APN(s): 177-26-710 - 001

Receipt/Conformed Copy

Requestor:
EQUITY TITLE OF NEVADA
02/28/2006 15:32:06 T20060036373
Book/Instr: 20060228-0007012
Restrictio Page Count: 3
Fees: $16.00 N/C Fee: $25.00

Frances Deane
Clark County Recorder

WHEN RECORDED RETURN TO:

PENGILLY LAW FIRM
10080 W. Alta Drive, Suite 140
Las Vegas, NV 89145

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR

AVADA HOMEOWNERS ASSOCIATION, INC.

CLARK COUNTY, NEVADA

AMENDMENT TO DECLARATION OF CONVENANTS, CONDITONS & RESTRICTIONS AND RESERVATION OF EASEMENT FOR AVADA HOMEOWNERS ASSOCIATIONS, INC.

This Amendment is made this 13 day of February, 2006, by the Declarant, AVADA, LLC, a Nevada Limited Liability Company. This Amendment is made pursuant to Section 9.1 of the Declaration of Covenants, Conditions & Restrictions and Reservation of Easements, on file in Box 20041008 Instrument 0001563 with Clark County Recorder.

AMENDMENT

Article 6 Sections 6.4 (c) and (d) are amended to read as follows:

Section 6.4 Maintenance of Installed landscaping.

(c) Each Lot Owner shall be responsible for: (1) maintenance, repair, replacement, and watering of all front yard landscaping on the Lots; and (2) maintenance, repair, and/or replacement of all or any portion of any irrigation systems or equipment pertaining to any Installed Landscaping located on the lots.

(d) All Lot owners shall be required to keep and maintain the front yard landscaping on their Lot in a neat, sanitary, and attractive condition.

AVADA, LLC
a Nevada Limited Liability Company

Michael J. Galatio
By: Michael J. Galatio

Its: Manager

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on this 13 day of February, 2006 by Michael J. Galatio, as Manager of Avada, LLC, a Nevada Limited Liability Company.

Melonie M Cook
Notary Public
My Commission Expires: 3/21/09

Notary Public State of Nevada
County of Clark
MELONIE M. COOK
My Appointment Expires
No: 01-67700-1 March 21, 2009

Receipt/Conformed Copy
Requestor:
ALVERSON TAYLOR MORTENSEN NELSON & SANC
10/08/2004 09:59:56 T20040110697
Book/Instr: 20041008-0001563
Covenant Page Count: 64
Fees: $77.00 N/C Fee: $0.00

Frances Deane
Clark County Recorder

ASSESSORS PARCEL NUMBERS:
177-26-701-002, 177-26-701-003

RETURN TO:
ALVERSON, TAYLOR, MORTENSEN, NELSON & SANDERS
7401 W. CHARLESTON BLVD.
LAS VEGAS, NEVADA 89117
FILE NO.: 15022

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR

AVADA HOMEOWNERS ASSOCIATION, INC.

CLARK COUNTY, NEVADA

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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR

AVADA HOMEOWNERS ASSOCATION, INC.

CLARK COUNTY, NEVADA

THIS DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS ("Declaration") is made as of this 6th day of October, 2004 by AVADA, LLC, a Nevada limited liability company ("Declarant").

WHEREAS Declarant owns certain real property in the Clark County, Nevada, on which Declarant intends to subdivide, develop, construct, market and sell a single family detached residential common-interest planned community, to be known as AVADA; and

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

WHEREAS Declarant intends that the Original Property (together with any Annexable Area, as defined herein, if and when annexed) shall comprise a Common-Interest Community and Planned Community ("Community") as defined in Nevada's Uniform Common-Interest Ownership Act, Chapter 116 of Nevada Revised Statutes ("NRS"); and

WHEREAS Declarant desires that the Community be subject to certain covenants, conditions, restrictions and easements, under a general plan of improvement for the benefit of all Lots in the Community and the owners ("Owners") thereof, and that a homeowners association be established for the purpose of assessing, managing and administering the Community; and

WHEREAS the name of the Community shall be AVADA, and the name of the homeowners association created pursuant to this Declaration as a Nevada non-profit corporation shall be AVADA HOMEOWNERS ASSOCIATION, INC. ("Association"); and

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

NOW, THEREFORE, Declarant hereby declares that the Properties shall at all times be owned, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the provisions of this Declaration and to the covenants, conditions and restrictions and reservation of easements contained herein, all of which are established and declared for the purpose of increasing the economic value, desirability and attractiveness of the Properties and for the mutual benefit of the Owners. The covenants, conditions, restrictions and easements set forth in this Declaration shall run with and burden the Properties and shall be binding upon all persons having or acquiring any right, title or interest in the Properties, or any party thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successive owners and assigns.

ARTICLE 1
DEFINITIONS

Section 1.1 Act. "Act" shall mean Nevada's Uniform Common-Interest Community Act as set forth in Chapter 116 of NRS.

Section 1.2 Administrator. "Administrator" shall mean the administrator of the Real Estate Division of the Department of Business and Industry.

Section 1.3 Annexable Area. "Annexable Area" shall mean all or any portion of that real property described in **Exhibit "B"** attached hereto and incorporated herein, all or any portion of which real property may from time to time be made subject to this Declaration pursuant to the provisions of Article 14 hereof. At no time shall any portion of the Annexable Area be deemed to be a part of the Community or a part of the Properties until such portion of the Annexable Area has been duly annexed hereto pursuant to Article 14 hereof.

Section 1.4 Articles. "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the Office of the Secretary of the State of Nevada, as such Articles may be amended from time to time.

Section 1.5 Assessment, Annual. "Common Assessment" shall mean the annual charge against each Owner and his or her Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

Section 1.6 Assessment, Special. "Special Assessment" shall mean a charge against a particular Owner and his or her Lot, directly attributable to or reimbursable by the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or levied by the Board as a reasonable fine or penalty for noncompliance herewith, plus interest and other charges on such Special Assessment as provided for herein.

Section 1.7 Association. "Association" shall mean AVADA HOMEOWNERS ASSOCIATION, INC., a Nevada non-profit corporation.

Section 1.8 Beneficiary. "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.9 Board. "Board" shall mean the Board of Directors of the Association, elected or appointed in accordance with the Bylaws and this Declaration. The Board is an "Executive Board" as defined in NRS § 116.045.

Section 1.10 Bylaws. "Bylaws" shall mean the Bylaws of the Association, which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.11 Close of Escrow. "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Lot from Declarant to a Purchaser.

Section 1.12 Common Area. "Common Area" shall mean all real property or interest therein owned or leased by the Association (including Community parks and playground area/equipment; entry signage and/or monument(s); private streets, curbs and gutters; private street lights; common area landscaping; common area drainage; walkways located within Common Element Lots;) but shall exclude Lots owned by any Person other then the Association. "Common Area" shall include all of that real property designated as "Common Element Lot" or "Private Drive" on the Plat, and Improvements thereon, and shall constitute Common Elements as to the Properties, as provided in NRS § 116.017. The term "Common Area" shall also include such personal property owned by the Association as necessary or appropriate to enable the Association to perform its duties or acts required or permitted hereunder.

Section 1.13 Common Expenses. "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves. Common Expenses shall include, but not necessarily be limited to, the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (and any other portions of the Properties as expressly required hereunder); costs of any commonly metered utilities and other charges for the Common Area; compensation paid by the Association to Managers, accountants, attorneys and employees; costs of all utilities, gardening, and other services benefiting the Common Area; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Common Area or Properties; costs of bonding the Board, Directors, Officers, Managers, or any other Persons handling the funds of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Area or Properties, or portions thereof; any other costs of management and administration of the Association or incurred in enforcing and administering the Declaration; any other expenses for which the Association is responsible pursuant to NRS Chapter 116; and costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners.

Section 1.14 Community. "Community" shall mean a Common-Interest Community, as defined in NRS § 116.021, and a Planned Community, as defined in NRS §116.075.

Section 1.15 Declarant. "Declarant" shall mean AVADA, LLC, a Nevada limited liability company, its successors and any Person to which it shall have assigned any rights hereunder by an express written and Recorded, as defined herein, assignment (but specifically excluding Purchasers).

Section 1.16 Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.

Section 1.17 Director. "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.18 Dwelling. "Dwelling" shall mean a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

Section 1.19 Emergency. "Emergency" shall mean any occurrence or combination of occurrences that: (a) Could not have been reasonably foreseen; (b) Affects the health, welfare and safety of the Lots' Owners of the Association; (c) Requires the immediate attention of, and possible action by, the Board; and (d) Makes it impracticable to comply with the notice, agenda, or Owner comment requirements applicable to meetings of either the Members or the Board, as the case may be.

Section 1.20 Family. "Family" shall mean (a) group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling.

Section 1.21 FHA. "FHA" shall mean the Federal Housing Administration.

Section 1.22 Identifying Number. "Identifying Number," pursuant to NRS § 116.053, shall mean the number that identifies a Lot on the Plat.

Section 1.23 Improvement. "Improvement" shall mean any structure or appurtenance thereto of every type and kind placed in the Properties, subject to the use restrictions set forth herein, including but not limited to Dwellings and other buildings, walkways, sprinkler pipes, garages, swimming pools, spas and other recreational facilities, streets, roads, driveways, parking areas, fences, screening walls, block walls, stairs, decks, landscaping, antennae, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water-softener fixtures or equipment.

Section 1.24 Lot. "Lot", as such term is used herein, shall mean the same as "Unit" as defined in NRS § 116.093 and therefore shall mean that portion of this Common-Interest Community to be separately owned by each Owner, and shall include the land within such Lot and all Improvements thereon. Subject to Section 4.8 below, the boundaries of each Lot shall be the property lines of the Lot, as shown on the Plat. The term "Unit Estate" shall mean all of the components of ownership held by an Owner of a Lot or Unit, including any fee title interest, any undivided interest in Common Area, any right to use Common Area and any easement rights.

Section 1.25 Lots That May Be Created. "Lots That May Be Created" shall mean the total number of Lots that may (but need not necessarily) be created by Declarant within the Original Property and all of the Annexable Area (i.e., 57 Lots).

Section 1.26 Maintenance of Installed Landscaping. "Maintenance of Installed Landscaping" shall mean the Association, as part of the dues for membership in the Association, shall maintain the front yard landscaping of every home in the Association to the level and quality as determined appropriate and acceptable to the Association.

Section 1.27 Manager. "Manager" shall mean the Person, whether an employee or independent contractor, appointed by the Association and delegated the authority to implement certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

Section 1.28 Member, Membership. "Member, Membership" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in this Declaration and the Articles and Bylaws.

