

Assessor's Parcel Nos. 002-01-812-001 et al.;
002-01-712-001 et al.; 002-01-413-001 et al; 002-
01-311-001 et al.; 002-01-810-001-080, 082-087;
002-01-710-001 et al.; 001-06-410-001 et al.; 002-
01-410-001 et al.; 002-01-310-001; 002-01-711-
001 et al.; 002-01-412-001 et al.; 002-01-811-001
et al.; 002-01-411-001- et al.; 001-06-310-001 et
al.; 001-05-301-002, 004; 001-05-401-004; 001-
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002-12-601-001

When Recorded, Return To:

PN II, Inc.
8345 West Sunset Road
Las Vegas, Nevada 89113-2092
Attention: John Cahlan

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SUN CITY MESQUITE, a planned community

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SUN CITY MESQUITE, a planned community

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUN CITY MESQUITE, a planned community (this "Declaration") is made as of the 21st day of May, 2007, by PN II, Inc., a Nevada corporation d/b/a Del Webb (the "Declarant").

ARTICLE 1 DEFINITIONS

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

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

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

1.2.2 "Additional Property" means the real property located in Clark County, Nevada, which is described on **Exhibit B** attached to this Declaration, together with all buildings and other Improvements located thereon.

1.2.3 "Anthem Mesquite" means the real property located in Clark County, Nevada, which is described in Exhibit A attached to the Master Declaration, together with all Improvements located thereon, and any portion of the additional property that is annexed pursuant to Section 2.7 of the Master Declaration, together with all Improvements located thereon.

1.2.4 "Apartment" means each individual Dwelling located within a building or structure or portion of a building or structure situated upon a Multi-Family Unit.

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

1.2.6 "Areas of Common Responsibility" means (i) all Common Elements; (ii) the Private Sewer and Storm Drain Facilities described in **Subsection 5.1.2**, upon completion of construction of such facilities, whether or not such facilities have been or ever will be conveyed to the Association; (iii) any emergency access roadway and related Improvements constructed or installed on the Golf Course Property or Master Common Elements for the

purpose of permitting emergency access from a public roadway to a portion of the Community, (iv) all real property, and the Improvements situated thereon, located within the boundaries of a Unit that the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Declarant or the Association; (v) all real property, and the Improvements situated thereon, within or adjacent to the Community located within dedicated rights-of-way with respect to which the State of Nevada or any county or municipality or the Master Association has not accepted responsibility for the maintenance thereof, but only until such time as the State of Nevada or any county or municipality or the Master Association has accepted all responsibility for the maintenance, repair and replacement of such areas; (vi) all real property, and the Improvements situated thereon, that the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, a Plat or the terms of another Recorded document executed by the Declarant or the Association, including the terms and conditions of a contractual agreement signed by the Association pursuant to **Section 6.19** of this Declaration, and (vii) any other property within or adjacent to the Community that is required to be maintained by the Association pursuant to the terms of the Master Governing Documents and/or the Golf Course Restrictions.

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

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

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

1.2.10 “Association” means Sun City Mesquite Homeowners’ Association, a Nevada nonprofit corporation, its successors and assigns. The Association is a “Community Association” under the Master Declaration.

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

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

1.2.13 “Builder” mean any Person, its successors and assigns, authorized by Master Declarant pursuant to a Development Declaration, that purchases one or more Units or Multi-Family Units for the purpose of constructing Improvements for later sale to Unit Owners or lease and occupancy as Apartments, or that purchases one or more parcels of land within the Community for further subdivision, development and/or resale in the ordinary course of such Person’s business.

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

1.2.15 “City” means the City of Mesquite, Nevada, a municipal corporation.

1.2.16 “Common Elements” means any real estate within the Community owned or leased, or designated by Declarant to be maintained, by the Association, other than the Units. The Common Elements initially subjected to this Declaration are as described on **Exhibit A**, and any additional Common Elements annexed by Declarant shall be described in an amendment to this Declaration annexing such Common Elements. The term “Common Elements” shall not include the Golf Course or any other Private Amenity.

1.2.17 “Common Expenses” means expenditures made by or financial liabilities of the Association, including (i) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all Improvements thereon and all other Areas of Common Responsibility, including the Private Sewer and Storm Drain Facilities described in **Subsection 5.1.2**, clustered mailboxes, private streets, entry gates, private sidewalks, private street lights and private utility lines and other facilities and equipment not maintained by a utility provider; (ii) the cost of centrally metered utilities that serve the Units and/or the Common Elements and the cost of trash removal for the Units if so elected by the Board of Directors; (iii) the cost of insurance premiums for fire, liability, workers’ compensation, directors, officers and agents liability and fidelity and any other insurance deemed appropriate by the Board of Directors, and the cost of compensation, wages, services, supplies and other expenses required for the administration and operation of the Association and for the maintenance and repair of that portion of the Community for which the Association has responsibility, including fees, charges and costs payable to any governmental entity pursuant to law; (iv) the cost of rendering to the Unit Owners all services required to be rendered by the Association under the Governing Documents and the Master Governing Documents; (v) such amount as is established by the Association as adequate reserves for the cost of repair and replacement for the major components of the Common Elements, which may be used only for Common Expenses that involve major repairs or replacement and that may not be used for daily maintenance, including repairing and replacing private streets, sidewalks and street lights; (vi) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (vii) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Community for the common benefit of the Unit Owners.

1.2.18 “Common Expense Assessment” means the assessment levied against the Units pursuant to **Section 7.3** of this Declaration.

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

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

Declarant pursuant to **Section 2.8** of this Declaration, together with all Improvements located thereon. The Community is a “Community” under the Master Declaration.

1.2.21 “Condominium Development” means a condominium established within the Community pursuant to the Act.

1.2.22 “Condominium Unit” means a unit, together with any appurtenant interest in all common elements, within a Condominium Development.

1.2.23 “Declarant” means PN II, Inc., a Nevada corporation d/b/a Del Webb, and its successors and any person or entity to which it may transfer any Special Declarant’s Right.

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

1.2.25 “Declaration” means this Declaration of Covenants, Conditions and Restrictions for Sun City Mesquite, as amended from time to time. The Declaration is a “Community Declaration” under the Master Declaration.

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

1.2.27 “Development Agreement” means that certain Standard Development Agreement with an effective date of March 15, 2006, between the City, Master Declarant and Mesquite Investors, LLC, a California limited liability company, Recorded March 23, 2006 in Book 20060323 as Instrument No. 000060, as amended from time to time.

1.2.28 “Development Declaration” means a Recorded declaration of development covenants and restrictions between Master Declarant and a Builder governing the Dwellings and other Improvements to be constructed by a Builder within the Community.

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

- (i) Add real estate to the Community;
- (ii) Create Units, Common Elements and Limited Common Elements within the Community;

- (iii) Subdivide Units or convert Units into Common Elements; or
- (iv) Withdraw real estate from the Community.

1.2.30 “Dwelling” means any building, or portion of a building, situated upon a Unit and designed and intended for independent ownership and for use and occupancy as a residence. Notwithstanding the foregoing, an ancillary “guest house,” “casita” or “in-law suite” on a Unit shall not be a separate Dwelling but, instead, shall be deemed a part of the structure serving primarily as the Dwelling on the Unit.

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

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

1.2.33 “Golf Course” means the real property generally described on Exhibit C to the Master Declaration, located adjacent to but NOT A PART OF the Community or Common Elements, together with the Improvements constructed thereon, which is part of the Private Amenities and may be operated as a public or private golf course. As used herein, the term “Golf Course” includes the golf course and playing elements, clubhouse, practice facilities, maintenance or storage facilities, driving ranges, parking lots, lakes, water hazards, trees, bunkers, berms, fairways, greens and/or related elements, facilities, features or components.

