurring false alarms. Each Unit Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit. Normal construction activities and parking in connection with the building of Improvements on a Unit or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and attractive condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Unit or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Review Committee, which may also require screening of the storage areas. The Board of Directors, in its sole discretion, shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

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

4.6 Firearms. The discharge of firearms within the Community is prohibited. The term "firearms" includes BB guns, pellet guns and other firearms of all types, regardless of size.

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

4.8 Antennas. No antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation (a "Device") proposed to be erected, used or maintained outdoors on any portion of the Community, whether attached to a Dwelling or structure or otherwise, shall be erected or

installed without the prior written consent of the Architectural Review Committee unless (i) applicable law prohibits the requirement for review and approval by the Architectural Review Committee, or (ii) the Design Guidelines and/or Association Rules permit installation of the Device without such review and approval. Even though a Unit Owner may not be required to obtain written approval from the Architectural Review Committee for a Device, a Unit Owner is required to comply with the Design Guidelines and/or the Association Rules to the extent that the Design Guidelines and/or Association Rules set forth guidelines, standards and procedures applicable to such Device. Failure by a Unit Owner to comply with the Design Guidelines and/or Association Rules with respect to a Device shall be deemed a violation of this Declaration in the same manner as if a Unit Owner had not obtained the prior written approval from the Architectural Review Committee for a Device that does require prior written approval.

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

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

4.11 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Unit so as to be Visible From Neighboring Property.

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

4.13 Overhead Encroachments. No tree, shrub, or planting of any kind on any Unit shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way

or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Review Committee.

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

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

4.16 Signs.

4.16.1 Subject to the provisions of **Subsection 4.16.2**, no signs whatsoever (Including commercial, political, "for sale," "for rent," "for lease," "open house" and similar signs) that are Visible From Neighboring Property shall be erected or maintained on any Unit except:

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

(iv) Signs that may be permitted in accordance with the Design Guidelines.

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

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

4.18 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Unit or Common Element or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Review Committee, except for (i) the temporary parking of a recreational vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar recreational equipment on the concrete driveway of a Unit for a period of not more than twenty-four (24) hours within any seven (7) day period for the purpose of loading, unloading and cleaning; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Review Committee; (iii) boats and similar recreational vehicles parked in garages on Units so long as such vehicles are in good operating condition and appearance and are not under repair; (iv) contractor and delivery vehicles temporarily parked in the street for loading, unloading and performing work on Units;

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and (v) motor vehicles not exceeding seven (7) feet in height and twenty-two (22) feet in length that are not used for commercial purposes and that do not display any commercial name, telephone number or message of any kind and that are parked in the garage or on the concrete driveway situated on a Unit, provided that such vehicles shall not be parked in such a manner as to block the sidewalks or impede pedestrian traffic in any way.

4.19 Motor Vehicles.

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

4.19.2 No loud motorcycle, motorbike or motor scooter, and no all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked, maintained or operated on any portion of the Community except such vehicles may be parked in garages of Units.

4.19.3 Motor vehicles of Residents and guests of Residents shall be parked in the garage or on the concrete driveway of such Resident's Unit at all times when sufficient parking area exists in the garage or on the concrete driveway. Street parking shall be limited to occasions when sufficient parking area does not exist in the garage or on the concrete driveway of a Unit; provided, that no overnight street parking shall be permitted. Parking on unpaved portions of Units is prohibited.

4.19.4 Any Unit Owner or Resident desiring to operate or maintain a golf cart within the Community shall obtain and maintain a valid permit from the State of Nevada for such golf cart. The Board of Directors shall be entitled to establish additional rules and regulations governing golf carts, including equipment required to be installed on golf carts in addition to equipment required by law. A Unit Owner or Resident shall not park or store a golf cart on any portion of his Unit except in the garage.

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

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

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

4.22 Special Restrictions for Swimming Pools. No swimming pool or spa shall be constructed or installed without the prior written consent of the Architectural Review Committee. Any swimming pool or spa that is proposed to be constructed within a rear yard where retaining walls have been constructed by Declarant on or adjacent to the Unit shall submit to the Architectural Review Committee a letter from a structural engineer licensed in Nevada certifying that the proposed swimming pool or spa has been designed to maintain the structural integrity of the walls of the swimming pool or spa and that such design will not place any lateral loads onto the retaining walls constructed on or adjacent to the Unit. A Unit Owner shall be responsible for any damage resulting from the construction of a swimming pool or spa in the rear yard of such Unit Owner's Unit. Neither the Declarant Parties, the Association (Including the Architectural Review Committee), nor any director, officer, agent, member or employee of any of the foregoing, shall be liable to any Unit Owner or Resident for any claims or damages resulting, directly or indirectly, from the construction and existence of a swimming pool or spa in a rear yard.

4.23 Garages. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Review Committee. Except for detached garages that are a part of Declarant's initial construction of the Community, detached garages are prohibited. Garages may be used for the storage of material so long as the storage of material does not result in inadequate parking for the motor vehicles of the Residents of a Unit. Garage doors shall remain closed at all times except when entering and exiting the garage and for a reasonable length of time during daytime hours while performing regular home maintenance activities.