Section 1.29 Mortgage. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot or other portion of the Properties to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "deed of trust" when used herein shall be synonymous with the term "Mortgage". "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien or other similarly involuntary lien on or encumbrance of a Lot.

Section 1.30 Mortgagee. "Mortgagee" shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

Section 1.31 Notice and Hearing. "Notice and Hearing" shall mean written notice and a hearing before the Association Board (as defined herein), at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws, as the case may be.

Section 1.32 Officer. "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.33 Original Property. "Original Property" shall mean that real property described on Exhibit "A" attached hereto and incorporated herein.

Section 1.34 Owner. "Owner" shall mean the Person or Persons, including Declarant, holding a fee simple interest of Record to any Lot. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees.

Section 1.35 Person. "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.36 Plat. "Plat" shall mean the final plat map of AVADA, recorded on September 18, 2004 in Book 119 of Plats, Page 0036 in Official Records Book No. 20040915 in the Office of the County Recorder, Clark County, Nevada; as the same may be amended from time to time; and any other map which shall hereafter affect the Properties.

Section 1.37 Properties. "Properties" shall mean the Original property and any and all portions of the Annexable Area hereinafter annexed to the real property subject to this Declaration in accordance herewith.

Section 1.38 Purchaser. "Purchaser" shall have that meaning as provided in NRS § 116.079.

Section 1.39 Record, Recorded, Filed or Recordation. "Record, Recorded, Filed or Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.40 Resident. "Resident" shall mean any person who is physically residing in a Lot.

Section 1.41 Rules and Regulations. "Rules and Regulations" shall mean all rules and regulations duly adopted by the Board, as such Rules and Regulations may be amended from time to time.

Section 1.42 VA. "VA" shall mean the United States Department of Veterans Affairs.

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

ARTICLE 2
THE ASSOCIATION

Section 2.1 Organization. The Association is or shall be incorporated under the name of AVADA HOMEOWNERS ASSOCIATION, INC., a Nevada non-profit corporation. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in its Articles or Bylaws.

Section 2.2 Powers and Rights. The duties and powers of the Association are those set forth in the Act and this Declaration, the Articles and Bylaws, together with the general and implied powers of a non-profit corporation generally to do any and all things that such a corporation may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety, and general welfare of its Members. This Declaration may not impose limitations on the power of the Association to deal with the Declarant which are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

Section 2.3 Membership. Each Owner (including Declarant), by virtue of being an Owner and only for so long as an Owner owns a Lot, shall be a Member of the Association. Membership in the Association shall be subject to this Declaration, the Articles and the Bylaws. Memberships shall not be assignable, except to the Person to which title to the Lot has been transferred, and every Membership shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for Membership. A Member in good standing "Member in Good Standing" shall be a Member who has paid the Association dues and does not have any unpaid fines or violations of the Association's governing documents.

Section 2.4 Transfer of Membership. The Membership held by any owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Lot, and then only to the Purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. An Owner who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. If any Owner should fail or refuse to transfer his Membership to the Purchaser of such Lot upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer has been presented to the Board, the purchaser shall not be entitled to vote at meetings of the Association. The Association may levy a reasonable transfer fee against a new Owner and his Lot (which fee shall be added to the Common Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association. The right to vote may not be severed or separated from any Lot. Each Owner shall, within ten (10) days prior to any sale, transfer or conveyance of a fee interest in the Owner's Lot, notify the Association in writing of such sale, transfer or conveyance, with the name and address of the transferee, the nature of the transfer and the Lot involved, as well as such other information relative to the transfer and the transferee as the Board may reasonably request. The transferee shall, if requested, attend an orientation to the Community, conducted by the Manager. Transferee will be required to pay costs necessary to obtain entry gate keys and/or remote controls, if not obtained from the prior Owner at closing.

Section 2.5 Owners' Voting Rights. Subject to Sections 2.7 and 2.8 below, each Member in Good Standing shall be entitled to cast (1) vote for each Lot owned. When more than one Person holds such interest or interests in any Lot ("co-owner"), only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Fractional votes shall not be allowed. If more than one of the co-owners is present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the co-owners. There is majority agreement if any one of the co-owners casts the vote allocated to that Lot without protest made promptly to the person presiding over the meeting by any of the other co-owners of the Lot.

Section 2.6 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters; but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern. The Bylaws must provide:

(a) The number of Directors and the titles of the Officers;

(b) For election by the Board of an Association president, treasurer, secretary and any other Officers specified by the Bylaws;

(c) The qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and filling vacancies;

(d) Which, if any, respective powers the Board or Officers may delegate to other Persons or to a Manager;

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

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

(g) A method for amending the Bylaws.

Section 2.7 Board of Directors.

(a) The affairs of the Association shall be managed by a Board of not less than three (3), nor more than seven (7) Directors In accordance with the provisions of Section 2.8 below, upon the formation of the Association, Declarant shall appoint the Board. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in this Declaration, the Articles, Bylaws, Plat, and Rules and Regulations (collectively, "Governing Documents") or any expressly applicable provision of NRS Chapter 116. The Directors, in the performance of their duties, are fiduciaries and are required to exercise the ordinary and reasonable performance of their duties, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all Persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. If a Director is sued for liability for actions undertaken in his role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Lot, a partner or a partnership that owns a Lot, or a fiduciary of an estate that owns a Lot, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other person; any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

(b) Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and limitations on the time an Owner may speak at such meeting. Owners may not attend or speak at an Executive Session, unless the Board specifically so permits. An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

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

(ii) Discussing Association personnel matters of a sensitive nature; or

(iii) Discussing any violation ("Alleged Violation") of the Governing Documents alleged to have been committed by an Owner ("Involved Owner").

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

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

Section 2.8 <u>Declarant's Control of Board</u>. During the period of Declarant's control, as set forth below, Declarant at any time may remove or replace any Director appointed by Declarant, with or without cause. Directors appointed by Declarant need not be Owners. Declarant shall have the right to appoint and remove the Directors, subject to the following limitations:

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

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

(c) The period of Declarant's control as set forth in this Section 2.8 shall terminate on the earliest of: (1) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Lots That May Be Created; (2) five (5) years after Declarant has ceased to offer any Lots for sale in the ordinary course of business; or (3) five (5) years after any right to annex any portion of the Annexable Area was last exercised pursuant to Article 14 hereof.

Section 2.9 Owners' Control of Board. Subject to and following Declarant's control, as set forth in Section 2.8 above: (a) the Owners shall elect a Board of at least three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the period of Declarant's control, all of the Directors must be Owners, and each Director shall, at the time of his appointment or election, certify in writing that he is an Owner and has read and understands the Governing Documents and those provisions of NRS Chapter 116 which are expressly applicable to this Community. The Board shall elect the Officers. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners' meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

Section 2.10 Turnover by Declarant. Within thirty (30) days after Members other than the Declarant may elect a majority of the Directors, the Declarant shall deliver to the Association held by or controlled by Declarant, including, but not limited to:

(a) The original or a certified copy of the recorded Declaration as amended, the Articles of Incorporation, if applicable, the Bylaws, Rules and Regulations, if applicable, minute books and other books and records of the Association; and

(b) An accounting of the money of the Association and financial statements from the date the Association received money to the date the period of the Declarant's control ends. The financial statements must fairly and accurately report the Association's financial condition prepared in accordance with generally accepted accounting principles; and

(c) A complete study of the reserves of the Association, conducted by a person qualified by the Administrator, and at the time the control of the Declarant ends, the Declarant shall:

(i) Deliver to the Association a reserve account that contains the Declarant's share of the amounts then due, and control of the account.

(ii) Disclose, in writing, the amount by which the Declarant has subsidized the Association's dues on a per Lot basis; and

(d) The Association's money or control thereof; and

(e) All of the Declarant's tangible personal property that has been represented by the Declarant as property of the Association or, unless the Declarant has disclosed in the public offering statement that all such personal property used in the Association will remain the Declarant's property, all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties; and

(f) A copy of any and all plans and specifications used in the construction of the improvements in the Association which were completed within two (2) years before the Declaration was recorded; and

(g) All insurance policies, then in force, in which the Members, the Association, or the Directors and Officers are named as insured persons; and

(h) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Association other than Lots in a planned community; and

(i) Any renewable permits and approvals issued by governmental bodies applicable to the Association which are in force and any other permits and approvals so issued and applicable which are required by law to be kept on the premises of the Community; and

(j) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective; and

(k) A roster of Members and Mortgagees of Lots and their addresses and telephone numbers, if known, as shown on the Declarant's records; and

(l) Contracts of employment in which the Association is a contracting party; and

(m) Any contract for service in which the Association is a contracting party or in which the Association or the Members have any obligation to pay a fee to the persons performing the services.

Section 2.11 <u>Continuing Notices to Declarant</u>. After the end of Declarant's control of the Board, and thereafter, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Owners meetings, and Declarant shall have the right, but not the obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, but not the obligation, to attend the inspections of the Properties described in Article 6 below. The Board shall also, throughout the term of this

Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 3.9, and proof of performance of the annual audit as required in Section 3.4, below. Such notices and information shall be delivered to Declarant at its last known address. Declarant shall notify the Board in writing of any change in address.

Section 2.12 Meetings of Owners. The first meeting of the Owners shall be held not later than the earlier of: (a) six (6) months after the Close of Escrow for the sale of the first Lot in the Original Property; or (b) forty-five (45) days after the Close of Escrow for the sale of a majority of the Lots in the Original Property. Thereafter, there shall be meetings of the Owners, at least twice each year, at approximately six month intervals.

Section 2.13 Special Meetings of Owners. A special meeting of the Owners may be called at any reasonable time and place, by written request of: (a) the Association President, (b) a majority of the Directors, or (c) Owners representing at least ten percent (10%) of the voting power of the Association. To be effective, such written request shall be delivered to the President, Vice President, or Secretary of the Association. The Officers shall then cause notice to be given, to the Owners entitled to vote, that a meeting will be held at a time and place set by the Board not less than ten (10) days nor more than thirty (30) days after receipt of the written request. Notice of special meetings shall specify the general nature of the business to be undertaken and that no other business may be transacted.

Section 2.14 Notice and Place of Meetings. Meetings of the Owners shall be held in the Properties or at such other convenient location near the Properties and within Clark County as may be designated in the notice of the meeting. Written notice of meetings shall state the place, date and time of the meeting and the items on the agenda, including, but not limited to, the general nature of any proposed amendment to the Declaration or Bylaws, any fees or assessments to be imposed or increased by the Association, any budgetary changes and any proposal to remove any Officer or Director. Said written notice must include notification of the right of an Owner to have a copy of the minutes or summary of the minutes of the meeting distributed to him upon request if the Owner pays the Association the cost of making the distribution. The foregoing notwithstanding, the Association shall provide at least twenty-one (21) days advance written notice to each Owner, of any meeting at which an assessment for a capital improvement is to be considered or action is to be taken on-such an assessment. Not more than thirty (30) days after any meeting, the Association Secretary or other authorized Officer shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or summary of the minutes must be provided to any requesting Owner, provided that such Owner first pays the Association the cost of providing such copy.