1.2.34 “Golf Course Owner” means PN II, Inc., a Nevada corporation, its successors and assigns, or such other Person as may own the Golf Course at the subject point in time.

1.2.35 “Golf Course Restrictions” means the Declaration of Covenants, Conditions, Restrictions and Easements for Conestoga Golf Club Recorded contemporaneously with this Declaration, as amended or supplemented from time to time.

1.2.36 “Governing Documents” means this Declaration together with all Supplemental Declarations, the Articles, Bylaws, Design Guidelines and the Association Rules.

1.2.37 “Identifying Number” means the number assigned to a particular Unit that identifies only that one Unit in the Community and that is shown on a Plat as a “Lot Number,” or in a Condominium Development, as a “Unit Number,” or on a Plat setting forth a Multi-Family Unit, as the lot number or parcel number assigned to such Multi-Family Unit according to such Plat.

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

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

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

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

1.2.42 “Master Association” means Anthem Mesquite Master Association, a Nevada nonprofit corporation, its successors and assigns. The Master Association is a “master association” under the Act.

1.2.43 “Master Common Elements” means any real estate within Anthem Mesquite owned or leased, or designated by Master Declarant to be maintained, by the Master Association, other than the Units. The term “Master Common Elements” shall not include the Golf Course or any other Private Amenity.

1.2.44 “Master Declarant” means PN II, Inc., a Nevada corporation, and its successors and any person or entity to which it may transfer any special declarant’s right under the Master Declaration.

1.2.45 “Master Declaration” means that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Anthem Mesquite dated as of May 21, 2007 and Recorded on May 21, 2007, in Book 20070521 as Instrument No. 0001675, as amended from time to time.

1.2.46 “Master Governing Documents” means the Master Declaration together with the articles of incorporation, bylaws and rules and regulations of the Master Association.

1.2.47 “Master Plan” means the master land use plan for the development of Anthem Mesquite referred to in the Development Agreement, as it may be amended from time to time in accordance with the Development Agreement.

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

1.2.49 “Multi-Family Unit” means a contiguous portion of the Community, whether improved or unimproved (other than a Unit intended for single family residential purposes, Common Elements, Master Common Elements or real property dedicated to the

public), that may be independently owned and conveyed, that is intended to be developed for attached multi-family residential uses with Apartments and that is not established as a separate “common-interest community” as defined in the Act. The term “Multi-Family Unit” shall mean all interests defined as “Unit” in N.R.S. § 116.093. The term shall refer to the land, if any, that is part of the Multi-Family Unit as well as any Improvements, Including any Apartment thereon. The boundaries of each Multi-Family Unit shall be delineated on a Plat.

1.2.50 “Neighborhood” means a portion of the Community designated in a Supplemental Declaration.

1.2.51 “Neighborhood Assessment” means an assessment levied against less than all of the Units in the Community pursuant to **Section 7.5** of this Declaration.

1.2.52 “Neighborhood Assessment Area” means a portion of the Community designated in a Supplemental Declaration as an area in which the Association will provide Neighborhood Services.

1.2.53 “Neighborhood Expense Liability” means the liability for Neighborhood Expenses allocated to each Unit within a particular Neighborhood by a Supplemental Declaration.

1.2.54 “Neighborhood Expenses” means the actual or estimated expenses, Including allocations to reserves, incurred or anticipated to be incurred by the Association to provide Neighborhood Services to the Unit Owners and Residents in a Neighborhood Assessment Area.

1.2.55 “Neighborhood Services” means services designated in a Supplemental Declaration as being for the sole or primary benefit of the Unit Owners and Residents of a particular part of the Community, Including the maintenance, management, operation, repair and replacement of Limited Common Elements and all Improvements thereon within a Neighborhood Assessment Area.

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

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

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

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

(iv) Such later date as may be permitted under the Act.

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

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

1.2.59 “Plat” means a Recorded final subdivision map or parcel map for any portion of the Community, and all amendments, supplements and corrections thereto, and any subdivision map or parcel map that may be Recorded against any part of the Additional Property that is annexed by the Declarant pursuant to **Section 2.8** of this Declaration, and any amendments, replats, supplements or corrections thereto.

1.2.60 “Private Amenity” means certain real property and any Improvements and facilities thereon located adjacent to, in the vicinity of or within Anthem Mesquite that may be privately owned or privately operated by Persons other than the Association or the Master Association for commercial, recreational and related purposes, Including the Golf Course, any office or commercial facility (Including retail, restaurant and entertainment facilities), day care facility, sales center or communications tower that is so located and all related and supporting facilities and Improvements. Private Amenities are NOT A PART OF the Community and NOT A PART OF the Common Elements and NOT SUBJECT TO this Declaration or the Master Declaration. Private Amenity ownership and/or membership is NOT A PART OF and is separate from membership in the Association and the Master Association. Notwithstanding the foregoing, the owners and members of Private Amenities, and their respective lessees, guests and other invitees, shall have an easement of access to, enjoyment of and ingress and egress over, Units and Common Elements as provided in **Sections 3.9** and **3.10** below.

1.2.61 “Project Plan” means the plans approved by Master Declarant for the development and construction of a portion of the Community in accordance with a Development Declaration.

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

1.2.63 “Record” and **“Recording”** means placing an instrument of public record; **“Recorded”** or **“Recordation”** means having been so placed or the act of placing of public record; and **“Record Owner,” “Record Unit Owner”** and **“Record Notice”** means that such owner, Unit Owner and/or such notice is evidenced by such public records in the office of the County Recorder of Clark County, Nevada.

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

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

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

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

(ii) Exercise any Developmental Right;

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

(iv) Use easements through the Common Elements for the purpose of making Improvements within the Community or within the Additional Property;

(v) Make the Community subject to a master association other than the Master Association, subject to the reasonable consent of the Master Association;

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

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

1.2.67 “Special Use Fee” means a special fee authorized by this Declaration that a Unit Owner, Resident or any other Person is obligated to pay to the Association over, above and in addition to any Common Expense Assessment, Neighborhood Assessment or Special Assessment imposed or payable hereunder. The amount of any Special Use Fee shall be determined in the sole discretion of the Board of Directors, provided all such fees shall be fair and reasonable.

1.2.68 “Subsidiary Association” means an owners’ association created within the Community (other than the Association established under this Declaration), which owners’ association shall be subject to this Declaration. Each Unit Owner who is a member of a Subsidiary Association shall also hold a membership in the Association established under this Declaration. A Subsidiary Association under this Declaration shall not be deemed a “Community Association” under the Master Declaration.

1.2.69 “Supplemental Declaration” means a declaration Recorded pursuant to **Section 2.7** of this Declaration.

1.2.70 “Unit” means a physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are described in **Section 2.5** of this Declaration, Including a Multi-Family Unit and a Condominium Unit.

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

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

ARTICLE 2

SUBMISSION AND DEVELOPMENT OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF LIMITED COMMON ELEMENTS; EXPANSION OF COMMUNITY

2.1 Submission of Property. Declarant hereby submits the real property described on **Exhibit A** attached to this Declaration, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Act for the purpose of creating a planned community in accordance with the provisions of the Act and hereby declares that the real property described on **Exhibit A** attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, and any part of the Additional Property annexed pursuant to **Section 2.8** of this Declaration, together with all Improvements situated thereon and easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 Name of Planned Community. The name of the planned community created by this Declaration is Sun City Mesquite.