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

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

4.26 Insurance Rates; Violation of Law. No Unit Owner or Resident shall permit anything to be done or kept in or upon a Unit that will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any Unit Owner or the Association or that would be in violation of any law.

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

4.28 Storage Structures; Storage of Materials. Storage buildings, sheds and other structures for the purpose of storage are prohibited. Storage of furniture, fixtures, appliances, machinery, equipment or other similar items is prohibited on any portion of a Unit that is Visible From Neighboring Property.

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

4.30 Exterior Lighting. Any lights installed on a Unit shall comply with the applicable governmental ordinances, provided that no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Unit that in any manner will allow light to be directed or reflected unreasonably upon any other Unit or Common Element.

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

4.32 Leasing.

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

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

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

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

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

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

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

4.33 Variances; Diminution of Restrictions. The Architectural Review Committee or Board of Directors, as applicable, may, at the respective option of each and in extenuating circumstances, grant variances from the restrictions set forth in this **Article 4** if the Architectural Review Committee or the Board of Directors, as applicable, determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on a Unit Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; and (ii) the activity permitted under the variance will not have any substantial adverse effect on the Unit Owners and Residents and is consistent with the high quality of life intended for Residents of the Community. Notwithstanding the foregoing, the Architectural Review Committee and the Board of Directors shall not grant variances permitting uses that are not consistent with applicable law. If any restriction set forth in this **Article 4** is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board of Directors, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable. Upon expiration of the Period of Declarant Control and for so long as the Declarant owns any property described on **Exhibit A**, any variance granted by the Architectural Review Committee or the Board of Directors shall be subject to review and approval by the Declarant, to the extent permitted by Nevada law.

ARTICLE 5 MAINTENANCE AND REPAIR

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

5.2 Duties of Unit Owners.

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

5.2.2 Each Unit Owner shall be liable to the Association for any damage to the Areas of Common Responsibility or for any damage to the Improvements on Units for which the Association has responsibility to maintain that results from the negligence or willful conduct of the Unit Owner. The cost to the Association of any repair, maintenance or replacements caused by the act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.3 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain his Unit in good condition and repair and in accordance with the Maintenance Standard as required by this Declaration; or if any portion of a Unit is so maintained as to present a nuisance or as to substantially detract from the appearance or quality of the surrounding Units or other areas of the Community that are substantially affected thereby or related thereto; or if any portion of a Unit is being used in a manner that violates this Declaration; or if a Unit Owner is failing to perform any of his obligations under the Governing Documents, the Association may make a finding to such effect, specifying the particular condition or conditions that exist, and give notice to the offending Unit Owner that corrective action is required to be taken within fifteen (15) days after such notice is sent to the Unit Owner. If the required maintenance, repair or replacement has not been performed within such fifteen-day period of time, the Board of Directors shall be authorized and empowered, but shall not be obligated, to cause such maintenance, repair or

replacement to be performed at the Unit Owner's cost. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to **Subsection 7.2.3** of this Declaration, shall be payable upon demand by the Association and shall be secured by the Assessment Lien.

5.4 Common Walls and Fences. The rights and duties of Unit Owners of Units with respect to common walls and fences (hereinafter referred to as a "wall" or "walls") shall be as provided in this **Section 5.4**.

5.4.1 The Unit Owners of contiguous Units who have a common wall shall both equally have the right to use such wall provided that the use by one Unit Owner does not interfere with the use and enjoyment of the wall by the other Unit Owner.

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

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

5.4.4 If a common wall is damaged or destroyed by some cause other than the act of one of the adjoining Unit Owners, his agents, tenants, licensees, guests or family (Including ordinary wear and tear and deterioration from lapse of time), then all adjoining Unit Owners shall rebuild or repair the common wall at their joint and equal expense.

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

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

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

5.5 Maintenance of Walls and Fences Other Than Common Walls and Fences.

5.5.1 Except for common walls and fences covered by **Section 5.4** above, and except for walls and fences covered by **Subsection 5.5.2** below, walls and fences located on a Unit shall be maintained, repaired and replaced by the Unit Owner.

5.5.2 Any wall or fence that is placed on the boundary line between a Unit and the Common Elements shall be maintained, repaired and replaced by the Unit Owner, except that the Association shall be responsible for the repair and maintenance of the surface of the wall or fence that faces the Common Elements. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such wall or fence. If any wall or fence described in this **Subsection 5.5.2** encroaches upon a Unit or the Common Elements, a valid easement for such encroachment and for the maintenance of the wall or fence shall and does exist in favor of the Unit Owner or the Association, as applicable.

5.6 Maintenance of Retaining Walls. Earth retaining walls are designed to support and retain dry earth. A Unit Owner shall not permit excess water to saturate the retained earth and shall maintain the Unit so that surface waters flow freely away from retaining walls. No grass or other heavily irrigated landscape materials may be installed within five (5) feet from retaining walls. Any landscaping within five (5) feet from a retaining wall shall be drip irrigated. A Unit Owner shall take all corrective action necessary to immediately repair any leaking irrigation pipes and correct any excess irrigation of plant materials that may cause the retained earth to become saturated. Each Unit Owner shall be responsible for any damage to retaining walls resulting from the failure to comply with this **Section 5.6**.