If the Association adopts a policy of imposing fines on Owners for violations of the Declaration, Bylaws, or Rules and Regulations, the Association Secretary or other authorized Officer shall prepare and cause to be hand-delivered or sent by U.S. mail, postage prepaid, to the mailing address of each Lot, or to any other mailing address designated in writing by the Owner, a schedule of fines which may be imposed for such violations.

Section 2.15 Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Owners entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Owners for any purpose. Notwithstanding any provision hereof to the contrary, the Owners of record on any such record date shall be deemed the Owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for an adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Owners is proposed or expected to be taken or to occur.

Section 2.16 Quorums. The presence at any meeting of Owners who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Owners present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of the Owners required to constitute a quorum, unless a greater vote is required by law or by this Declaration. If any meeting cannot be held because a quorum is not present, the Owners present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Owners entitled to vote at least twenty percent (20%) of the total votes of the Association. Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e.g., 67%) of votes of the total voting Membership.

Section 2.17 Proxies. Every Owner entitled to vote or execute statements or consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such Person or his or her duly authorized agent; provided, however that no such proxy shall be valid after the expiration of one (1) year after the date of its execution.

Section 2.18 Actions. If a quorum is present, the affirmative vote on any matter by the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two (2) candidates, a plurality of the votes cast) shall be the act of the Owners, unless the vote of a greater number is required by law or by this Declaration.

Section 2.19 Action by Meeting and Written Approval of Absent Owners. The proceedings and transactions of any meeting of Owners or special meeting of Owners (however called and noticed and wherever held shall be as valid as though such proceedings and transactions had occurred at a meeting duly held after regular call and notice, if: (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each Owner not present (in person or by proxy) signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes thereof.

Neither the business to be transacted at, nor the purpose of any meeting of Owners or special meeting of Owners, need be specified in any written waiver of notice. All such waivers, consents or approvals shall be filed with the Association records or made a part of the minutes of the meeting.

Attendance of an Owner at a meeting shall constitute a waiver of notice of such meeting, except when the Owner objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. The foregoing notwithstanding, attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law to be included in the notice but not so included, if such objection is expressly made at the meeting.

Section 2.20 Action by Written Consent Without Meeting. Any action which may be taken at any meeting of Owners or special meeting of the Owners may be taken without a meeting and without prior notice, if authorized by a written consent setting forth the action so taken, signed by Owners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Owners were present and voted, and filed with the Association Secretary. The foregoing notwithstanding, Directors may not be elected by written consent, except by unanimous written consent of all Owners. Any Owner giving a written consent (or such Owner's proxy holder) may revoke any such consent by a writing received by the Association prior to the time that written consents of the number of Owners required to authorize the proposed action have been filed with the Association Secretary, but may not do so thereafter. Such revocation shall be effective upon receipt by the Association Secretary.

Unless the consents of all Owners have been solicited in writing and received, prompt notice shall be given (in the manner for meetings of Owners) to those Owners who have not consented in writing, of the taking of any Association action approved by Owners without a meeting. Such notice shall be given at least ten (10) days before the consummation of the action authorized by such approval with respect to the following:

(a) Approval of any reorganization of the Association;

(b) A proposal to approve a contract or other transaction between the Association and one or more Directors, or any corporation, firm or association in which one or more Directors has a material financial interest; or

(c) Approval required by law for the indemnification of any person.

Section 2.21 Adjourned Meetings and Notice Thereof. Any Owners' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members present either in person or by proxy thereat, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in Section 2.19.

When any meeting of Owners, including special Owners meeting, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any meeting of Owners, including special Owners meeting, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Owner as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Owners may transact any business that might have been transacted at the original meeting.

ARTICLE 3
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 3.1 General Maintenance. The Association shall provide for the inspection, management, maintenance and repair of the Common Area (and of any other portions of the Properties as expressly required hereunder), as set forth in further detail in Article 6, below. Said areas shall be maintained in a safe and attractive condition and in good order and repair. The Association shall also provide for utilities serving the Common Area.

Section 3.2 Other Services. The Association may undertake or contract for any lawful activity, function or service provided for under the Articles, Bylaws or this Declaration for the benefit of the Owners. In addition to the assessments described in Article 5, all costs and expenses of activities, functions or services undertaken by the Association for the benefit of fewer than all of the Owners may, at the discretion of the Board, be assessed to the Owners benefited thereby, and such assessments shall be enforced in accordance with the provisions of Article 5, below. The Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder.

Section 3.3 Rules and Regulations. The Board shall be empowered to adopt, amend, or repeal uniform Rules and Regulations as it deems reasonable and appropriate for the use and occupancy of the Common Area. Subject to the foregoing:

(a) The Rules and Regulations must be reasonably related to the purpose for which they are adopted and sufficiently explicit in their prohibition, direction, or limitation to inform a Member or other individual of any action or omission required for compliance. In addition, the Rules and Regulations must not be adopted to evade any obligation of the Association and they must be consistent with the Declaration and Bylaws. They may not arbitrarily restrict conduct or require the construction of any capital improvement by a Member that is not required by the Declaration or Bylaws.

(b) The Rules and Regulations shall be binding upon all Persons subject to this Declaration, whether Members of the Association or not; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles of Bylaws.

(c) The Rules and Regulations must be uniformly enforced under the same or similar circumstances against all Members.

(d) A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Area or may be mailed or otherwise delivered to each Member. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if set forth herein, and shall be binding on all Persons having any interest in, or making any use of any part of, the Common Area and facilities thereon, whether or not Members. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, as though notice thereof had been given pursuant to this Section 3.3.

(e) Should any Resident violate the Rules and Regulations (or any provision of this Declaration) or should any Resident's act, omission or neglect cause damage to Common Area, such violation, act, omission or neglect shall also be considered and treated as that of the Owner of the Lot in which the Resident resides. Likewise, should any guest of any Owner or Resident commit any such violation, or cause damage to Common Area, such guest's violation, act, omission or neglect shall also be considered and treated as that of the Owner of the relevant Lot.

(f) The Board shall have the power to enforce compliance with the Rules and Regulations by all legal and equitable remedies, and an Owner determined by judicial action to have violated the Rules and Regulations shall be liable to the Board for all damages and costs, including attorney's fees. Without limiting the foregoing, the Association shall have the right to enforce the Rules and Regulations (and obligations of Owners under this Declaration, the Articles, or Bylaws) by assessing a reasonable fine against a transgressing Owner or Resident, and/or temporarily suspending the right of a transgressing Owner to vote at meetings of the Association. Any such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation. If any such violation continues for a period of ten (10) days after notice thereof to a transgressing Owner or Resident, such continuing violation shall be deemed a new violation and may be subject to the imposition of new penalties. If any such fine imposed by the Association on an Owner or Resident is not paid within thirty (30) days after written notice of the imposition of such fine, then the amount of such fine shall constitute a Special Assessment, charged to the Lot of said Owner, and shall be enforceable as an assessment in accordance with Article 5. Any such fine and/or use and/or voting suspension may only be imposed if, at least thirty (30) days before the violation, the Owner and/or individual received notice of the Rule or Regulation and then, after the violation, received notice of the right to request a hearing and be heard regarding the alleged violation(s).

(g) The foregoing notwithstanding, the Rules and Regulations shall be enforceable only to the extent not inconsistent with this Declaration, the Articles, Bylaws, or existing law. In the event of any conflict, the provisions of the Rules and Regulations shall be deemed superseded by the provisions of this Declaration, the Articles, Bylaws, or existing law, as the case may be, to the extent of any such conflict. The Rules and Regulations may not be used to amend this Declaration, the Articles or Bylaws.

Section 3.4 <u>Taxes; Annual Audit</u>. The Association shall timely pay all real and personal property taxes and assessments levied against the Common Area. Each Owner shall timely pay all taxes levied against his or her Lot and any personal property. The Association shall file all tax returns required by the Internal Revenue Service or any other appropriate governmental body as the case may be. The Association, at its expense, shall cause its financial statements and tax returns to be audited annually by a Certified Public Accountant, who shall prepare a written report to the Association.

Section 3.5 Right of Entry to Lots. The Association shall have the right, in the event of emergency or urgent need, to enter onto any Lot (but not the interior of any Dwelling) for the purpose of enforcing this Declaration or any Rules and Regulations. Any damage to a Lot caused by the Association or its agents during any such entry onto the Lot shall be repaired by and at the expense of the Association, unless such entry was necessitated by the negligence or misconduct of the Owner, Resident or guest of such Lot.

Section 3.6 Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration or any other of the Governing Documents, or reasonably to be implied from the provisions of this Declaration or of the Governing Documents, or given or implied by virtue of the Association status as a Nevada non-profit corporation, or given or implied by NRS § 116.3102 or other applicable law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

Section 3.7 Limitation on Rights. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except: (i) a contract with a public utility company (if the rates charged for the materials or services are regulated by the Nevada Public Service commission), provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rates; or (ii) prepaid casualty and/or liability insurance policies of not greater than three (3) years duration.

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

(c) Instituting or intervening in litigation or administrative proceedings in its own name on matters affecting the Community in which the amount in controversy exceeds One Thousand Dollars ($1,000.00), provided that such consent need not be obtained for actions commenced by the Association in the regular course of business: (i) to enforce assessment liens against Owners as provided for herein, or (ii) against vendors or suppliers of services to the Association (collectively, "Permitted Litigation"). Prior to involvement in any litigation or administrative proceedings, other than Permitted Litigation, the Board shall furnish to all Owners written notification of the estimate of attorney's fees required (or, if a contingent fee is involved, under what conditions the Association would be required to pay fees out-of-pocket) and a budgetary analysis of the impact of such fees and costs on assessments, as well as notice that, by voting in favor of litigation, the Owners agree to be personally liable for any attorney's fees which may be in excess of the amounts disclosed.

Section 3.8 Manager. The Association shall have the right, but not the obligation, to employ or contract, subject to Section 3.7(a) above, with a professional Manger to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

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

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

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

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

(e) By execution of its agreement with the Association, a Manager shall be conclusively deemed to have covenanted: (i) in good faith to be bound by, and to faithfully perform all duties required of the Manager under the Governing Documents (including, but not limited to, full and faithful accounting for all Association funds within the possession or control of Manager); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; and (3) at Manager's sole expense, to promptly turn over to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manger turnover in good faith has been completed).