2.3 Name of Association. The name of the Association is Sun City Mesquite Homeowners’ Association.

2.4 Identifying Numbers of Units. The Identifying Numbers of the Units are as set forth on **Exhibit A** and defined in **Subsection 1.2.37**.

2.5 Unit Boundaries.

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

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

2.6 Allocation of Limited Common Elements.

2.6.1 In addition to Limited Common Elements allocated by Declarant pursuant to a Supplemental Declaration, mailboxes will be Limited Common Elements allocated to the Units served.

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

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

2.7 Supplemental Declarations. Declarant reserves the right, but not the obligation, to Record one or more Supplemental Declarations against portions of the Community. A Supplemental Declaration may be Recorded as a part of an amendment annexing portions of the Additional Property to the Community or as a separate instrument and may (i) designate Limited Common Elements, (ii) establish a Neighborhood Assessment pursuant to **Section 7.5** of this Declaration for a Neighborhood Assessment Area and thereafter annex and subject additional Units to any Neighborhood Assessment Area, (iii) designate Neighborhood Services for Neighborhood Assessment Areas, (iv) impose such additional covenants, conditions and restrictions as the Declarant determines to be appropriate for the Neighborhood Assessment Area, and (v) impose any additional covenants, conditions and restrictions as Declarant deems reasonably necessary and appropriate, whether or not a Neighborhood Assessment Area is established. A Supplemental Declaration may be amended only by (a) the written approval or the affirmative vote, or any combination thereof, of the Unit Owners representing at least sixty-seven percent (67%) of the votes in the Association held by the Unit Owners of all of the Units subject to the Supplemental Declaration, (b) the written approval of the Board of Directors, and (c) the written approval of Declarant so long as Declarant owns any real property described on **Exhibit A** or **Exhibit B**, and (d) the written approval of the Master Declarant or the Master Association, whichever is applicable pursuant to the Master Declaration. Such amendment shall certify that the amendment has been approved as required by this Section, shall be signed by the

President or Vice President of the Association, the Declarant, if Declarant then owns any real property described on **Exhibit A** or **Exhibit B**, and either the Master Declarant or the Master Association, as applicable, and shall be Recorded.

2.8 Expansion of the Planned Community.

2.8.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the planned community created by this Declaration, without the consent of the Association or any other Unit Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the planned community by preparing and Recording an amendment to this Declaration containing the following:

(i) a legal description of the portion of the Additional Property being annexed;

(ii) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit. If any of the Units to be annexed are Multi-Family Units, then the amendment shall identify the total number of Apartments contained or to be contained on each Multi-Family Unit pursuant to the applicable Project Plan approved by Master Declarant, or if no Project Plan has been approved by Master Declarant, then the maximum permissible Apartments as designated by Master Declarant.

(iii) a description of the Common Elements and Limited Common Elements created;

(iv) the current number of the votes in the Association and a reallocation to each Unit of the fractional undivided interest in the liability for Common Expenses of the Association, which shall be determined in accordance with **Subsection 6.4.2** and **Section 7.1** respectively; and

(v) a description of any Developmental Rights reserved by the Declarant within the Additional Property being annexed.

2.8.2 Notwithstanding anything contained herein to the contrary, no Additional Property shall be annexed and submitted to this Declaration without such Additional Property having been first annexed and submitted to the Master Declaration.

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

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

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

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

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

2.8.8 Any Improvements placed, constructed, replaced, or reconstructed on the Additional Property will be consistent with the existing Units in the Community as to quality of construction.

2.8.9 Declarant reserves the right to create and develop, directly or through Builders to which the various Units may be conveyed, up to an aggregate maximum of five thousand (5,000) Units in the Community to wit: ninety-nine (99) Units on the real property described in **Exhibit A** and four thousand nine hundred one (4,901) Units on the Additional Property described in **Exhibit B**, in the event Declarant exercises its right of annexation pursuant to the terms of this Declaration. Declarant makes no representations, assurances or warranties whatsoever that: (i) all of such Units will be created or developed, nor that the Community will be completed in accordance with the plans for the Community as they exist on the date this Declaration is Recorded; (ii) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the sequence, timing or location of further development; or (iv) the use of any property subject to this Declaration will not be changed in the future. Unless otherwise expressly provided elsewhere herein, any “Developmental Rights” or “Special Declarant’s Rights” (as those terms are defined in the Act) reserved to Declarant in this Declaration may be exercised with respect to different portions of the Community or Additional Property at different times, and the exercise of such rights in a portion of the Community or Additional Property shall not necessitate the exercise of any such right in all or any portion of the remaining Community or Additional Property.

2.8.10 Notwithstanding anything in this Declaration to the contrary, Declarant reserves the right to expand the Community by adding additional property not described on **Exhibit B** attached hereto so long as (i) such additional property is annexed and submitted to this Declaration in the same manner described in this **Section 2.8**, (ii) the maximum number of Units set forth in **Subsection 2.8.9** is not increased, and (iii) the addition of such additional property complies with the provisions of N.R.S. § 116.2122.

2.9 Master Plan. The Master Declarant, without obtaining the consent of any other Person, Including any Unit Owner, the Master Association or the Association, shall have the right to make changes or modifications to the Master Plan with respect to the Community or Additional Property owned by the Declarant in any way that the Master Declarant desires, Including changing the density of all or any portion of the Community or Additional Property owned by the Declarant or changing the nature or extent of the uses to which the Community or Additional Property may be devoted. Inclusion of real property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such real property to this Declaration, nor shall the omission of any part of the Additional Property from the Master Plan bar its later submission to this Declaration as provided in **Section 2.8**.

ARTICLE 3 EASEMENTS

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

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

3.3 Unit Owners' Easements of Enjoyment.

3.3.1 Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements (Including the right to use the private streets for ingress and egress to and from the Unit Owner's Unit), which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements and to prohibit access to such portions of

the Common Elements, such as landscaped areas, not intended for use by the Unit Owners and Residents;

(ii) The right of the Association to impose reasonable membership requirements, including the requirement that a Unit Owner or Resident obtain and present an Association activity card prior to using any of the recreational facilities on the Common Elements;

(iii) The right of the Association to charge reasonable Special Use Fees for services to be rendered by the Association or for the use of any recreational facility situated on the Common Elements, whether pursuant to **Subsection 3.3.3** below or otherwise;

(iv) The right of the Association to permit use of any recreational facility situated on the Common Elements by persons other than Unit Owners, Residents and their guests upon payment of Special Use Fees;

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

(vi) The right of the Association to change the use of a Common Element as provided in **Section 6.13**;

(vii) The right of the Association to delegate the rights of enjoyment to use Limited Common Elements exclusively to the Unit Owners within a Neighborhood Assessment Area who are paying Neighborhood Assessments to maintain such Limited Common Elements;

(viii) The right of the Association to organize and operate events and programs that utilize the recreational facilities for the purpose of generating funds for the Association, and the right of the Association to exclude Unit Owners from using such facilities during special events;

(ix) The right of the Association to form legal entities that are authorized to operate and/or enter into agreements with third parties for the operation of portions of the recreational facilities or other amenities within the Common Elements; provided that such legal entities are owned solely by the Association;

(x) All rights and easements set forth in this Declaration, including the rights and easements granted to the Declarant and Builders by **Sections 3.4 and 3.5** of this Declaration; and

(xi) The right of the Association to suspend the right of a Unit Owner and any Resident of the Unit to use the Common Elements for any period during which the Unit Owner or any Resident of the Unit is in violation of any provision of the Governing Documents;

provided, however, that any such suspension shall not affect the easement granted pursuant to **Section 3.2** of this Declaration nor the right of a Unit Owner and such Unit Owner's family, Residents and guests to use the private streets for ingress and egress to and from the Unit Owner's Unit, including any area used for parking as permitted under this Declaration.