5.7 Installation of Landscaping. Unless previously installed by the Declarant, within ninety (90) days after acquiring a Unit from the Declarant, each Unit Owner shall install trees, grass, plants or other landscaping Improvements (together with any sprinkler system or drip irrigation system sufficient to adequately water the trees, grass, plants or other landscaping Improvements) within the front, side and rear yards of the Unit. Prior to installing the landscaping, a Unit Owner shall maintain all such yard areas in a weed-free and attractive manner. Notwithstanding anything herein to the contrary, all landscaping installed pursuant to this **Section 5.7** shall be approved by the Architectural Review Committee prior to installation.

**ARTICLE 6
THE ASSOCIATION**

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

action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association.

6.2 Directors and Officers.

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

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

6.2.3 The Declarant may voluntarily surrender its right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.2.4 Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Unit Owners other than the Declarant. Any member of the Board of Directors elected by Unit Owners pursuant to this Subsection shall be (i) a Unit Owner, or (ii) an officer, employee, agent or director of a corporate Unit Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, a member or manager of a limited liability company that owns a Unit or a fiduciary of an estate that owns a Unit. Prior to having a person's name placed on a ballot for election of directors, such person shall take all actions required by Nevada law to prove such person's eligibility to serve on the Board of Directors. A person shall not be eligible to serve on the Board of Directors if, at the time a person's name is proposed to be placed on a ballot for election of directors, such person (or the Unit Owner if such person is an officer, employee, agent or director of a corporate Unit Owner) is not in compliance with the provisions of the Governing Documents, including the current payment of all Assessments, charges and other fees required thereunder, or any other provision of Nevada law governing the eligibility of directors.

6.2.5 The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or

written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given and taken by the Board of Directors. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, shall have the power to impose construction penalties when authorized pursuant to **Subsection 4.1.7** of this Declaration and levy reasonable fines against a Unit Owner for a violation of the Governing Documents by the Unit Owner, a guest of the Unit Owner, a lessee of the Unit Owner or by any Resident of the Unit Owner's Unit, provided that a fine may not be levied for a violation that is the subject of a construction penalty.

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

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

6.5 Personal Liability. Neither Declarant Parties nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member, or to any other Person, Including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant Parties, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

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

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

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

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

6.11 Architectural Review Committee. The Association may, in the discretion of the Board of Directors from time to time, have an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration. In the event no Architectural Review Committee is formed, the Board of Directors shall perform all functions of the Architectural Review Committee except as provided herein to the contrary or as waived in writing by the Board of Directors. The Architectural Review Committee shall be a Committee of the Board of Directors. The Architectural Review Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any property described on **Exhibit A**, the Declarant shall have the sole right to appoint and remove the members of the Architectural Review Committee. At such time as the Declarant no longer owns any property described on **Exhibit A**, the members of the Architectural Review Committee shall be appointed by the Board of Directors. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the

Architectural Review Committee, and in that event the Declarant may require, for so long as the Declarant owns any property described on **Exhibit A**, that specified actions of the Architectural Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Review Committee may adopt, amend and repeal Design Guidelines to be used in rendering its decisions. The Design Guidelines may include provisions regarding: (i) the size of Dwellings; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Dwellings and other buildings; (iv) landscaping design, content and conformance with the character of the Community and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; (vii) perimeter and screen wall design and appearance; and (viii) procedures to be used in the architectural review process. The decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

6.12 Conveyance or Encumbrance of Common Element. The Common Elements shall not be mortgaged, transferred, dedicated or encumbered without (i) the prior written consent or affirmative vote of Unit Owners representing at least sixty-seven percent (67%) of the votes in the Association, including a majority of the votes allocated to Units not owned by Declarant, and (ii) the prior written consent of all Unit Owners of Units on which any such Common Elements are located. Upon the expiration of the Period of Declarant Control and for so long as the Declarant owns any property described on **Exhibit A**, the Common Elements shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of the Declarant, to the extent permitted by Nevada law.

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

6.14 Commencement of Civil Action. With respect to any disputes or claims not subject to the requirements of **Section 11.20** of this Declaration, the Association may not commence a civil action without the prior written consent or affirmative vote of Unit Owners to which at least a majority of the votes of the Members of the Association are allocated. In addition to the notice and meeting requirements set forth in the Act, at least ten (10) days before the Association commences a civil action, the Association shall provide a written statement to all Unit Owners that includes a reasonable estimate of the costs of the civil action, including

reasonable attorneys' fees, an explanation of the potential benefits of the civil action and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and all other disclosures required by law. The provisions of this Section do not apply to a civil action that is commenced to (i) enforce the payment of an Assessment, (ii) enforce the Governing Documents, (iii) enforce a contract with a vendor, (iv) proceed with a counterclaim, or (v) protect the health, safety and welfare of the Members of the Association.

ARTICLE 7 ASSESSMENTS

7.1 Preparation of Budgets.

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt (i) a budget for the Association containing an estimate of the annual revenue of the Association and an estimate of the total amount of funds that the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses (except for the Common Expenses that are to be assessed against less than all of the Units pursuant to **Subsections 7.2.3 and 7.2.4** of this Declaration), including contributions to be made to the reserve fund, and (ii) a budget to provide adequate funding for the reserves for the repair, replacement and restoration of the major components of the Common Elements prepared in accordance with applicable law.