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

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

ARTICLE 4
COMMON AREA AND EASEMENTS

Section 4.1 Easement in Common Area. In addition to ownership of his or her Lot, each Owner shall also have a nonexclusive easement in and to the Common Area, as provided for herein. The Common Area is owned by the Association. Except as otherwise limited in this Declaration, each Owner shall have the right to use said Common Area for all purposes incident to the use and occupancy of his Lot as a place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Lot. Every Owner shall have a non-exclusive right and easement of ingress and egress and of use and enjoyment in, to and over all Common Area. Said right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to:

(a) The rights and reservations of Declarant as set forth in Article 13, below (including, but not limited to, the right of Declarant and its sales agents, representatives and prospective Purchasers, to the nonexclusive use of the Common Area, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and any other development(s) until the last Close of Escrow for the sale of a Lot in the Properties or such other development(s); provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein);

(b) The right of the Association (acting through the Board) to suspend voting rights and to impose fines for nonpayment of any Common or Special Assessment by the Association against the Owner's Lot, or if an Owner is otherwise in material breach of obligations imposed under this Declaration, the Articles, Bylaws, or the Rules and Regulations;

(c) The right of the Association to adopt uniform Rules and Regulations regarding use, maintenance and upkeep of the Common Area and all Improvements located thereon, and to amend same from time to time (such Rules and Regulations to be amended by majority vote of the Board);

(d) The right of the Association in accordance with the Articles, Bylaws and Declaration, with the vote of two-thirds (2/3) of the voting power of the Association, to borrow money for the purpose of improving or adding to the Common Area and, in aid thereof, and further subject to the provisions of Article 10 hereof: (i) to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred, provided that the rights of the mortgagee shall be subordinated to the rights of the Owners hereunder; and (ii) to dedicate, release, alienate or transfer the Common Area to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed upon by the Owners;

(e) The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvements in the Common Area in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and if not materially in accordance with the original design, finish or standard of construction, then only with: (i) the vote or written consent of Owners holding seventy-five percent (75%) of the voting power of the Association, and (ii) approval of the beneficiaries of fifty-one percent (51%) of the first Mortgages on Lots in the Properties; and

(f) The easements reserved in Sections 4.2 through 4.7 inclusive.

The foregoing rights and easements shall not be conveyed or otherwise transferred separately from the Lot to which appurtenant, and said rights and easements shall be deemed to be conveyed or encumbered with the Lot to which appurtenant, whether or not the deed or instrument of conveyance makes reference thereto.

Section 4.2 Easement Right of Declarant Incident to Construction. An easement is reserved by and granted to Declarant, its successors and assigns, for access, ingress, and egress over, in, upon, under, and across the Common Area, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use and development of the Properties; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his Family, guests, or invitees, to or of that Owner's Lot, or the Common Area. Declarant further reserves the right to change the arrangement of any Lot and to alter the boundaries between Lots, so long as Declarant owns the Lots so altered. No such change shall increase the number of Lots nor alter the boundaries of the Common Area. The easement created pursuant to this Section 4.2 is subject to the time limit set forth in Article 13 hereof.

Section 4.3 Easements for Parking. The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the common Area, as well as to enforce these parking limitations by all means lawful for such enforcement on public streets, including the removal of any violating vehicle by those so empowered.

Section 4.4 Easements for Pedestrian Access Corridors. There shall be reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, nonexclusive, appurtenant easements for pedestrian traffic over any and all portions of Pedestrian Access Corridors ("sidewalks") located on portions of individual Lots. In addition, there shall be reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, easements for vehicular traffic over portions of Pedestrian Access Corridors ("sidewalks") located on Lots. Said easements for vehicular traffic shall be limited to the extent, if any, necessary for ingress and egress from driveways and/or garages.

Section 4.5 Easements for Pedestrian & Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, nonexclusive, appurtenant easements for vehicular and pedestrian traffic over any and all private streets and walkways within the Common Area, subject to the parking provisions set forth in Sections 4.3 and 8.1 hereof.

Section 4.6 Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for public services of the city and county, including, but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

Section 4.7 Easements for Utility Purposes. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for public and private utility purposes, including, but not limited to, the right of any public utility of ingress or egress over the Lots and Common Area for purposes of reading and maintaining meters, and using and maintaining fire hydrants.

Section 4.8 Further Reservations of Easements. Declarant hereby reserves for the benefit of each Owner and his Lot, reciprocal, nonexclusive easements over the adjoining Lot(s) for the control, maintenance and repair of the utilities serving such Owner's Lot. Declarant expressly reserves for the benefit of all of the real property in the Properties, and for the benefit of all of the Lots, the Association and the Owners, reciprocal, nonexclusive easements over all Lots and the Common Area, for the installation, maintenance and repair of utility services and drainage facilities, for drainage from the Lots of water resulting from the normal use of adjoining Lots, for the maintenance, repair and replacement obligations of the Association under this Declaration, and for making repairs necessary to prevent damage to the Common Area, or any Lot.

Section 4.9 Walls. Each wall (which term as used in this Declaration also shall include a fence), which is built as part of the original construction by Declarant and is placed on the property line of a Lot, or between Lots, shall constitute a boundary wall. In the event that any boundary wall is not constructed exactly on the property line, the Owner(s) affected shall accept the boundary wall as the property boundary. The cost of reasonable repair and maintenance of boundary walls shall be borne or shared by the Owner(s) who use such wall, in proportion to such use (e.g., if the boundary wall is the boundary of one Lot only, then the Owner of the Lot shall bear all of the cost; if the if the boundary wall is the boundary between two Owners, then each of the two Owners shall each bear half of such cost). If a boundary wall is destroyed or damaged by fire or other casualty, any Owner whose Lot has use of the wall may restore it, and any other Owner whose Lot makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use. The foregoing shall not prejudice the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any provision of this Section 4.9, an Owner who by his negligent or willful act causes a boundary wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against: such elements. The right of any Owner to contribution from any other Owner under this Section 4.9 shall be appurtenant to the land and shall pass to the Owner's successors in title. In the event of any dispute arising concerning a wall or boundary wall under the provisions of this Section 4.9, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitration shall be binding upon the Owners which are a party to the arbitration. No Owner shall permit removal, alteration or painting of boundary walls without the prior written approval of the Association. If an Owner fails to maintain such a boundary wall in accordance with the foregoing, the Association may perform such maintenance, and the cost thereof shall be assessed to the Owner as a Special Assessment.

Section 4.10 <u>Encroachments</u>. In the event that any Dwelling encroaches upon the Common Area, as a result of construction or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist so long as the minor encroachment exists. Declarant and the Owners of each Lot on which there is constructed a Dwelling along or adjacent to such Lot line shall have an easement appurtenant to such Lot over the Lot line to and over the adjacent Lot, for the purposes of accommodating any natural movement or settling of any Dwelling located on such Lot, any encroachment of any Dwelling due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, patio walls and architectural features comprising parts of the original construction of any Dwelling located on such Lot. The physical boundaries of an existing Lot, or of a Lot reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than any metes and bounds expressed in the Plat or in an instrument conveying, granting or transferring a Lot, regardless of settling or lateral movement and regardless of minor variances between boundaries shown on the Plat or reflected in the instrument of grant, assignment or conveyance and the actual boundaries existing from time to time.

Section 4.11 <u>Taxes</u>. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Lot. If any taxes or assessments of any Owner may, in the opinion of the Association, become a lien on the Common Area, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Special Assessment.

Section 4.12 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or by abandonment of his Lot or any other property in the Properties.

Section 4.13 Easement Data. The recording data, required to be contained herein pursuant to the provisions of NRS § 116.2105(1)(m), for any easements and licenses appurtenant to or included in this Community or to which any portion of this Community is or may become subject by means of a reservation in 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 the Plat is the same as the recording data for the Plat. All other easements of record are indicated on the Plat.

ARTICLE 5
FUNDS AND ASSESSMENTS

Section 5.1 Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, (b) Special Assessments, and (c) Capital Improvement or Reconstruction Assessments; such assessments to be established and collected and provided in this Declaration. All assessments, together with interest thereon, later charges, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon, later charges, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors in title of any Owner unless expressly assumed by such successors.

Section 5.2 Association Funds. The Board shall establish at least the following separate accounts ("Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as trust accounts at a federally or state insured banking or saving institution, and shall include: (a) an operating fund ("Operating Fund") for current expenses of the Association, and (b) a reserve fund ("Reserve Fund") for capital repairs and replacements as set forth in Section 5.3 below, and (c) any other funds which the Board may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds, provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate trust savings or trust checking account, at any federally insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration, the Articles, or Bylaws.

Section 5.3 Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs and replacements of major components of the Common Elements; (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any proceeding, or for any other purpose whatsoever; and (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing; and (v) any use of the Reserve Fund in violation of the foregoing provisions shall be unauthorized and *ultra vires* as to the Association, and shall subject any Director who acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3(a) to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized use of the Reserve Fund.

(b) The Board, in its reasonable judgment, shall periodically retain the services of a qualified reserve study analyst, with sufficient experience, with preparing reserve studies for similar residential projects in the county, to prepare and provide to the Association a reserve study ("Reserve Study"). Each such Reserve Study shall set forth Association Reserve Fund requirements, based on estimates of the useful life and maintenance and/or replacement requirements of the Common Elements. The Board shall utilize the information contained in the most recent Reserve Study at the time the Board prepares the annual budget for the Association, and each Annual Assessment shall contain a specific portion thereof exclusively dedicated and funded to a segregated Association Reserve Fund, based upon the most recent Reserve Study.

Section 5.4 Budget. The Board shall adopt a proposed annual Budget at least forty-five (45) days prior to the first Annual Assessment period for each Fiscal Year. Within thirty (30) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days, nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed Budget is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as foresaid, the annual Budget for the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

Section 5.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual

Assessment" as determined below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association. The "Maximum Authorized Annual Assessment" in any Fiscal Year following the initial budgeted year shall not exceed one hundred fifteen percent (115%) of the Annual Assessment for the prior Fiscal Year. Notwithstanding any other provision herein, the annual average liability for Common Expenses of all Lots, exclusive of optional users' fees and any insurance premiums paid by the Association, may not exceed the limit per Lot set forth in NRS Chapter 116.

Section 5.6 Annual Assessments for Common Expenses.

(a) Until the Association establishes an Annual Assessment for Common Expenses, the Declarant shall pay all Common Expenses.