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

3.3.3 Two Residents of each Dwelling, as designated by the Unit Owner thereof, shall be entitled to use the recreational facilities within the Common Elements. If one or more additional Residents of a Dwelling (not to exceed two (2) additional Residents) desire to use the recreational facilities, such additional Resident(s) each shall pay to the Association annually a Special Use Fee equal to one-half (1/2) of the then current annual Common Expense Assessment.

3.3.4 The guests and invitees of any Unit Owner or other person entitled to use the Common Elements pursuant to **Subsection 3.3.1** of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to **Subsection 3.3.2** of this Declaration may use the Common Elements provided they are accompanied by a Unit Owner, lessee or other person entitled to use the Common Elements pursuant to **Subsection 3.3.1 or 3.3.2** of this Declaration or as otherwise permitted by the Association Rules. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

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

3.3.6 The provisions of this **Section 3.3** shall not apply to any of the Limited Common Elements that are allocated to one or more but less than all of the Units.

3.4 Declarant's and Builders' Use for Sales And Leasing Purposes.

3.4.1 Declarant and Builders shall have the right and an easement to maintain sales and leasing offices, management offices, a design center, construction offices, model homes and parking areas (collectively, "Sales and Construction Facilities") throughout the Community and to maintain one or more advertising, identification or directional signs on the

Common Elements or on the Units owned or leased respectively by Declarant and Builders. Declarant reserves the right for itself and Builders to place Sales and Construction Facilities on any Units owned or leased respectively by Declarant and Builders and on any portion of the Common Elements in such number, of such size and in such locations as Declarant and Builders deem appropriate.

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

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

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

3.4.5 For so long as Declarant owns any property described on **Exhibit A** or **Exhibit B**, the Declarant reserves for itself and all Builders the right to use any recreational facilities within the Community for management and sales activities, including permitting the temporary use of such facilities by prospective purchasers, and sponsoring special events for charitable, philanthropic, political or marketing purposes.

3.4.6 For so long as Declarant owns any property described on **Exhibit A** or **Exhibit B**, the Declarant reserves for itself and all Builders the right to enter into short-term leases or rental agreements for Units that do not comply with **Section 4.37** of this Declaration solely for the purpose of permitting prospective purchasers to occupy a Dwelling and use the recreational facilities as described in **Subsection 3.4.5** above.

3.4.7 The Declarant reserves for itself and all Builders the right to allow any gated entrances to remain open during business and construction hours for the period of time necessary to sell and construct all Units and other Improvements within any gated portion of the Community.

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

3.4.9 Notwithstanding anything contained to the contrary in this Section, the rights of any Builder pursuant to this Section shall be subject to and as specifically set forth in a Development Declaration.

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

3.5 Declarant's and Builders' Rights and Easements.

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

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

3.5.3 Declarant shall have an easement through the Units constructed by Declarant, and each Builder shall have an easement through the Units constructed by such Builder for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant or Builders on their respective Units.

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

3.5.5 Notwithstanding anything contained to the contrary in this Section, the rights of any Builder pursuant to this Section shall be subject to and as specifically set forth in a Development Declaration.

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

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

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

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

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

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

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

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

3.7 Easements in Favor of Master Association. In addition to the easements in favor of the Master Association that encumber the Units pursuant to the Master Declaration, and in addition to any rights that the Master Association may have pursuant to Nevada law, including N.R.S. Chapter 40, the Common Elements are hereby made subject to the following easements in favor of the Master Association and its directors, officers, agents, employees and independent contractors:

(i) For inspection of the Common Elements in order to verify the performance of the Association of all items of maintenance and repair for which the Association is responsible pursuant to the Master Declaration;

(ii) For inspection, maintenance, repair and replacement of any portion of the Master Trail System (as such term is defined in the Master Declaration) situated in or accessible from such Common Elements;

(iii) For inspection, maintenance, repair and replacement of Master Common Elements situated in or accessible from such Common Elements; and

(iv) For correction of emergency conditions in Common Elements that may cause damage to the Master Common Elements.

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

3.9 Easements for Private Amenities. Declarant hereby reserves for the owners of each Private Amenity the right and nonexclusive easement of ingress, egress, access and use over those certain Common Elements (Including private streets, sidewalks and entry areas), if any, whether by automobile or other means, located within the Community and reasonably and customarily necessary to travel between the entrances of the Community and the Private Amenities.

3.10 Easements for Golf Course.

3.10.1 Declarant hereby grants an easement on the Units, Common Elements and all other portions of the Community permitting golf balls played from the Golf Course unintentionally to come upon the Community. **UNDER NO CIRCUMSTANCES SHALL THE DECLARANT PARTIES, THE GOLF COURSE OWNER OR ANY OPERATOR OF THE GOLF COURSE, ANY BUILDER, THE ASSOCIATION, THE MASTER ASSOCIATION, A SUCCESSOR IN INTEREST TO ANY OF THE FOREGOING, AND ANY OFFICER, DIRECTOR, EMPLOYEE OR PARTNER OF ANY OF THE FOREGOING, BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY RESULTING FROM ERRANT GOLF BALLS OR THE EXERCISE OF THIS EASEMENT.** Each Unit Owner and Resident, for himself and his family, invitees and licensees, recognizes and agrees to the release set forth in **Subsection 11.2.3** of this Declaration.

3.10.2 Declarant hereby grants to the Golf Course Owner, and the portion of the Community immediately adjacent to the Golf Course is hereby burdened with, a nonexclusive easement for overspray of water, herbicides, pesticides, fertilizer, grass cuttings, landscape clippings and other materials, and effluent from any irrigation system serving the Golf Course. Under no circumstances shall the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

3.10.3 The Golf Course Owner shall have a perpetual, exclusive easement of access over the Common Elements for the purpose of retrieving golf balls from bodies of water within the Common Elements lying reasonably within range of golf balls hit from the Golf Course.

3.10.4 The Golf Course Owner, its agents, employees and contractors shall have a perpetual, nonexclusive easement of access over the Units and Common Elements for the purpose of maintaining and repairing water and irrigation lines and pipes that are used in connection with the irrigation of the Golf Course.

3.10.5 The Golf Course Owner, its agents, guests, invitees, employees and customers, shall at all times have a right and nonexclusive easement of access and use over all roadways and golf cart paths, if any, located or to be located within the Community and reasonably necessary to travel to and from the Golf Course. The Association shall permit the parking of vehicles on the streets within the Community at reasonable times before, during, and after golf tournaments and other similar functions held at the Golf Course.

3.11 Drainage Easements. All Units and Common Elements are subject to drainage easements as shown or described on a Plat (“Drainage Easements”). The Drainage Easements are granted in favor of the Unit Owners, the Association and other parties for the purpose of permitting storm water to flow through the areas over which the Drainage Easements have been granted (the “Drainage Easement Areas”). The location of the Drainage Easements will permit storm water to drain from higher elevations to lower elevations and from one Unit and/or Common Element to another Unit and/or Common Element. Unless otherwise provided in a Supplemental Declaration, Unit Owners (and the Association with respect to Common Elements) benefiting from Drainage Easements that permit storm water to drain from a higher elevation to a lower elevation shall be responsible for maintaining, repairing and replacing any damage to Improvements on Units and Common Elements at lower elevations caused by storm water flowing from a Unit (or Common Element, as the case may be) at a higher elevation through the Drainage Easement Areas. No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained within the Drainage Easement Areas that in any manner that would obstruct, interfere with or change the direction or flow of water within the Drainage Easement Areas.