7.1.2 Within sixty (60) days after the adoption of the budgets, the Board of Directors shall send to each Unit Owner a summary of the budgets (with the complete budgets available for review and/or copying at the Association's office upon request) and a statement of the amount of the Common Expense Assessment assessed against each Unit in accordance with **Section 7.2** of this Declaration and shall set a date for the meeting of the Unit Owners to consider ratification of the budgets not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budgets, the budgets are ratified, whether or not a quorum is present. If the proposed budgets are rejected, the periodic budgets last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify subsequent budgets proposed by the Board of Directors. The failure or delay of the Board of Directors to prepare or adopt budgets for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay such Unit Owner's allocable share of the Common Expenses as provided in **Section 7.2** of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common

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

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

7.2.3 If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against such Unit Owner's Unit.

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

7.2.5 All Assessments, fines and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, fines or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, fines and other fees and charges levied against such Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

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

7.4 **Special Assessments.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful

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

7.5 Assessment Period. The period for which the Common Expense Assessment is to be levied (the "Assessment Period") shall be the calendar year. The first Assessment Period, and the obligation of the Unit Owners to pay Common Expense Assessments, shall commence upon the conveyance of the first Unit to a Purchaser and shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors, in its sole discretion from time to time may change the Assessment Period.

7.6 Commencement Date of Assessment Obligation. Until the conveyance of the first Unit to a Purchaser, the Declarant shall pay all Common Expenses. All Units described on **Exhibit A** to this Declaration shall be subject to Assessments upon the conveyance of the first Unit to a Purchaser.

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

7.8 Effect of Nonpayment of Assessments; Remedies of the Association.

7.8.1 Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the maximum rate allowable under Nevada law. In addition, the Board of Directors may establish a late fee to be charged to any Unit Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

7.8.2 The Association shall have a lien on each Unit for: (i) all Assessments levied against the Unit; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Unit or payable by the Unit Owner of the Unit; (iii) all construction penalties and fines levied against the Unit Owner of the Unit; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to a Unit Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by a Unit Owner; and (v) any amounts payable to the Association pursuant to **Section 5.2 or 5.3** or any other provision of this Declaration. The Recording of this Declaration constitutes Record notice and perfection of the Assessment Lien, and no further Recordation of any claim of lien shall be required. The Association may, at its option, Record a Notice of Lien setting forth the name of the delinquent Unit Owner as shown in the records of the Association, the legal description or street address of the Unit against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, Including interest, lien Recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Unit, the Association shall make a written demand to the delinquent Unit Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Unit.

7.8.3 The Assessment Lien shall have priority over all liens and encumbrances except for: (i) liens and encumbrances Recorded prior to the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any bona fide First Mortgage Recorded prior to the date the delinquent Assessment(s) first accrued; provided, however, that the Assessment Lien is also prior to any such First Mortgage to the extent of Common Expense Assessments that became due during the six (6) months immediately preceding the institution of an action to enforce the Assessment Lien. All Assessments and charges against the Unit, Including those that accrue before the six (6) month period prior to the institution of an action to enforce the Assessment Lien, shall remain the obligation of the defaulting Unit Owner; provided, however, that the Association shall credit such amount as it receives toward payment of any such delinquent Assessments from the First Mortgagee or any other Person acquiring title or coming into possession of the Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure. Any delinquent Assessments, fines and other fees and charges that are extinguished or otherwise uncollectible by the Association pursuant to this Section may be reallocated and assessed to all Units as a Common Expense.

7.8.4 Except as otherwise provided in the Act, the Association shall not be obligated to release the Assessment Lien as to any portion of past due Assessments until all such delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, title report fees, collection costs and all other sums payable to the Association by the Unit Owner of

the Unit have been paid in full. In no event shall such release of the Assessment Lien for past due Assessments release the lien of this Declaration as to all other Assessments to become due hereunder.

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

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

7.10 Foreclosure Sale. The Association may enforce the lien by sale of the applicable Unit. In exercising its power of sale, the Association shall comply with such requirements and conditions and shall follow such procedure as may be established under the Act relative to the enforcement of such liens. Unless otherwise permitted by law, no sale to foreclose an Assessment Lien may be conducted until (i) the Association, its agent or attorney has first executed and Recorded a notice of default and election to sell the Unit to satisfy the Assessment Lien ("Notice of Default"), which contains all information required by the Act, and (ii) the delinquent Unit Owner or such Unit Owner's successor in interest has failed to pay the amount of the delinquent Assessment and interest, costs (Including attorneys' fees) and expenses incident to its enforcement for a period of ninety (90) days. Such ninety (90) day period shall commence on the later of (a) the date on which the Notice of Default is Recorded, or (b) the date on which a copy of the Notice of Default is mailed by certified or registered mail with postage prepaid and return receipt requested to the Unit Owner or such Unit Owner's successor in interest at his address, if the address is known, and otherwise to the address of the Unit. The Association, its agent or attorney shall, after the expiration of such ninety (90) day period and before the foreclosure sale, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting, by certified or registered mail with postage prepaid and return receipt requested, to the Unit Owner

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or such Unit Owner's successor in interest at his address if known, and otherwise to the address of the Unit, and a copy of the notice of sale must be served on or before the date of first publication or posting in the manner prescribed by law.