(b) After an assessment has been made by the Association, assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the requirements set forth in Section 5.4 of this Declaration. The Budget must include a Budget for the daily operation of the Association and the money for the reserve required by the Act.

(c) Except for assessments under subsections (d) to (f), inclusive, all Common Expenses, including a reserve, must be assessed against all the Lots in accordance with the allocations set forth in this Declaration pursuant to the Act.

(d) Any past due assessment for Common Expenses or installment thereof bears interest at the rate established by the Association not exceeding eighteen percent (18%) per year.

(e) To the extent required by this Declaration any Common Expense associated with the maintenance, repair, restoration, or replacement of a Limited Common Element must be assessed against the Lots to which that Limited Common Element is assigned, equally, or in any other proportion the Declaration provides. Additionally, any Common Expense or portion thereof benefiting fewer than all of the Lots must be assessed exclusively against the Lots benefited and the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(f) Assessments to pay a judgment against the Association may be made only against the Lots in the Association at the time the judgment was entered, in proportion to their liabilities for Common Expenses.

(g) If any Common Expense is caused by the misconduct of any Member or tenant, guest, or invitee of a Member, the Association may assess that expense exclusively against the Member.

(h) If liabilities for Common Expenses are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

Section 5.7 Initial Capital Contributions to Association. At the close of escrow for the sale of a Lot by Declarant, the Purchaser of such Lot shall be required to pay a capital contribution to the Association, in an amount equal to two (2) full monthly installments of the greater or the initial or then-applicable Annual Assessment (notwithstanding Section 5.8 below). Such capital contribution is in addition, and is not to be considered as an advance payment of the Annual Assessment for such Lot, and shall be deposited into and used exclusively to initially fund the Association Reserve Fund.

Section 5.8 Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein. Annual Assessments shall commence on Lots on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be: (a) with respect to Lots within the Original Property, that date which is the Close of Escrow to a Purchaser of the first Lot in the Original Property and (b) with respect to each Lot within the Annexed Property, that date on which the Annexation Amendment for such Lot is Recorded; provided that Declarant may establish a later Assessment Commencement Date uniformly as to all Lots by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. The first Annual Assessment for each Lot shall be pro-rated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the assessments on a Lot have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be retained by the Association for use in reducing the following year's Annual Assessment or for deposit in the Reserve Fund. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

Section 5.9 Capital Improvement or Reconstruction Assessments. The Board may levy, in any Fiscal Year, a Capital Improvement or Reconstruction Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement or other such addition upon the Common Elements, including fixtures and personal property related thereto; provided that any proposed Capital Improvement or Reconstruction Assessment shall require the advance consent of a majority of the voting power of the Association.

Section 5.10 Uniform Rate of Assessment. Annual Assessment and Capital Improvement or Reconstruction Assessments shall be assessed at an equal and uniform rate against all Owners and their Lots. Each Owner's share of such assessments shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the aggregate number of Lots in the Original Property (and, upon annexation, of Lots in portions of the Annexed Property).

Section 5.11 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

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

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

Section 5.12 Special Assessments. The Association may, subject to the applicable provisions of Article 6 and Section 11.1(b) hereof, levy Special Assessment against specific Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorney's fees, amounts expended to enforce assessment liens against Owners as provided for herein, and other charges of similar nature. Special Assessments, if not timely paid when due, shall constitute unpaid or delinquent assessments pursuant to this Article 5.

Section 5.13 Special Assessments for Violations.

(a) If a Member or tenant, family member, guests, or invitee of a Member violates a provision of the Governing Documents, the Board, may, after written notice and opportunity to be heard:

(i) Prohibit, for a reasonable time, the individual from voting on matters related to the Association and using the Common Elements, except for any vehicular or pedestrian ingress or egress to go to or from the Lot, including any area used for parking;

(ii) Require the individual or Member to pay a fine for each failure to comply, the amount of which shall be commensurate with the severity of the violation and otherwise consistent with the Act.

(b) If a fine is imposed pursuant to subsection (a)(i), above, and the violation is not cured within ten (10) days or a longer period as may be established by the Board, the violation shall be deemed a continuing violation. If a continuing violation is established, the Board may impose an additional fine for the violation for each seven-day period or portion thereof that the violation is not cured, the amount of which shall be commensurate with the severity of the violation and consistent with the Act. Any additional fine for a continuing violation may be imposed without notice and an opportunity to be heard.

Section 5.14 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Improvement or Reconstruction Assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the rate of ten percent (10%) per annum, commencing thirty (30) days from the due date until paid. In addition, the Board may require the delinquent Owner to pay a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest or any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or by abandonment of his Lot.

Section 5.15 Notice of Delinquent Installment. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail notice of delinquent assessment to the Owner and to each first Mortgagee of the Lot. The notice shall specify: (a) the amount of assessments and other sums due; (b) a description of the Lot against which the lien is imposed; (c) the name of the record Owner of the Lot; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the Lot. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such assessments levied against such Owner and his Lot to be immediately due and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 5.16 Notice of Default and Election to Sell and Priority of Assessment Lien.

(a) Except as otherwise provided in subsection (d), below, the Association may foreclose its lien by sale after:

(i) The Association has mailed by certified or registered mail, return receipt requested, to the Member or his successor in interest, at his or her address if known, and at the address of the Lot, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with the Act, a description of the Lot against which the lien is imposed, and the name of the record owner of the Lot; and

(ii) The Association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the Association or any part of it is situated, a notice of default and election to sell the Lot to satisfy the lien, which contains the same information as the notice of delinquent assessment, but must also describe the deficiency payment and the name and address of the person authorized by the Association to enforce the lien by sale; and

(iii) The Owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for sixty (60) days following the recording of the notice of default and election to sell.

(b) The notice of default and election to sell must be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the President of the Association.

(c) The period of sixty (60) days begins on the first day following the later of:

(i) The day on which the notice of default is Recorded; or

(ii) The day on which the notice of default is mailed by certified or registered mail, return receipt requested, to the Owner or his successors in interest at his address if known, and at the address of the Lot.

(iii) The Association may not foreclose a lien by sale for the assessment of a fine for a violation of the Declaration, Bylaws, Rules and Regulations of the Association, unless the violation is of a type that threatens the health, safety or welfare of the residents of the Association.

(d) Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. A lien for assessments, including interest, costs, and attorney's fees, as provided herein, shall be prior to all other liens and encumbrances on a Lot, except for:

(i) Liens and encumbrances Recorded before the Recordation of the Declaration.

(ii) A first security interest and/or First Mortgage on the Lot Recorded before the date that the assessment sought to be enforced became delinquent.

(iii) Liens for real estate taxes and other governmental assessments or charges against the Lot.

The sale or transfer of any Lot shall not affect an assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other Purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure of "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title such Lot by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Lots, including the Lot belonging to such Person and his successors and assigns.

Section 5.17 Foreclosure Sale. Subject to the limitation set forth in Section 5.18 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS § 116.31164 and Covenants

Nos. 6, 7 and 8 of NRS § 107.030 and § 107.090, as amended, insofar as they are consistent with the provisions of NRS § 116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS § 116.31163. Notice of time and place of sale shall be provided as required by NRS § 116.311635.

Section 5.18 Limitation on Foreclosure. Any other provision in the Governing documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a fine or for a violation of the Governing Documents, unless the violation is of a type that threatens the health and welfare of the Owners and Residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for Annual Assessments or Capital Improvement or Reconstruction Assessments, or any portion respectively thereof, pursuant to this Article 5.

Section 5.19 Cure of Default. Upon the timely curing of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or Manager, stating the indebtedness secured by the lien upon any Lot created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 5.20 Cumulative Remedies. The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 5.21 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 5, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Lot, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure, other foreclosure, or exercise of power of sale, such Lot shall remain subject to his Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Lot. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

ARTICLE 6
MAINTENANCE AND REPAIR OBLIGATIONS

Section 6.1 General Maintenance Obligations of Association. The Association (acting through the Board and/or Manager) shall provide for the inspection, management, maintenance, and repair of the Common Area (and of any other portions of the Properties as expressly required hereunder), as set forth in detail in this Article 6. The Association's obligations hereunder shall include, but not necessarily be limited to, the following:

(a) Inspections. After the end of Declarant's control of the Board, the Board and/or Manager shall conduct inspections of entry gate(s), street lights and any landscaped portions (including drainage and related systems) of the Common Area at least monthly and all private streets and walkways in the Common Areas at least quarterly. Subsequent to each inspection the Board shall cause any and all necessary or prudent maintenance and/or repairs to be promptly undertaken and completed in a manner and to the extent necessary to prevent avoidable deterioration or property damage.

Every other year at least one inspection of private streets in the Common Area shall be done by a licensed and qualified contractor with expertise in the construction and/or maintenance of such installations, who also shall be required to promptly provide a written report to the Board. Subsequent to said inspection the Board shall cause any and all necessary or prudent repairs to be promptly undertaken and completed in a manner and to the extent necessary to prevent avoidable deterioration or property damage.

(b) Utilities. The Board shall cause to be maintained properly and in good condition and repair all utilities and utility systems in the Common Area.

(c) Reports. Throughout the term of this Declaration, the Board shall promptly deliver to Declarant information copies of all written inspections and reports rendered pursuant to the Association's maintenance and repair responsibilities hereunder (without any obligation whatsoever of Declarant to review such documents or to take any action in connection therewith).

Section 6.2 General Maintenance Obligations of Owners. It shall be the duty of each Owner, at his or her sole cost and expense, subject to this Article 6, and Article 7 below, to maintain, repair, replace and restore his or her Lot and all Improvements thereon (including, but not necessarily limited to: security lighting (if any), landscaping (including, but not limited to, Installed Landscaping), exterior of Dwelling, sidewalks, boundary walls, including, but not necessarily limited to, those portions fronting private and public streets and/or abutting Common Area), in a neat, sanitary and attractive condition, except for any areas expressly required to be maintained by the Association under this Declaration. If any Owner shall permit any Improvement, the maintenance of which is his or her responsibility, to fall into disrepair or to become unsafe, unsightly or unattractive, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the obligation, after Notice and Hearing, to enter upon such Lot to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment, enforceable as set forth in this Declaration.

Section 6.3 Maintenance of Security Lighting. Each Owner shall maintain in good and operable condition the exterior security lighting (if any) installed on the exterior of his or her Dwelling. Such maintenance shall include, but not be limited to, the replacement of light bulbs, the provision of electrical power to such lights, and the payment for electrical service, as applicable. If any Owner shall fail to maintain such exterior lighting, or permit the lighting to fall into disrepair, the Association shall have the right to correct such condition. If any such condition is corrected by the Association, the Association shall be fully reimbursed by the Lot Owner for all costs incurred. The foregoing notwithstanding, the Association, at its expense, shall maintain within the Community all streetlights.