3.12 Landscape Maintenance Easements; Sight Zone Area Easements. Pursuant to **Section 5.2** of this Declaration, each Unit Owner is responsible for maintaining his Unit and all Improvements constructed and installed thereon, including landscaping, unless the Association is obligated to maintain, repair and replace any such Improvements as set forth in this Declaration or the terms of another Recorded document executed by the Declarant or the Association. As set forth on the Plat, certain Units are subject to easements granted to the Association for the purposes set forth in this Section.

3.12.1 Certain of the Units are hereby made subject to easements as shown on a Plat or as described in another Recorded instrument as “Landscape Maintenance and Access Easement” or similar name (a “Landscape Easement”). Unless otherwise provided in a Supplemental Declaration, the Landscape Easements are granted in favor of the Association, its directors, officers, agents, employees and contractors over portions of the Units (the “Landscape Easement Areas”) for the purpose of the Association maintaining, repairing and replacing landscape Improvements only in the event of a Unit Owner not performing its obligations to maintain, repair and replace the landscape Improvements within the Landscape Easement Areas. If a Unit Owner fails to maintain the landscape Improvements within the Landscape Easement Areas in good condition and repair and in accordance with the Maintenance Standard as required by this Declaration, the Association may make a finding to such effect and exercise its rights pursuant to **Section 5.3** of this Declaration.

3.12.2 Certain of the Units are hereby made subject to easements as shown on a Plat as “Sight Zone Area Easements,” “Sight Visibility Easements” or “Sight Visibility Zone Easements” (an “SZA Easement”). Unless otherwise provided in a Supplemental Declaration, the SZA Easements are granted in favor of the Association, its directors, officers, agents, employees and contractors over portions of the Units (the “SZA Easement Areas”) for the purpose of the Association maintaining, repairing, removing and replacing Improvements within the SZA Easement Areas only in the event of a Unit Owner not performing its obligations to maintain, repair, remove and replace such Improvements in accordance with the requirements of the City. No buildings, fence, earth bank, vegetation or other obstruction shall be allowed within the SZA Easement Areas that is more than twenty-four (24) inches in height above the adjacent street elevation, or as current City standards require from time to time. If a Unit Owner fails to maintain the Improvements within the SZA Easement Areas in accordance with the requirements of the City, the Association may make a finding to such effect and exercise its rights pursuant to **Section 5.3** of this Declaration.

3.13 Easements and Rights Subordinate. The easements and rights granted or reserved in this **Article 3** and the exercise thereof are subject to and limited by the Master Declaration (Including the easements granted and reserved therein) and all other Master Governing Documents. The exercise of the easements granted or reserved in this **Article 3** shall not permit entry into the Master Common Elements unless such entry is authorized by the Master Declaration.

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

ARTICLE 4 PERMITTED USES AND RESTRICTIONS

4.1 Architectural Control. Subject to the provisions of **Subsection 4.1.10** and **Section 4.18** of this Declaration:

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

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

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

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

4.1.5 Any Unit Owner desiring approval of the Architectural Review Committee for excavation or grading, or for the construction, installation, addition, alteration, repair, change or replacement of any Improvement that would alter the exterior appearance of a Unit, or the Improvements located thereon, shall submit to the Architectural Review Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work that the Unit Owner desires to perform. Any Unit Owner requesting the approval of the Architectural Review Committee shall also submit to the Architectural Review Committee any additional information, plans and specifications that the Architectural Review Committee may request. In the event that the Architectural Review Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with all supporting information, plans and specifications requested by the Architectural Review Committee have been submitted to it, the application shall be deemed to have been disapproved.

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

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

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

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

4.1.10 The provisions of this Section do not apply to, and approval of the Architectural Review Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant or a Builder, provided that all construction, erection, installation, addition, alteration, repair and replacement of any Improvements by a Builder has been authorized pursuant to a Development Declaration. Any construction, erection, installation, addition, alteration, repair and replacement of any Improvements by a Builder that has not been authorized pursuant to a Development Declaration shall be subject to the prior written consent of the Architectural Review Committee, provided that the Architectural Review Committee shall have no authority to rescind or modify an approval validly given pursuant to a Development Declaration.

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

4.1.12 The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Review Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation (“Applicable Laws”). The Community is subject to the provisions of the Development Agreement and the Planned Unit Development Handbook attached thereto, as it may be amended from time to time (the “PUD Handbook”), which sets forth certain architectural and design standards for the Community. The Architectural Review Committee will review and, in good faith, attempt to approve only such construction, installation, addition, alteration, repair, change or other work that is in general conformance with the PUD Handbook and all other Applicable Laws; however, neither Declarant, the Association, the Board of Directors, any party retained by the Architectural Review Committee as a consultant nor any committee or member of any of the foregoing shall be held liable for any claim whatsoever arising out of construction on or modifications to any Unit that are not in compliance with the PUD Handbook or any other Applicable Laws. Each Unit Owner is responsible for investigation of and compliance with all

Applicable Laws, Including the PUD Handbook, prior to submitting a request for approval pursuant to this Section.

4.1.13 The Architectural Review Committee may condition its approval of plans and specifications upon the agreement by the Unit Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Review Committee in an amount determined by the Architectural Review Committee to be reasonably sufficient to: (i) assure the completion of the proposed construction, installation, addition, alteration, repair, change or other work or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such construction, installation, addition, alteration, repair, change or other work, and (ii) to repair any damage that might be caused to any Area of Common Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Unit Owner upon: (a) the completion of the construction, installation, addition, alteration, repair, change or other work in accordance with the plans and specifications approved by the Architectural Review Committee; and (b) the Unit Owner's written request to the Architectural Review Committee, provided that there is no damage caused to any Area of Common Responsibility by the Unit Owner or its agents or contractors.

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

4.3 Housing for Older Persons; Age Restriction.

4.3.1 The Community is intended to be operated for occupancy by persons fifty-five (55) years of age or older in accordance with The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 et seq.) (the “Fair Housing Act”), which exempts “housing for older persons” from the prohibitions against discrimination based on familial status. Except as provided in **Subsection 4.3.2** below, each Dwelling, if occupied, must be occupied by at least one (1) person fifty-five (55) years of age or older. Except as provided in **Subsection 4.3.3** below, no person under nineteen (19) years of age shall occupy or reside in a Dwelling. The Board of Directors, in its sole and absolute discretion, shall have the right and power to determine when a person “occupies or resides” in a Dwelling.

4.3.2 In accordance with the Fair Housing Act, at least eighty percent (80%) of the occupied Dwellings must be occupied by at least one person who is fifty-five (55) years of age or older. Accordingly, the Board of Directors, upon application, shall have the right and option, but without obligation, at the Board of Directors’ sole and absolute discretion, to permit a Dwelling to be occupied by persons all of whom are under the age of fifty-five (55), unless the granting of permission would result in fewer than eighty percent (80%) of the occupied Dwellings being occupied by one person fifty-five (55) years of age or older, or considering other factors deemed appropriate by the Board of Directors, may jeopardize (whether at the time of the request or in the future) the Community’s status as “housing for older persons” under the Fair Housing Act. The Board of Directors shall exercise its sole and absolute discretion based upon criteria that the Board of Directors shall determine as appropriate, including information then known to the Board of Directors concerning potential or pending changes in occupancy of other Dwellings within the Community, the ages of the persons requesting such permission, the proximity to age fifty-five (55) of those occupants of other Dwellings within the Community then under such age, and any other information known to and deemed relevant by the Board of Directors in its sole discretion. Any request submitted to the Board of Directors pursuant to this Subsection shall be a written request setting forth the names and ages of all proposed Residents of the Dwelling and such other information as the Board of Directors reasonably may require.