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

7.12 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 that the Association and its assigns may have hereunder and by law, Including a suit to recover a money judgment for unpaid Assessments, as above provided.

7.13 Exemption of Unit Owner. No Unit Owner may claim an exemption from liability for payment of Assessments, fines and other fees and charges levied pursuant to the Governing Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.

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

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

7.16 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person acquiring a Unit from the Declarant shall pay to the Association immediately upon becoming a Unit Owner a sum equal to one-sixth (1/6th) of the then current annual Common Expense Assessment attributable to the Unit. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.17 Reserve Fund. The Association shall establish and maintain, from Common Expense Assessments, an adequate reserve fund to provide for the replacement of Improvements

to the Areas of Common Responsibility. In addition to the funds collected through Common Expense Assessments, each Person acquiring a Unit from the Declarant shall pay to the Association immediately upon becoming a Unit Owner a sum equal to one-sixth (1/6th) of the then current annual Common Expense Assessment attributable to the Unit. Funds paid to the Association pursuant to this Section shall be deposited in the reserve fund of the Association. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

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

7.19 Transfer Fee. Each Person acquiring a Unit shall pay to the Association, or to its community manager if directed to do so by the Board of Directors, immediately upon becoming a Unit Owner a transfer fee in such amount as is established from time to time by the Board of Directors.

ARTICLE 8 INSURANCE

8.1 Scope of Coverage.

8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Person other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Areas of Common Responsibility issued under a form that provides "All Risk of Direct Physical Loss" coverage in an amount equal to the maximum insurable replacement value of the Areas of Common Responsibility as determined by the Board of Directors; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy.

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

Elements, any Unit or any public or private right-of-way. Such policy shall include a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner.

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

(iv) Directors' and officers' liability and errors and omissions insurance covering all the directors, officers and committee members of the Association in such limits as the Board of Directors may determine from time to time.

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

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

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household.

(iii) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(iv) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance that may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.

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

(vi) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(viii) Any insurance trust agreement will be recognized by the insurer.

(ix) “Agreed Amount” and “Inflation Guard” endorsements.

8.1.3 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association’s policy shall provide primary coverage.

8.1.4 If the insurance described in **Subsections 8.1.1(i) or 8.1.1(ii)** is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

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

8.3 Insurance Obtained by Unit Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage.

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

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

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

8.7 Annual Insurance Review. The Board of Directors shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the

Areas of Common Responsibility in light of increased construction costs, inflation, practice in the area of which the Community is located or any other factor that tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Unit Owners and of the Association. If the Board of Directors determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

8.8 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Common Responsibility that are damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Unit Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association, and the Board of Directors may, without the necessity of a vote of the Unit Owners, levy an equal assessment against all Unit Owners. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction. Any assessment levied pursuant to this **Section 8.8** will be deemed to be a part of the Assessments and will be secured by the Assessment Lien. If all of the Common Elements are not repaired or replaced, insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Community and that is not in violation of any state or local health or safety statute or ordinance. The remainder of the proceeds shall either (a) be distributed to all Unit Owners or lien holders in proportion to the allocated interest of each Unit Owner as determined pursuant to **Section 2.6** of this Declaration, or (b) be retained by the Association as an additional capital reserve or used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9 RIGHTS OF FIRST MORTGAGEES

9.1 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will be entitled, upon written request, to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

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

ARTICLE 10
RESERVATION OF DEVELOPMENTAL AND
SPECIAL DECLARANT'S RIGHTS

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

10.1 Developmental Rights. Declarant hereby reserves, for a period of seven (7) years following the Recordation of this Declaration, all developmental rights under N.R.S. § 116.039. Declarant specifically reserves the right to withdraw real estate described on **Exhibit A** from the Community until the first Unit has been conveyed to a Person other than Declarant.

10.2 Right to Complete Improvements and Construction Easement. Declarant hereby reserves the right, for a period of seven (7) years following the Recordation of this Declaration, to complete the construction of Improvements in the Community and an easement over the Community for the purpose of doing so. Any damage caused to a Unit or the Common Elements by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

10.3 Exercise of Developmental Rights. Declarant reserves the right to exercise all developmental rights reserved pursuant to **Section 10.1** above for a period of seven (7) years following the Recordation of this Declaration.

10.4 Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain offices for sales and management and models as provided in **Section 3.7** above, and to maintain signs on the Common Elements for so long as Declarant owns any property described on **Exhibit A**.

10.5 Use of Easements. Declarant reserves the right to use easements through the Common Elements for the purpose of making Improvements within the Community.

10.6 Master Association. Declarant reserves the right to make the Community subject to any master homeowners association.

10.7 Merger or Consolidation. Declarant reserves the right to merge or consolidate the Association with another common-interest community of the same form of ownership.

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

ARTICLE 11
GENERAL PROVISIONS

11.1 Enforcement.

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

11.1.2 All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In the event the Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Governing Documents, the prevailing party in any such action (Including any such action maintained under **Section 11.20**) shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in the action.