Section 6.4 Maintenance of Installed Landscaping.

(a) Declarant shall install landscaping on the front yard portions of the Lots ("Installed Landscaping").

(b) Installed Landscaping shall comply with any and all then-current Drought Restrictions, as set forth in Title 30, Chapter 30.64, Section 30.64.070, of the Clark County Code; any and all then-current restrictions imposed by the applicable city ordinances; and any and all applicable city Turf Limits imposed by the Southern Nevada Water Authority.

(c) Declarant shall be responsible for: (1) maintenance, repair, replacement, and watering of all front yard landscaping on the Lots; and (2) maintenance, repair, and/or replacement of all or any portion of any irrigation systems or equipment pertaining to any Installed Landscaping located on the Lots.

(d) All Lot Owners shall promptly pay their water bills when due, and shall not permit or suffer water to be shut off to their Lots. In the event that all or any portion of the Installed Landscaping is damaged because of any Owner's act or omission, such Owner shall be solely liable for the costs of repairing such damage and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment hereunder, over and above the normal dues for the Maintenance of Installed Landscaping.

(e) Absent prior written approval of the Association, no Owner may add to, delete, modify or change any Installed Landscaping.

Section 6.5 Perimeter Walls, Landscaping & Sidewalks.

(a) Walls and/or fences around the exterior boundary of the Community ("Perimeter Walls") constructed or to be constructed by Declarant, are Improvements, all portions of which are located, or conclusively deemed to be located, within the boundaries of individual Lots. By acceptance of a deed to his Lot, each Owner on whose Lot a portion of the perimeter wall is located, hereby covenants, at the Owner's sole expense, with regard to said portion of the perimeter wall: to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Perimeter Wall at all times in good repair; and, if and when reasonably necessary, to replace the Perimeter Wall to its condition and appearance as originally constructed by Declarant. No changes or alterations (including, without limitation, temporary alterations, such as removal of the Perimeter Wall for construction of a swimming pool or other Improvement) shall be made to the Perimeter Walls, or any portion thereof, without the prior written approval of the Association. If any Owner shall fail to insure, or to maintain, repair or replace his Perimeter Wall within sixty (60) days when reasonably necessary, in accordance with this Section 6.5 or the Association shall be entitled to insure, or to maintain, repair or replace such Perimeter Wall, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration.

(b) The foregoing notwithstanding, in order to maintain uniform appearance of the Community along Spencer Street and Dave Street and any other streets that may run adjacent to the Community, presently or in the future, the Association shall paint: (1) the exterior of those portions of Perimeter Walls along Spencer Street and Dave Street and any other streets that may run adjacent to the Community, presently or in the future, which are located on Lots and do not constitute Common Area. "Exterior" shall mean those portions of perimeter wall facing the road outside the Community; "interior" shall mean those portions of perimeter wall facing the inside of the Community (i.e., opposite the exterior side).

(c) Walkways, landscaping and planters (if any) along the exterior of Perimeter Walls, along Spencer Street and Dave Street and any other streets that may run adjacent to the Community, presently or in the future, shall be maintained by the Association.

(d) To help prevent water damage to Perimeter Walls, Owners shall not cause or permit irrigation water or sprinkler water to flow onto or to strike upon the interior portions of the Perimeter Wall on or adjacent to their Lots. Subject to the foregoing (and subject further to the requirements of Article 7, and to Declarant's reserved rights), and in order to help prevent water damage to Perimeter Walls, Owners shall at all times ensure that if landscaping is located adjacent and contiguous to the interior of Perimeter Wall, that only drip irrigation is installed along not less than a three foot (3') wide uninterrupted strip, adjacent and contiguous to the interior of Perimeter Wall on their Lots.

(e) Pedestrian Access Corridors ("Sidewalks") constructed or to be constructed by Declarant, are Improvements, all portions of which are located, or conclusively deemed to be located, within the boundaries of individual Lots. By acceptance of a deed to his Lot, each Owner on whose Lot a portion of a Sidewalk is located, hereby covenants, at the Owner's sole expense, with regard to said portion of the Sidewalk: to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Sidewalk at all times in good repair; and, if and when reasonably necessary, to replace the Sidewalk to its condition and appearance as originally constructed by Declarant. No changes or alterations shall be made to the Sidewalks, or any portion thereof, without the prior written approval of the Association. If any Owner shall fail to insure, or to maintain, repair or replace his Sidewalk within sixty (60) days when reasonably necessary, in accordance with this Section 6.5, the Association shall be entitled to insure, or to maintain, repair or replace such Sidewalk, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration.

Section 6.6 No Alterations. After completion of Declarant's construction or installation thereof, no Improvement, excavation or work which in any way alters the Common Area shall be made or done by any Person other than the Association or its authorized agents. In addition, no Improvement, excavation or work which in any way alters or causes temporary damage to the Sidewalks or Perimeter Walls shall be made or done by any Owner without prior written approval of the Association and/or proper city authority/committee. The cost of any maintenance, repair and/or replacement of any Common Area, or Sidewalk located on individual Lots, arising out of or caused by the willful or negligent act or omission of an Owner, Resident, or their respective Families, guests or invitees, shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Sections 5.12, 5.13 and 11.1(b) hereof, to the extent that the damage is not covered and paid by said Owner's insurance.

Section 6.7 Dedicated Areas. Any provision herein notwithstanding, the Association shall not be responsible for the maintenance of any portions of the Common Area or Properties which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity.

ARTICLE 7
ARCHITECTURAL AND LANDSCAPING CONTROL

Section 7.1 Review of Plans and Specifications. No construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of an Improvement or removal of any tree in the Community shall be commenced or maintained by any Owner until the plans and specifications showing the nature, kind, shape, height, width, color, materials, and location of the same have been submitted to, and approved in writing by the Association and/or proper city authority/committee, as required by this Declaration.

(a) Within ten (10) days of Owner's receipt of written approval, or conditioned approval from the Association and/or proper city authority/committee, the Owner shall send a copy of said approval, or conditioned approval by certified mail, return receipt requested, postage prepaid to the Board.

Section 7.2 Declarant Exemption. The provisions of this Article 7 shall not apply to Lots owned by Declarant until such time as Declarant conveys title to the Lot to a Purchaser thereof. This Article 7 shall not be amended without Declarant's written consent set forth on the amendment.

ARTICLE 8
USE RESTRICTIONS

Section 8.1 Restrictions on Use of the Properties.

Subject to the rights and exemptions of Declarant as set forth in this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions, and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 8 may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Any other provision herein notwithstanding, neither Declarant, the Association, nor their respective Directors, officers, members, agents or employees, shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein. The Properties shall be occupied and used as follows:

(a) Single Family Residence. Each Lot shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes; except that Declarant, its successors and assigns, may exercise any rights reserved and set forth in this Declaration. The provisions of this Section 8.1(a) shall not preclude a professional or administrative occupation, or an occupation of child care provided for not more than five (5) non-Family children, provided that there is no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Lot by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than ninety (90) days.

(b) No Further Subdivision. Except as may be authorized by the Declarant, no Lot or Common Area may be further subdivided (including, without limitation, any division into time-share estates or time-share uses) without the prior written approval of the Board. Moreover, no two or more Lots in the Property may be combined in any manner whether to create a larger Lot or otherwise, and no Owner may permanently remove any block wall or other intervening partition between Lots.

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

(d) Animal Restrictions. No animals, livestock or poultry of any kind shall be raised or kept on any Lot, except for dogs, cats or other household pets. At any one time the total number of household pets raised or kept on a Lot other than fish, shall not exceed three (3), nor shall any animals be kept, bred, manicured or maintained on a Lot for any commercial purposes. No animals may be kept on a Lot which, in the opinion of the Board, constitutes a nuisance or annoyance to other Owners or Residents. Any such nuisance shall be eliminated at the Lot Owner's expense. Should the Owner not comply with the requirements imposed by the

Board, such elimination shall be made under the Board's direction upon the affirmative vote of at least two-thirds (2/3) of the Directors, with any costs to be added to the Assessments which are assessed against the responsible Owner and his Unit Estate and to be enforceable and collectible as an Assessment in accordance with Article 5. In no event shall an Owner permit any animal to roam from the Owner's Lot.

(e) Parking and Vehicular Restrictions. No person shall park, store or keep anywhere within the Property, any inoperable vehicle or any large commercial-type vehicle (other than a pickup or camper truck or similar vehicle up to and including one (1) ton when used for daily transportation of the Owner or Residents respectively thereof, which shall be permitted), including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, and recreational vehicle, camper unit, house car or motor home, any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home, any inoperable vehicle, or any other similar vehicle or any vehicular equipment, mobile or otherwise, deemed by the Board to be a nuisance, except wholly within the Owner's garage and only with the garage door closed. No person shall conduct repair or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Property or on any street abutting the Property. However, repair and/or restoration of one (1) such item only shall be permitted within an Owner's garage so long as the garage door remains closed; provided, however, that such activity may be prohibited entirely by the Board if the Board determines in its reasonable discretion that such activity constitutes a nuisance. Vehicles owned, operated or within the control of any Owner or of a Resident of such Owner's Dwelling shall be parked in the garage of such Lot to the extent of the space available therein. All garages shall be kept neat and free of stored materials so as to permit the parking of one (1) standard sized sedan automobile therein at all times. Garage doors shall not remain open for prolonged periods of time, and must be closed when not in use. Any motor vehicle operated on the Property, including any automobile, truck, dune buggy, motorcycle or trail bike, shall have mufflers on its exhaust system and shall be ridden only on paved roads and driveways within the Property. No motor vehicle shall be operated or parked on any lawn area. In no event shall motor vehicles be operated for recreational purposes on any portion of the Property. The Association, through the Board, is hereby empowered to establish and enforce any additional parking limitations, rules and/or regulations (collectively, "parking regulations") which it may deem necessary, including, but not limited to, the levying of fines for violation of parking regulations, and/or removal of any violating vehicle at the expense of the owner of such vehicle. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner as to permit any activity which would be contrary to any City or County ordinance.

(f) Nuisances. No Owner or Resident shall create or suffer to exist any use, operation or condition on a Lot which is a public or private nuisance or a noxious or offensive activity. Nor shall any music noise or sound that is objectionable due to intermittent beat, frequency, shrillness or volume be allowed to emanate from or to exist within or around a Lot. Without prior approval of the Board, no Owner or Resident shall allow the use upon his or her Lot, of an exterior loud speaker or any other sound projection device emitting voices, music or noises beyond the boundaries of his or her Lot, save and except for a siren, bell or similar noise device used solely for security and alarm purposes.