4.3.3 The Board of Directors, upon application by a person, because of undue hardship on such person or other Residents of the Dwelling or extraordinary circumstances, in its sole and absolute discretion (unless the granting of permission would jeopardize the Community’s status as “housing for older persons” under the Fair Housing Act), shall have the right and option, but not the obligation, to permit a Dwelling to be occupied by a person under nineteen (19) years of age. Any person requesting permission to have a Dwelling occupied pursuant to the provisions of this Subsection shall submit a written request to the Board of Directors setting forth the reason for the request and such other information as the Board of Directors reasonably may require. A person under nineteen (19) years of age may temporarily reside in a Dwelling as a guest of the Residents of the Dwelling for a period of not more than sixty (60) days in any twelve (12) month period.

4.3.4 Each Resident, as and when requested to do so by the Board of Directors, shall furnish the Board of Directors with the names and ages of all occupants of the Dwelling and such affidavits and other documents as the Board of Directors may request to

verify the age of such occupants. In the event there is a change in the occupancy of a Dwelling, the Owner immediately shall notify the Board of Directors in writing of such change and comply with all rules and regulations adopted by the Board of Directors for verification of occupancy.

4.3.5 The Board of Directors shall publish and adhere to policies and procedures to demonstrate the intent that the Community is intended and operated for occupancy by persons fifty-five (55) years of age or older. Furthermore, the Board of Directors shall comply with any rules issued by the Secretary of Housing and Urban Development for verification of occupancy. The policies and procedures shall provide for verification of Residents by reliable surveys and affidavits or other means as permitted by the Fair Housing Act.

4.3.6 The requirements contained in this **Section 4.3** are intended to comply with the exemption requirements under the Fair Housing Act and any regulations now or hereafter issued therefor. Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that although it is the intent of the Declarant that the Community is intended to be and that it be operated for occupancy by persons fifty-five (55) years of age or older in compliance with the Fair Housing Act which exempts “housing for older persons” from the prohibitions against discrimination based on familial status, no representation or warranty is made that the Community complies or will comply with the Fair Housing Act, and if for any reason the Community is deemed not in compliance with the Fair Housing Act and therefore not exempt from the prohibitions against discrimination based on familial status, neither the Declarant Parties nor the Association (or the affiliates of either of the foregoing) shall have any liability in connection therewith. Anything herein contained to the contrary notwithstanding, the Declarant, at any time during the Period of Declarant Control, and thereafter, the Board of Directors, may amend the provisions of this **Section 4.3**, to the extent that it deems it necessary or appropriate, without the approval of the Unit Owners, in order to comply with the exemption requirements under the Fair Housing Act or any regulations now or hereafter issued therefor, as they may be amended from time to time, with respect to “housing for older persons.”

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

4.5 Nuisances; Construction Activities. No rubbish, clippings, refuse, scrap lumber or metal, grass, shrub or tree clippings, plant waste, bulk materials or other debris of any kind (all collectively referred to hereinafter as “rubbish and debris”) shall be kept, placed, stored or permitted to accumulate upon or adjacent to any Unit unless stored within an enclosed structure or container that has been approved by the Architectural Review Committee. Compost piles are prohibited. No odors or loud noises shall be permitted to arise or emit from any Unit, and no

other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or to the residents of such property. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security or fire protection purposes), noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscaping maintenance) or other item that may unreasonably disturb other Unit Owners or Residents, or any equipment or item that may unreasonably interfere with television or radio reception within any Unit or the Area of Common Responsibility shall be located, used or placed on any portion of the Community without the prior written approval of the Board of Directors. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. Each Unit Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit. Normal construction activities and parking in connection with the building of Improvements on a Unit or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and attractive condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Unit or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Review Committee, which may also require screening of the storage areas. The Board of Directors, in its sole discretion, shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant or a Builder.

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

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

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

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

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

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

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

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

structures incident to the construction of buildings or structures approved by the Architectural Review Committee.

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

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

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

4.17 Signs.

4.17.1 Subject to the provisions of **Subsection 4.17.2**, no signs whatsoever (Including commercial, political, “for sale,” “for rent,” “for lease,” “open house” and similar signs) that are Visible From Neighboring Property shall be erected or maintained on any Unit except:

- (i) Signs required by legal proceedings;

(ii) Signs that, by law, cannot be prohibited, provided that the Architectural Review Committee reserves the right to disallow and/or regulate the size and number of any such signs to the extent permitted by law;

(iii) Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Review Committee; and

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

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

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

4.19 Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Unit or Common Element or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Review Committee, except for (i) vehicles

that cannot be prohibited from parking on a driveway or street by applicable law; (ii) the temporary parking of a recreational vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar recreational equipment on the concrete driveway of a Unit or on a street for a period of not more than twenty-four (24) hours within any seven (7) day period for the purpose of loading, unloading and cleaning; (iii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Review Committee; (iv) boats and similar recreational vehicles parked in garages on Units so long as such vehicles are in good operating condition and appearance and are not under repair; (v) contractor and delivery vehicles temporarily parked in the street for loading, unloading and performing work on Units; and (vi) motor vehicles not exceeding seven (7) feet in height and twenty-two (22) feet in length that are not used for commercial purposes and that do not display any commercial name, telephone number or message of any kind and that are parked in the garage or on the concrete driveway situated on a Unit, provided that such vehicles shall not be parked in such a manner as to block the sidewalks or impede pedestrian traffic in any way.

4.20 Motor Vehicles.

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

4.20.2 No unlicensed vehicle, and no dirt bike, motor scooter, all-terrain, off-road or other similar loud mechanized vehicle shall be parked, maintained or operated on any portion of the Community, except such vehicles may be parked in garages of Units. This restriction shall not prohibit any type of licensed motor scooter or similar vehicle from being operated in the Community if it is electrically powered or is equipped with a muffler that minimizes noise.

4.20.3 No automobile or other motor vehicle shall be parked on any road or street in the Community, except for (i) vehicles that cannot be prohibited from parking on a road or street by applicable law; (ii) automobiles or motor vehicles of guests of Unit Owners and Residents that may be parked on a street in the Community, and (iii) automobiles or motor vehicles that may be parked on a street in the Community pursuant to **Subsection 3.10.5**. Except for temporary parking as permitted in **Section 4.19**, the parking of any vehicle on any street in the Community by a Unit Owner or a Resident is prohibited. No automobile or other motor vehicle shall be parked on any Unit except on the concrete driveway or in the garage or carport as originally installed as part of the Dwelling or as approved by the Architectural Review Committee.

4.20.4 Any Unit Owner or Resident desiring to operate or maintain a golf cart within the Community shall obtain and maintain a valid permit from the State of Nevada for such golf cart. The Board of Directors shall be entitled to establish additional rules and regulations

governing golf carts, Including equipment required to be installed on golf carts in addition to equipment required by law. A Unit Owner or Resident shall not park or store a golf cart on any portion of his Unit except in the garage.

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

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

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

4.23 Golf Ball Restriction; Entry Onto Golf Course. No Unit Owner, Resident or the guests of either shall hit golf balls from any Unit onto the Golf Course. Unit Owners and Residents shall not enter upon the Golf Course, Including driving any golf cart onto the cart paths or any other area of the Golf Course, for any purpose except as a customer/patron of the Golf Course, subject to all rules and regulations established by the Golf Course Owner, Including all policies relating to fees, reservation of tee times and other operating rules and procedures. Unit Owners and Residents shall not permit any pets to enter the Golf Course at any time.