11.1.3 The Association shall be obligated to investigate allegations of violations of any covenant, restriction, or rule set forth in any of the Governing Documents; provided that the Association may, but shall not be obligated to, investigate anonymous allegations. Following such investigation, the decision to take or not take enforcement action shall, in each case, be in the discretion of the Board of Directors, in the exercise of its business judgment. Without limiting the generality of the Board of Directors' discretion, if the Board of Directors reasonably determines that a covenant, restriction, or rule is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board of Directors reasonably determines that the Association's position is not strong enough to justify taking enforcement action, the Board of Directors shall not be obligated to take such action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, or estop the Association from enforcing any other covenant, restriction, or rule. Notwithstanding the above, if, in the discretion of the Declarant as long as Declarant owns any property described in **Exhibit A**, the Association fails to take appropriate action to enforce any provision of the Governing Documents in accordance with its rights and responsibilities, the Declarant may take such enforcement action on behalf of the Association. Declarant shall not take such action without first providing the Association written notice and a reasonable opportunity to take such action on its own.

11.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

11.3 Duration. Unless amended in accordance with the provisions of **Section 11.5** below, the covenants and restrictions of this Declaration shall run with and bind the Community,

for a term of twenty (20) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

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

11.5 Amendment.

11.5.1 Except as otherwise provided by the Act, and except in cases of amendments that may be executed by a Declarant under N.R.S. §§ 116.2109 or 116.211, by the Association under N.R.S. §§ 116.1107, 116.2106, Subsection 3 of N.R.S. § 116.2108 or N.R.S. § 116.2113 or by certain Unit Owners under Subsection 2 of N.R.S. §§ 116.2108, 116.2112 or 116.2118, and except as limited by **Section 11.5.2** of this Declaration, and subject to the provisions of **Subsection 11.20.9** of this Declaration, this Declaration, including the Plat and Plans, may be amended only by the affirmative vote or written consent, or any combination thereof, of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

11.5.2 Except to the extent expressly permitted or required by the Act, an amendment to the Declaration shall not create or increase Special Declarant's Rights, increase the number of Units, change the boundaries of any Unit, change the allocated interests of a Unit, or change the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners affected and the consent of a majority of the Unit Owners of the remaining Units in the Community.

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

11.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner, (iii) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, or (iv) comply with the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Community, the Plat or the Governing Documents is required by law or requested by Declarant.

11.5.5 Any amendment adopted by the Unit Owners pursuant to **Subsection 11.5.1** of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to

Subsection 11.5.4 of this Declaration or the Act shall be executed by the Declarant and shall be Recorded. Any amendment shall be effective only upon Recordation.

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

11.7 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address that the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one (1) person, notice to one (1) of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

11.8 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Community, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Governing Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Governing Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in the Governing Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Governing Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Governing Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

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

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

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

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

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

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

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

11.16 No Absolute Liability. No provision of the Governing Documents shall be interpreted or construed as imposing on any Unit Owner absolute liability for damage to the

Common Elements or the Units. A Unit Owner shall only be responsible for damage to the Common Elements or Units caused by the Unit Owner's negligence or intentional acts.

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

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

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

11.20 Dispute Notification and Resolution Procedure. All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Unit Owner(s) against any one or more of the Declarant Parties (other than claims under the limited warranty provided by Declarant to a Purchaser (the "Limited Warranty") to the extent applicable), or (iii) by both the Association and any Unit Owner(s) (other than claims under the Limited Warranty to the extent applicable) against any one or more of the Declarant Parties, arising out of or relating to the Community, including the Declaration or any other Governing Documents, the use or condition of the Community or the design or construction of or any condition on or affecting the Community, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Dwellings) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Community or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this **Section 11.20**. Declarant and each Unit Owner acknowledge that the provisions set forth in this **Section 11.20** shall be binding upon current and future Unit Owners of the Community and upon the Association, whether acting for itself or on behalf of any Unit Owner(s). Nothing in this Declaration is intended to limit, expand

or otherwise modify the terms of the Limited Warranty, and claims under the Limited Warranty will, subject to the terms of the Limited Warranty, be arbitrated in accordance with the arbitration provisions set forth in the Limited Warranty (to the extent applicable).

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

11.20.2 Right to Inspect. Within forty-five (45) days after receipt of the Claim Notice, the Notified Declarant Party and the Notified Declarant Party’s representatives, upon written request to the claimant, shall be entitled to inspect the property that is the subject of the Dispute to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. After reasonable notice to the claimant and at reasonable times, the Notified Declarant Party and the Notified Declarant Party’s representatives shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by the Notified Declarant Party (provided the Notified Declarant Party shall repair or replace any property damaged or destroyed during such inspection or testing), provided that all such activities are reasonably necessary to establish the existence of the defect, which right shall continue until such time as the Dispute is resolved as provided in **Subsection 11.20.3.**

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

11.20.4 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in **Subsections 11.20.2 and 11.20.3** shall be construed to impose any obligation on the Notified Declarant Party to inspect, test, repair or replace any item of the Community for which the Notified Declarant Party is not otherwise obligated under applicable law or the Limited Warranty. The right of the Notified Declarant Party to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and Recorded by the Notified Declarant Party.