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

(h) Landscaping. No plants or seeds infected with insects or plant diseases shall be brought upon, grown or maintained upon any part of the Properties. The Board may adopt Rules and Regulations to regulate landscaping permitted and required in the Properties. If an Owners fails to install and maintain landscaping in conformance with this Declaration or such Rules and Regulations, or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Board shall have the right to either (i) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists an unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon such Owner's Lot for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Special Assessment, enforceable in the manner set forth herein. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Lot, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

(i) Drainage. By acceptance of a deed to a Lot, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Lot, so as to affect said Lot, any other Lot, the Common Area, or the Property, unless adequate alternative provision is made for proper drainage and approved in advance and in writing by the Board. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Lot is conveyed to a Purchaser from Declarant.

(j) Water and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, shall be permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Board, any water district serving the Property, the County health department, all other applicable utility and governmental authorities having jurisdiction, and, if applicable, the Declarant and/or Association.

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

(l) Signs and Unsightly Articles. Except as may be specifically permitted by this Declaration or the Board, no signs, billboards, posters, displays, unsightly articles or nuisances shall be erected, placed or permitted to remain on any Lot, nor shall the Property be used in any way or for any purpose which may endanger the health of any Owner or Resident or unreasonably disturb any Owner or Resident. Nothing herein contained shall restrict the right of an Owner to display or have displayed on such Owner's Lot a sign of customary and reasonable dimensions advertising the Unit Estate for sale.

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

(n) Service Areas. All clotheslines, equipment, service yards, wood piles and storage piles on Lots shall be kept screened by adequate fencing so as to conceal them from view from adjacent Lots and dedicated rights-of-way. All rubbish and trash shall be regularly removed from all Lots and shall not be allowed to accumulate thereon. Should an Owner fail to remove rubbish and trash from a Lot or otherwise allow the same to accumulate thereon, and should such failure continue following written request from the Board to comply with the provisions of this Section, the Board may, upon the affirmative vote of at least two-thirds (2/3) of the Directors, at the cost and expense of the Owner of the Lot, provide for the removal of all such rubbish and trash, and any such costs shall be added to the Assessments which are assessed against the responsible Owner and his Unit Estate and shall be enforceable and collectible as an Assessment.

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

(p) Excavation. No excavation shall be made on any Lot except in connection with construction of an improvement on such Lot, and upon completion thereof any exposed, unimproved opening shall be backfilled, and disturbed ground shall be compacted, graded and leveled in such a manner that the drainage over the disturbed ground shall be the same as it was prior to such excavation or as otherwise approved by the Board.

(q) Improvements.

(i) No Lot shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-Family Dwelling. No part of the construction on any Lot shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any building within the Properties, except one or more chimneys or vent stacks. No permanent or attached basketball backboard, jungle gym, play equipment, or other sports apparatus shall be constructed, erected, or maintained on the Properties without the prior written approval of the Board. Apart from any installation by Declarant as part of its original construction, no patio cover, antennae, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant during the original construction of the Dwelling), subject to Section 8.1(r), below.

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

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

(iv) Garages shall be used only for their ordinary and normal purposes. No Owner may convert the garage on his Lot into living space or otherwise use or modify the garage so as to preclude regular and normal parking of vehicles therein. The foregoing notwithstanding, Declarant may convert a garage located in any Lot owned by Declarant into a sales office or related purposes.

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

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

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

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

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

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

(s) <u>View Restrictions</u>. No vegetation, Improvement, or other obstruction shall be planted, constructed or maintained by an Owner on his Lot in such location or of any such height as to obstruct unreasonably the view from any other Lot. Each Owner of a Lot shall be responsible for periodic trimming, pruning and thinning of all hedges, shrubs and trees located on his Lot, so as not to unreasonably obstruct the view of adjacent Owners. The Association shall be responsible for accomplishing such work on the Common Area. If an Owner fails to perform necessary trimming, pruning or thinning, the Association shall have the right, but not the obligation, after Notice and Hearing, to enter upon such Lot for purposes of performing such work. Notwithstanding the foregoing, each Owner, by accepting a deed to his Lot, hereby acknowledges that any construction or installation by Declarant may impair or eliminate the view of such Owner, and hereby consents to such view impairment or elimination.

(t) <u>County and City Ordinances</u>. The foregoing notwithstanding, no use restriction shall be interpreted in such a manner as to permit any activity which would be contrary to any applicable county or city ordinance.

Section 8.2 <u>Abatement of Violations</u>. The violation of any of the Rules and Regulations, or the breach of this Declaration, shall give the Board the right, in addition to any other right or remedy elsewhere available:

(a) To enter into a Lot in which, or as to which, such violation or breach exists, and to summarily abate and remove, at the expense of the violating Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of any of the foregoing documents, and the Board shall not be deemed to have trespassed or committed forcible or unlawful entry or detainer; and

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

All expenses of the Board in connection with such actions or proceedings, including court costs and attorney's fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of twelve percent (12%) per annum until paid, shall be charged to and assessed against such defaulting Owner, and the Board shall have a lien for all of the same upon the Lot of such defaulting Owner. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

Section 8.3 Owner's and Mortgagee's Power to Enforce Declaration. If the Board has failed to act to enforce any provision of this Declaration for ten (10) days after written demand by any Owner or Mortgagee of any Lot, then any such Owner or Mortgagee shall be entitled to prosecute, on behalf of the Board and all the Owners, any action authorized hereunder to be prosecuted by the Board, and shall be entitled to any other appropriate equitable relief.

Section 8.4 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or a Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or a Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Manager.

ARTICLE 9
AMENDMENT

Section 9.1 Amendment by Declarant. Any amendment to this Declaration pursuant to the exercise of any Developmental Rights reserved herein may be made by recordation of a written instrument, signed by Declarant, setting forth such amendment, in accordance with NRS Chapter 116. Any other provision herein notwithstanding, for as long as Declarant owns a Lot, Declarant additionally shall have the power to unilaterally amend this Declaration to correct any scrivener's errors, and otherwise to ensure that the Declaration conforms with requirements of applicable law.

Section 9.2 Amendment by Owners. Except as provided in Section 9.1 above, the provisions of this Declaration may be amended only by Recordation of a certificate, signed and acknowledged by the President or Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by vote and agreement of Owners representing at least sixty-seven percent (67%) of the voting power of the Association (and the requisite percentage of holders and insurers of First Mortgages, in the case of those amendments which this Declaration requires to be approved by First Mortgagees) and such an amendment shall be effective upon such Recordation. In addition, except as permitted by NRS Chapter 116, no amendment may change the boundaries of any Lot, change the uses to which any Lot is restricted, or change the allocated interests of a Lot, without the unanimous consent of all Owners whose Lots are so affected.

Section 9.3 Approval of First Mortgagees. Anything to the contrary herein notwithstanding, any of the following amendments, to be effective, must be approved by the record holders and insurers of at least sixty-seven percent (67%) of all First Mortgages at the time of such amendment, based upon one (1) vote for each Mortgage owned or insured:

(a) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to holders, insurers and guarantors of first Mortgages as provided herein.

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

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

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

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

(f) Any amendment concerning:

(i) Voting rights;

(ii) Boundaries of any Lot;

(iii) Leasing of Lots;

(iv) Reserves for maintenance, repair, and replacement of Common Area;

(v) Responsibility for maintenance of repairs;

(vi) Reallocation of interests in the Common Area or rights to their use;

(vii) Reallocation of obligations of any Lot(s) for purposes of levying Assessments;

(viii) Convertibility of Lots into Common Area or vice versa;

(ix) Expansion or contraction of the Properties, or the addition, annexation, or withdrawal of property to or from the project, except for Annexation Amendments addition portions of the Annexable Areas in the manner provided in Article 13 below;

(x) Imposition of any restrictions on a Lot Owner's rights to sell or transfer his of her Lot;

(xi) A decision by the Association to establish self-management;

(xii) Restoration or repair of the Properties (after damage or partial condemnation) in a manner other than that specified in this Declaration;

(xiii) Any provisions that expressly benefit mortgage holders, insurers, or guarantors; and

(xiv) Any material amendment as defined in Section 601.02 of the FNMA Lending Guide (as amended from time to time).

Any approval by a holder, insurer or guarantor of a First Mortgage required under this Article 9, or required pursuant to any other provisions of this Declaration, shall be given in writing; provided that prior to any such proposed action, the Association or Declarant, as applicable, may give written notice of such proposed action to any or all holders, insurers and guarantors of a First Mortgage, and for thirty (30) days following the receipt of such notice, such holder, insurer or guarantor of a First Mortgage shall have the power to disapprove such action by giving written notice to the Association or Declarant, as applicable. If no written notice of disapproval is received by the Association or Declarant, as applicable, within such thirty (30) day period, then the approval of such holder, insurer or guarantor shall be deemed given to the proposed action, and the Association or Declarant, as applicable, may proceed as if such approval was obtained with respect to the request contained in such notice.

A certificate, signed and sworn to by two (2) Officers that Owners representing at least sixty-seven percent (67%) of the voting power of the Association have voted for any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires a written consent of Declarant or any of the record holders of the First Mortgages shall include a certification that the requisite approval of Declarant or such holders of First Mortgages has been obtained or waived. The Association shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

ARTICLE 10
MORTGAGEE PROTECTION

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

(a) Each Beneficiary, insurer and guarantor of a First Mortgage encumbering any Lot, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles, or the Bylaws, which default is not cured within sixty (60) days after the Association learns of such default. For purposes of this Declaration, "First Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and "First Mortgagee" shall mean the Beneficiary of a first Mortgage.

(b) Each Owner, including every First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by this Declaration, the Articles, the Bylaws, or the Rules and Regulations.

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

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

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

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

(iii) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other Improvements on the Lots, the maintenance of the exterior walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(iv) Fail to maintain Fire and Extended Coverage on insurable Common Area on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost); or fail to maintain liability and other insurance coverage, as and to the extent required in Article 12, below;

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

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

(e) Beneficiaries, insurers and guarantors of First Mortgages, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours, (ii) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (iii) receive written notice of all meetings of the Members, and (iv) designate in writing a representative to attend all such meetings.

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

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

(h) The Reserve Fund described in Article 5 of this Declaration must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large extraordinary assessments.