4.24 Sight Zone Area Restrictions. The maximum height of any and all Improvements (Including landscaping) within any "Sight Zone Area Easement," as set forth on a Plat, shall be restricted to a maximum height of twenty-four (24) inches, or as current City standards require from time to time. If any Improvement located within a Sight Zone Area Easement exceeds the maximum height permitted by the City, the Association shall be entitled to exercise its easement rights set forth in **Section 3.12** of this Declaration.

4.25 Special Restrictions for Swimming Pools. No swimming pool or spa shall be constructed or installed without the prior written consent of the Architectural Review Committee. Any swimming pool or spa that is proposed to be constructed within a rear yard where retaining walls have been constructed by Declarant on or adjacent to the Unit shall submit

to the Architectural Review Committee a letter from a structural engineer licensed in Nevada certifying that the proposed swimming pool or spa has been designed to maintain the structural integrity of the walls of the swimming pool or spa and that such design will not place any lateral loads onto the retaining walls constructed on or adjacent to the Unit. A Unit Owner shall be responsible for any damage resulting from the construction of a swimming pool or spa in the rear yard of such Unit Owner's Unit. Neither the Declarant Parties, the Association (Including the Architectural Review Committee), nor any director, officer, agent, member or employee of any of the foregoing, shall be liable to any Unit Owner or Resident for any claims or damages resulting, directly or indirectly, from the construction and existence of a swimming pool or spa in a rear yard.

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

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

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

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

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

4.31 Rooftop Decks and Balconies Prohibited. No rooftop decks and no balconies may be constructed or installed on any Dwelling or other building.

4.32 Patio Use Restrictions. Any patio Visible From Neighboring Property shall be used only for recreational purposes and for outdoor patio furniture. No storage of any kind, including garbage cans or parking of golf carts, is allowed under any conditions.

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

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

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

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

4.37 Leasing.

4.37.1 Except as provided in **Subsection 3.4.6** of this Declaration, a Unit may be leased to a lessee from time to time by a Unit Owner provided that each of the following conditions is satisfied:

(i) A Unit (except for a Multi-Family Unit) may be leased only in its entirety. No fraction or portion of a Unit or Dwelling may be leased, except that Apartments in Multi-Family Units may be leased separately.

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

(iii) The Residents of the Unit under the lease shall satisfy the “housing for older persons” restrictions set forth in **Section 4.3** of this Declaration and any rule or regulation adopted by the Board of Directors with respect thereto.

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

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

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

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

4.38 Restrictions Imposed by Master Governing Documents; Obligation to Obtain Approvals. Unless otherwise set forth in this **Article 4**, wherever this **Article 4** requires the approval or consent of the Board of Directors or the Architectural Review Committee, such approval or consent shall not be deemed the approval or consent of the Master Association or the Master Declarant. Each Unit Owner acknowledges that the Master Governing Documents may require the approval or consent of the Master Association or the Master Declarant for certain actions, and that such approval or consent required by the Master Governing Documents shall be required in addition to any approval or consent obtained from the Association or the Declarant.

4.39 Variances; Diminution of Restrictions. The Architectural Review Committee or Board of Directors, as applicable, may, at the respective option of each and in extenuating circumstances, grant variances from the restrictions set forth in this **Article 4** (except for the restrictions set forth in **Section 4.38**) if the Architectural Review Committee or the Board of Directors, as applicable, determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on a Unit Owner or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; and (ii) the

activity permitted under the variance will not have any substantial adverse effect on the Unit Owners and Residents and is consistent with the high quality of life intended for Residents of the Community. Notwithstanding the foregoing, the Architectural Review Committee and the Board of Directors shall not grant variances permitting uses that (a) are not consistent with applicable law or the Master Governing Documents, or (b) would jeopardize the Community's status as "housing for older persons" under the Fair Housing Act. If any restriction set forth in this **Article 4** is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board of Directors, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable. Upon expiration of the Period of Declarant Control and for so long as the Declarant owns any property described on **Exhibit A** or **Exhibit B**, any variance granted by the Architectural Review Committee or the Board of Directors shall be subject to review and approval by the Declarant, to the extent permitted by Nevada law.

ARTICLE 5 MAINTENANCE AND REPAIR

5.1 Duties of the Association.

5.1.1 Unless otherwise provided in a Supplemental Declaration, the Association shall maintain, repair and replace all Areas of Common Responsibility. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance of the Areas of Common Responsibility, and all Unit Owners shall cooperate with the Board of Directors in any way required by the Board of Directors in order for the Board of Directors to fulfill its obligations under this Section. Notwithstanding anything contained in this Section or otherwise set forth in this Declaration to the contrary, the Areas of Common Responsibility shall be maintained, repaired and replaced by the Association in compliance with all laws, statutes, ordinances, regulations and standards, including (i) the provisions of the Development Agreement, including the Environmental Development Plan attached thereto, and (ii) the terms and conditions of other permits and approvals issued to Declarant, including the U.S. Army Corps of Engineers 404 Permit, the Nevada Department of Environmental Protection 401 Water Quality Certification and the U.S. Fish and Wildlife protocols, as any such provisions, terms and conditions may be applicable to portions of the Areas of Common Responsibility.

5.1.2 The Association shall be responsible for the operation, maintenance, repair and replacement of all private sewer lines and storm drain pipes and related facilities (including drainage swales) that have not been accepted for maintenance by the City or any other governmental agency or private utility company (the "Private Sewer and Storm Drain Facilities") located within (i) property that is or will become a Common Element, (ii) Golf Course Property, and (iii) Master Common Elements, provided that the Private Sewer and Storm Drain Facilities constructed and installed on Golf Course Property and/or Master Common Elements are

constructed and installed primarily to serve the Community. The Association shall operate, maintain, repair and replace the Private Sewer and Storm Drain Facilities in compliance with all applicable federal, state and local laws, ordinances and regulations and, if required by law, shall contract with qualified persons or companies to manage, operate and maintain the Private Sewer and Storm Drain Facilities, Including the filing of all reports regarding the operation and maintenance of the Private Sewer and Storm Drain Facilities as may be required by federal, state or local laws, ordinances and or regulations. Notwithstanding anything contained in the Governing Documents to the contrary, and to the extent permitted by Nevada law, if the Community is terminated as provided for in the Act and/or the Association is dissolved in accordance with the Articles and Nevada law, the Common Elements on which the Private Sewer and Storm Drain Facilities are constructed shall be granted, conveyed or assigned to another nonprofit corporation, association, trust or other organization to be devoted to such similar purpose, and it shall be the obligation of the Unit Owners to assure that the governing documents for such new entity provides for the assumption by the new entity of the responsibilities set forth in this **Subsection 5.1.2.**

5.2 Duties of Unit Owners.

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

5.2.2 Each Unit Owner shall be liable to the Association for any damage to the Areas of Common Responsibility or for any damage to the Improvements on Units for which the Association has responsibility to maintain, if any, that results from the negligence or willful conduct of the Unit Owner. Without limiting the generality of the foregoing, each Unit Owner shall specifically be responsible for any damage caused to sidewalks along private streets by acts of the Unit Owner or Residents of the Unit or by any contractor or other licensee of the Unit Owner. The cost to the Association of any repair, maintenance or replacements caused by the act of a Unit Owner, the Residents of a Unit or by any contractor or other licensee of the Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.3 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain his Unit in good condition and repair and in accordance with the Maintenance Standard as required by this

Declaration; or if any portion of a Unit is so maintained as to present a nuisance or as to substantially detract from the appearance or quality of the surrounding Units or other areas of the Community that are substantially affected thereby or related thereto; or if any portion of a Unit is being used in a manner that violates this Declaration; or if a Unit Owner is failing to perform any of his obligations under the Governing Documents, the Association may make a finding to such effect, specifying the particular condition or conditions that exist, and give notice to the offending Unit Owner that corrective action is required to be taken within fifteen (15) days after such notice is sent to the Unit Owner. If the required maintenance, repair or replacement has not been performed within such fifteen-day period of time, the Board of Directors shall be authorized and empowered, but shall not be obligated, to cause such maintenance, repair or replacement to be performed at the Unit Owner's cost. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to **Subsection 7.3.3** of this Declaration, shall be payable upon demand by the Association and shall be secured by the Assessment Lien.