11.20.5 Mediation. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in **Subsection 11.20.3** above within ninety (90) days after delivery of the Claim Notice, the Person who delivered the Claim Notice shall select a mediator within ten (10) days after such ninety (90) day period. The mediator shall be subject to the approval of the Notified Declarant Party. If the Notified Declarant Party and the claimant fail to agree upon a mediator within twenty (20) days after a mediator is first selected by the claimant, either party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator qualified in the area pertaining to the Dispute. If the Person who delivered the Claim Notice fails to timely submit the Dispute to mediation, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. No person shall serve as a mediator in the Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Notified Declarant Party or any other Declarant Party without complying with the procedures described in this **Subsection 11.20.5**.

(i) Position Memoranda; Dispute Materials; Pre-Mediation Conference. Within fifteen (15) days after the selection of the mediator, each party shall (i) submit a brief memorandum setting forth its position with regard to the issues that need to be resolved, and (ii) provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the Dispute that are not privileged. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within thirty (30) days following the submittal of the memoranda and shall be concluded within forty-five (45) days following the submittal of the memoranda unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Community is located or such other place as is mutually acceptable by the parties.

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

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

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

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

11.20.6 Arbitration. Should mediation pursuant to **Subsection 11.20.5** above not be successful in resolving the Dispute, then the Person who delivered the Claim Notice shall have ninety (90) days after the date of termination of the mediation to submit the Dispute to binding arbitration. If timely submitted, such Dispute shall be resolved by binding arbitration through the American Arbitration Association in accordance with the Construction Industry AAA Rules, as modified or as otherwise provided in this **Subsection 11.20.6**. If the Person who delivered the Claim Notice fails to timely submit the Dispute to arbitration within the ninety (90) day period, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. A Person with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No Person may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. All Declarant Parties and any Person(s) with a Dispute and/or submitting a Claim Notice, together with any additional Persons who agree to be bound by this **Section 11.20.6**, such as contractors, subcontractors, brokers, suppliers, architects, engineers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Community (collectively, the "Bound Parties"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this **Subsection 11.20.6**, and waive the right to have the Dispute resolved by a court, including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause any Person

who may be liable to any other Bound Party to be included in the arbitration proceeding. Subject to the limitations imposed in this **Subsection 11.20.6**, the arbitrator shall have the authority to try all issues, whether of fact or law.

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

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

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

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

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including destructive or invasive testing; and (vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in **Subsection 11.20.2** above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

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

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

11.20.7 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 11.20 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 11.20. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND ALSO WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 11.20, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE COMMUNITY, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

11.20.8 Statutes of Limitation and Repose. Except as otherwise provided under N.R.S. § 40.695, nothing in this Section 11.20 shall be considered to toll, stay, reduce or extend any applicable statute of limitation or repose.

11.20.9 Required Consent of Declarant to Modify. This Section 11.20 shall not be amended except in accordance with Subsection 11.5.1 of this Declaration and with the express written consent of the Declarant.

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

to bind Declarant or the Association with respect to the preservation of any view from any Unit or any view of a Unit from any other property.

11.22 Gated Entrances; Release of Claims.

11.22.1 The entrance leading into the Community has an entry gate that may limit vehicular access to the Community and provide some privacy for the Unit Owners and Residents. Each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges and agrees as follows:

(i) Declarant Parties make no representations or warranties that the gated entrance will provide security and safety to the Unit Owners, Residents and their family, invitees and licensees.

(ii) The gated entrance may restrict or delay entry into the Community by the police, fire department, ambulances and other emergency vehicles or personnel.

11.22.2 Each Unit Owner and Resident, for himself and his family, invitees and licensees, assumes the risk that the gated entrance may not provide security and safety and may restrict or delay entry into the Community by the police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant Parties, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Unit Owner, Resident or his family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the gated entrance.

11.22.3 Each Unit Owner and Resident, for himself and his family, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this **Section 11.22.**

11.23 High Power Electric Transmission Lines; Release of Claims.

11.23.1 High power electric transmission lines and related towers, systems and other equipment are located within or adjacent to the Community and may be upgraded and supplemented from time to time. Each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges and agrees as follows:

(i) The Community may now or in the future be exposed to electromagnetic fields from the high power electric transmission lines and related towers, systems or equipment.

(ii) The Declarant Parties do not claim any expertise concerning such conditions and make no representations, warranties or statements, express or implied, regarding such high power electric transmission lines or related towers, systems or equipment (except to

note their existence), or regarding any damage or injury which may occur as a result of the proximity of such lines and equipment to the Community.

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

11.23.3 Each Unit Owner and Resident hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this **Section 11.23**.

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

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

PN II, INC., a Nevada corporation dba Pulte Homes
of Nevada

By:  _____

Its: V.P. PLANNING & DEVELOPMENT

EXHIBIT A

PROPERTY SUBMITTED TO COMMUNITY

Lots 1 through 35, inclusive, of the Final Map of PINNACLE-CAPRIANA, according to the plat thereof on file in Book 127 of Plats, page 24, in the office of the County Recorder of Clark County, Nevada.