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

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

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

ARTICLE 11
DESTRUCTION AND CONDEMNATION

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

(a) Repair of Damage. Any portion of the Community for which insurance is required by this Declaration or by the Act, which is damaged or destroyed, must be replaced or repaired promptly by the Association unless: (i) the Common-Interest community is terminated, in which case the provisions of NRS §§ 116.2118, 116.21183 and 116.21185 apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) at least 80% of the Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire community is not repaired or replaced, (1) the proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the community, (2) the proceeds attributable to Lots that are not rebuilt must be distributed to the Owners of those Lots, and (3) the remainder of the proceeds must be distributed to all Owners or lien holders, as their interests may appear, in proportion to the liabilities of all Lots for Common Expenses.

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

Section 11.2 Eminent Domain. If a part of the Common Area is taken by eminent domain, the portion of the award attributable to the Common Area taken must be paid to the Association. For the purposes of NRS § 116.1107(2)(a), if part of a Lot is taken by eminent domain, the award shall compensate the Lot's Owner for the reduction in value of the Lot's interest in the Common Area. The basis for such reduction shall be the extent to which the occupants of the Lot were impaired from enjoying the Common Area.

ARTICLE 12
INSURANCE

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

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

Section 12.2 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his Lot, at his sole expense to have obtained, and to have furnished his Mortgagee (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of, a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements and fixtures originally installed by Declarant on such Owner's Lot in accordance with the original plans and specifications, or installed by the Owner on the Lot, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his Lot, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and shall provide the Board with duplicate copies of such insurance policy upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability, damage to person or property occurring inside his Lot or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 12.3 Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (a) subrogation of claims against the Owners and tenants thereof; (b) any defense based on coinsurance; (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents; contractors and employees of any insured; (e) any rights of the insurer to repair, rebuild or replace, and, in the event any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (f) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; or (g) any right to require any assignment of any Mortgage to the insurer. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, any Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss; provided, however, that such waiver shall not be effective as to any loss covered by a policy of insurance which would be voided or impaired thereby.

Section 12.4 Liability and Other Insurance. The Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable (but in no event less than one million dollars ($1,000,000.00) covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association shall also obtain, through the Board, Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner and the Association, Board, and any Manager, from liability in connection with the Common Area, the premiums for which are a Common

Expense included in the Common Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its discretion. The Board shall also obtain such errors and omissions insurance, indemnity bonds, fidelity, bonds and other insurance as it deems advisable, insuring the Board, the Officers and any Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, the Association must obtain directors, officers, officers and agents liability insurance; and fidelity bond coverage which names the Association as an obligee, for any Person handling funds of the Association, including but not limited to, Officers, Directors, employees, agents, and Manager and its employees, whether or not such Persons are compensated for their services, in such an amount as the Association may deem appropriate. The Association shall require that any Manager maintain fidelity bond coverage which names the Association as an obligee, in such amount as the Association deems appropriate. In no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4) of the Common Assessments on all Lots in the Properties, plus Reserve Funds. In addition, and notwithstanding any other provision herein, the Association shall continuously maintain in effect any and all insurance necessary to meet any applicable requirements established by the VA, FHA, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), and/or Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any such entity is an Owner of a Lot or holder or insurer of a Mortgage, except to the extent such coverage is not available or has been waived in writing by the VA, FHA, FNMA, GNMA, and FHLMC, as applicable.

Section 12.5 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice, and every other Person in interest who requests such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 12, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his interest in the Common Area-or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his Family; (c) no act or omission by any Owner or member of his Family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

ARTICLE 15
OTHER PROVISIONS

Section 15.1 Duration of Declaration. Each of the provisions contained in this Declaration shall run with the land and continue and remain in full force and effect perpetually, unless a Declaration of Termination approved by at least eighty percent (80%) of the voting power of the Association and the requisite percentage of first Mortgagees, is recorded.

Section 15.2 Effect of Provisions of Declaration. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Properties or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any, right, title or interest in the Properties or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of the Association and with and for the benefit of any other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running, in each case, as a burden with and upon the title to the Properties and each Lot for the benefit of the Properties and each Lot; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Properties and each Lot in favor of the Association.

Section 15.3 Enforcement and Remedies. In addition to any other remedies herein provided, each provision of this Declaration may be enforced by the Association, or any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. By accepting a deed to his Lot each Owner hereby acknowledges and agrees that every violation of this Declaration shall create an irrebuttable presumption of immediate and irreparable damage without adequate remedy at law, entitling Declarant, the Association and/or any Owner to obtain a temporary restraining order, preliminary or permanent injunction (mandatory or prohibitory) abating such violation. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party any costs and expenses in connection therewith, including reasonable attorney's fees.

Section 15.4 No Public Right of Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 15.5 Protection of Encumbrances. Notwithstanding any other provision hereof, no amendment, violation, breach of, or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgage, deed of trust or other lien on any Lot taken in good faith and for value and recorded prior to the time of recording of notice of such amendment, violation, breach or failure to comply. Any subsequent Owner of such Lot shall, however, take subject to this Declaration, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 15.6 Construction. The provisions of this Declaration shall be liberally construed to promote and effectuate the purposes of the Association as set forth in this Declaration, and no provision hereof shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over the Properties. 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 violative of the Act, this Declaration shall be deemed amended to the extent necessary to comply with the Act.

Section 15.7 Non-Avoidance. No Owner through non-use or abandonment of his or her Lot may avoid the burdens imposed on him or her by this Declaration.

Section 15.8 Limited Liability. Neither Declarant, the Association, any director, any officer, any committee representative, nor any agent or employee of Declarant or the Association, shall be liable to any Owner or other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith. The Association shall indemnify every present and former Officer and Director of the Association and every present and former committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 15.9 Business of Declarant. Declarant hereby reserves the right to create and develop up to 57 total Lots, together with such additional Improvements as may be indicated on the Plat (as the same may be amended from time to time); provided, however, that Declarant makes no assurances as to whether all of such Lots and improvements will be created or developed, nor any representation as to the sequence, timing or location of such further development. Unless otherwise expressly provided elsewhere herein, any "Developmental Rights" or "Special Declarant's Rights" (as those terms are defined in the Act) reserved to Declarant in this Declaration may be exercised with respect to different portions of the Properties or Annexable Area at different times, and the exercise of such rights in a portion of the Properties or Annexable Area shall not necessitate the exercise of any such right in all or any portion of the remaining Properties or Annexable Area.

Section 15.10 Successors and Assigns. This Declaration shall be binding upon and shall insure to the benefit of the Association, each Owner and their respective heirs, personal representatives, successors and assigns.

Section 15.11 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid or enforceable part of a provision of this Declaration.

Section 15.12 Priorities and Inconsistencies. If there exists any conflict or inconsistency between this Declaration and the Articles, the Bylaws, or any Rules and Regulations of the Association, the terms and provisions of this Declaration shall prevail.

Section 15.13 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 15.14 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

Section 15.15 Further Assurances. The Association and each Owner hereby agree to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of this Declaration.

Section 15.16 Notices. Any notice, information or material required to be given hereunder shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in regular U.S. mail, postage prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material. Any notice, information or material shall be deemed properly addressed to an Owner if it is addressed to the name and address shown on the most recent written notice of name and address, if any, furnished to the Association by such Owner or, if a name and address is not so furnished, if it is addressed to the Owner at the street address of a Lot owned by Owner. Notices, information and material required to be given hereunder to Declarant, the Association, Board, or any committee shall be addressed to such entity care of the Association at the main office of the Association.

Section 15.17 Commencement of Civil Actions.

(a) The Association may commence a civil action only upon a vote or written agreement of the Members of Lots to which at least a majority of the votes of the Members of the Association are allocated unless the civil action is commenced: (i) to enforce the payment of an Assessment; (ii) to enforce the Declaration, Bylaws or Rules and Regulations of the Association; (iii) to proceed with a counterclaim; or (iv) to protect the health, safety and welfare of the Members of the Association.

(b) If a civil action is commenced without the required both or agreement, the action must be ratified within ninety (90) days after the commencement of the action by a vote or written agreement of the Owners of the Lots to which at least a majority of votes of the Members of the Association are allocated.

(c) At least ten (10) days before the Association commences or seeks to ratify the commencement of a civil action, the Association shall provide a written statement to all Members that includes: (i) a reasonable estimate of the costs of the civil action, including reasonable attorney's fees; (ii) 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 (iv) all disclosures that are required to be made upon the sale of any property.

(d) No person other than a Member may request the dismissal of a civil action commenced by the Association on the ground that the Association failed to comply with any provision of this section.

Section 15.18 VA/FHA Approval. So long as Declarant retains effective control of the Association, the following actions shall require the prior written approval of VA and FHA, as applicable, if at such time the FHA or VA-requires such prior written approval: (a) amendment of this Declaration; (b) mergers, consolidations or dissolutions of the Association; (c) annexation or deannexation of real property to or from the Properties; and (d) dedication, conveyance or mortgage of Common Area.

IN WITNESS WHEREOF, the Declarant has executed this Declaration to be effective as of the day and year of the recording hereof in the Official Records in the Office of the County Recorder of Clark, County, Nevada.

AVADA, LLC

Michael J Galatio
By: MICHAEL J GALATIO
Its: MANAGER

STATE OF NEVADA

ss:

COUNTY OF CLARK

BARBARA HIEBING
Notary Public State of Nevada
Appointment No. 99592001
My Appt. Expires Apr. 1 2008

On the 6 day of October, 2004 personally appeared before me, MICHAEL J GALATIO, a Notary Public, who acknowledged to me that (s)he executed the above instrument.

NOTARY Barbara Hiebing

EXHIBIT "A"

Legal Description of the Property

Lot One (1) through Lot Thirteen (13), inclusive; Barone Street in Avada as shown by Map thereof on file in Book 119 of Plats, Page 0036 in Official Records Book No. 20040915 in the Office of the County Recorder, Clark County, Nevada.

Exhibit "B"

Legal Description of the Annexable Area

Phase I:

Lot Fourteen (14) through Lot Twenty-one (21), inclusive and Lot Fifty-two (52) through Lot Fifty-seven (57), inclusive; Montenero Court in Avada as shown by Map thereof on file in Book 119 of Plats, Page 0036 in Official Records Book No. 20040915 in the Office of the County Recorder, Clark County, Nevada.

Phase II:

Lot Twenty-two (22) through Lot Twenty-nine (29), inclusive and Lot Forty-six (46) through Lot Fifty-one (51), inclusive; Negresco Court in Avada as shown by Map thereof on file in Book 119 of Plats, Page 0036 in Official Records Book No. 20040915 in the Office of the County Recorder, Clark County, Nevada.

Phase III:

Lot Thirty (30) through Lot Forty-five (45), inclusive; Mirabeau Court in Avada as shown by Map thereof on file in Book 119 of Plats, Page 0036 in Official Records Book No. 20040915 in the Office of the County Recorder, Clark County, Nevada.