Assessor's Parcel Nos. 125-18-310-001
through 035

When recorded, return to:

Craig Cherney
Pulte Homes of Nevada
8345 West Sunset Road
Las Vegas, Nevada 89113-2092

Receipt/Conformed Copy

Requestor:
LAWYERS TITLE OF NEVADA
11/09/2006 14:00:18 T20060199379
Book/Instr: 20061109-0003417
Restrictio Page Count: 4
Fees: \$17.00 N/C Fee: \$0.00

Charles Harvey
Clark County Recorder

**AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BRISTOL HEIGHTS, a planned community**

This Amendment to Declaration of Covenants, Conditions and Restrictions for Bristol Heights, a planned community (the "Amendment"), is made as of the 6th day of November, 2006, by PN II, Inc., a Nevada corporation d/b/a Pulte Homes of Nevada ("Declarant").

RECITALS:

A. A Declaration of Covenants, Conditions and Restrictions for Bristol Heights, a planned community, dated as of August 7, 2006, was executed by Declarant and recorded on August 9, 2006, as Instrument No. 0003131 in Book 20060809 of Official Records, County Recorder, Clark County, Nevada (the "Declaration").

B. Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth for such terms in the Declaration.

C. Section 11.5 of the Declaration provides that the Declaration may be amended by the affirmative vote or written consent of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

D. As of the date hereof, Declarant owns all of the Units and all of the votes in the Association and desires to amend the Declaration to provide for the parking of recreational vehicles on certain Units.

NOW, THEREFORE, the Declaration is amended as follows:

1. **Amendment.** Section 4.18 of the Declaration is deleted in its entirety and the following substituted therefor:

4.18 Trucks, Trailers, Campers and Boats.

4.18.1 No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Unit or Common Element or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Review Committee, except for (i) the temporary parking of any such vehicle or equipment on the paved driveway of a Unit for a period of not more than forty-eight (48) hours within any seven (7) day period for the purpose of loading, unloading or cleaning, provided that such vehicle is not used for any cooking or sleeping purposes during that time; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Review Committee; (iii) boats and vehicles parked in garages on Units so long as such vehicles are in good operating condition and appearance and are not under repair; (iv) motor vehicles not exceeding seven (7) feet in height and twenty-two (22) feet in length that are not used for commercial purposes and that do not display any commercial name, telephone number or message of any kind and that are parked in the garage or on the concrete driveway situated on a Unit; and (v) vehicles that are parked on certain Units in accordance with the provisions of **Subsection 4.18.2** below.

4.18.2 A travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat or boat trailer (each an "RV") may be parked and maintained on certain Units, as described in **Subsection 4.18.3** below, only if the following requirements are satisfied:

(i) An RV shall be parked on a concrete pad (the "Parking Pad") within the side yard of a Unit that abuts the garage. A Parking Pad shall be permitted only in side yards adjacent to the garage and behind the front plane of the Dwelling where there is a minimum of fifteen (15) feet between the Dwelling and side yard property line of the Unit.

(ii) Drainage facilities shall be installed under the Parking Pad so that storm water from the roof and the rear yard of the Unit is directed to the street and is not diverted to neighboring Units.

(iii) A screened double gate having a minimum height of six (6) feet and a maximum width of twelve (12) feet (an "RV Gate") shall be installed between the side boundary line of the Unit and the Dwelling. The RV Gate shall be supported on both sides by masonry pilasters.

(iv) No RV sewer/disposal connections will be allowed and occupation of an RV parked pursuant to this Section is prohibited.

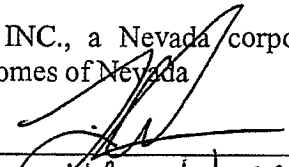
(v) Unless installed by Declarant, a Parking Pad and an RV Gate, as described in this **Subsection 4.18.2**, shall not be constructed on any Unit without the prior written consent of the Architectural Review Committee.

4.18.3 The Architectural Review Committee will consider requests for approval of a Parking Pad and RV Gate on Lots 21 through 34, inclusive (the "RV Units"); provided, however, that Declarant, in its sole discretion and so long as Declarant owns any Unit, may permit additional Units to be designated as RV Units by preparing and Recording an amendment to this Declaration. In the absence of any such amendment, no Unit Owner may park an RV on any Unit except an RV Unit or except as permitted in **Subsection 4.18.1**.

2. **Interpretation.** All terms, covenants, conditions and restrictions set forth in the Declaration remain in full force and effect, except to the extent specifically amended or modified hereby. This Amendment shall be considered an integral part of the Declaration and construed with the Declaration as if the provisions hereof were specifically set forth in the Declaration.

IN WITNESS WHEREOF, this Amendment is executed as of the date first set forth above.

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

By: 

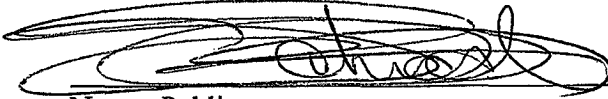
Its: Tim Washburn
Attorney-in-Fact

STATE OF NEVADA)
)ss.
County of Clark)

This instrument was acknowledged before me on Nov 6th, 2006, by Tim Washburn the Attorney-in-Fact of PN II, Inc., a Nevada corporation d/b/a Pulte Homes of Nevada, on behalf of the corporation.

My commission expires:

July 21, 2009



Notary Public