5.4 Common Fences. The rights and duties of Unit Owners of Units with respect to common walls or fences (hereinafter, a "fence") shall be as provided in this **Section 5.4**, subject to any contrary or additional provisions contained in a Supplemental Declaration.

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

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

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

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

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

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

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

5.5 Maintenance of Fences Other Than Common Fences.

5.5.1 Except for common fences and fences covered by **Subsections 5.5.2, 5.5.3, 5.5.4 and 5.5.7** below, and unless otherwise provided for in a Supplemental Declaration or the Master Declaration, fences located on a Unit shall be maintained, repaired and replaced by the Unit Owner. If a fence is located along a boundary line (but not on the boundary line) of a Unit and entry upon the adjacent Unit is necessary for the Unit Owner of the Unit upon which the fence is located to maintain, repair and replace the fence, an easement for such entry onto the adjacent Unit exists in favor of such Unit Owner. Any damage to a Unit resulting from the exercise of any easement right granted to a Unit Owner in this Section shall be promptly restored or repaired by, and at the expense of, the Unit Owner exercising the easement right.

5.5.2 Any fence that is placed on or along the boundary line between a Unit and the Common Elements shall be maintained, repaired and replaced by the Unit Owner, except that the Association shall be responsible for the repair and maintenance of the surface of the fence that faces the Common Elements. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such fence. Notwithstanding the foregoing, if any such fence or portion thereof is a metal view fence, the Association shall maintain the entire metal view portion of the fence, and the Unit Owner shall pay to the Association, upon demand, one-half the cost of any such maintenance performed on the metal view portion of the fence. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments. A perpetual, nonexclusive easement in favor of the applicable Unit Owner and the Association is hereby created on, over, under, through and across any such Unit and Common Element, to the extent reasonably necessary, for the purpose of the applicable Unit Owner and the Association maintaining, repairing and replacing any fences subject to this **Subsection 5.5.2**. If any fence described in this **Subsection 5.5.2** encroaches upon a Unit or the Common Elements, a valid easement for such encroachment and for the maintenance of the fence shall and does exist in favor of the Unit Owner or the Association, as applicable.

5.5.3 Any fence that is placed on a corner Unit to separate a side or rear yard from the adjacent street, whether or not the fence is placed on the boundary line between the Unit and the street right-of-way or placed totally within the boundaries of a Unit, shall be maintained, repaired and replaced by the Unit Owner, except that the Association shall be responsible for the repair and maintenance of the surface of the fence that faces the street. The Association shall

have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such fence. Notwithstanding the foregoing, if any such fence or portion thereof is a metal view fence, the Association shall maintain the entire metal view portion of the fence, and the Unit Owner shall pay to the Association, upon demand, one-half the cost of any such maintenance performed on the metal view portion of the fence. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.5.4 Any fence that is placed on or along a boundary line between a Unit and property that is not a part of the Community (“Adjacent Property”) shall be maintained, repaired and replaced by the Unit Owner, except that the Association shall be responsible for the repair and maintenance of the surface of the fence that faces the Adjacent Property. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such fence. Notwithstanding the foregoing, if any such fence or portion thereof is a metal view fence, the Association shall maintain the entire metal view portion of the fence, and the Unit Owner shall pay to the Association, upon demand, one-half the cost of any such maintenance performed on the metal view portion of the fence. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments. A perpetual, nonexclusive easement in favor of the Association is hereby created on, over, under, through and across any such Unit, to the extent reasonably necessary, for the purpose of the Association maintaining, repairing and replacing any fences subject to this **Subsection 5.5.4**. The maintenance obligations to be performed by Unit Owners and the Association pursuant to this Subsection shall be subject to the applicable party obtaining an easement or other permission from the owner of the Adjacent Property prior to entering the Adjacent Property for maintenance purposes.

5.5.5 Any fence that is placed on or along a boundary line between a Common Element and Adjacent Property shall be maintained, repaired and replaced by the Association, provided that such maintenance obligations shall be subject to the Association obtaining an easement or other permission from the owner of the Adjacent Property prior to entering the Adjacent Property for maintenance purposes.

5.5.6 Any fence that is placed on or along the boundary line between a Common Element and the Golf Course shall be maintained, repaired and replaced by the Association.

5.5.7 Any fence that is placed on or along the boundary line between a Unit and the Golf Course shall be maintained, repaired and replaced by the Unit Owner, except that the Association shall be responsible for the repair and maintenance of the surface of the fence that faces the Golf Course. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such fence. Notwithstanding the foregoing, if any such fence or portion thereof is a metal view fence, the Association shall maintain the entire metal view portion of the fence, and the Unit Owner shall pay to the Association, upon demand, one-half the cost of any such maintenance performed on

the metal view portion of the fence. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments. A perpetual, nonexclusive easement in favor of the Association is hereby created on, over, under, through and across any such Unit, to the extent reasonably necessary, for the purpose of the Association maintaining, repairing and replacing any fences subject to this **Subsection 5.5.7**.

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

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

ARTICLE 6 THE ASSOCIATION

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Person other than the Declarant, the Association shall be organized as a Nevada nonprofit corporation. The Association shall be the entity through which the Unit Owners shall act with respect to all matters contained in this Declaration. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Governing Documents, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Act. The Association shall have the right to finance capital Improvements in the Community by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association.

6.2 Directors and Officers.

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

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

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

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

6.2.5 The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association

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

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

6.4 Composition of Members; Allocation of Votes.

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

6.4.2 The Association shall two (2) classes of membership as follows:

(i) Class A: Class A shall be composed of all of the Unit Owners of Units except Multi-Family Units. Each Class A Unit Owner shall have one (1) equal vote for each Unit in which it holds the interest required for membership under **Subsection 6.4.1**, except that there shall be only one (1) vote per Unit. Accordingly, the total number of Class A votes for the Association shall equal the total number of Units, except Multi-Family Units, subject to this Declaration from time to time.

(ii) Class B: Class B shall be composed of all of the Unit Owners of Multi-Family Units. Each Unit Owner of a Multi-Family Unit shall have one (1) equal vote for every five (5) Apartments located on each Multi-Family Unit in which it holds the interest required for membership under **Subsection 6.4.1**, except that there shall be no fractional votes. The total number of Class B votes for each Multi-Family Unit shall equal the total number of Apartments contained on such Multi-Family Unit, divided by five (5) and then rounded to the nearest whole number. Accordingly, the total number of Class B votes for the Association shall

equal the total number of Apartments subject to this Declaration from time to time, divided by five (5) and rounded to the nearest whole number.

As of the date this Declaration is Recorded, there are ninety-nine (99) Class A votes in the Association and no Class B Votes.

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

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

6.7 Voting Rights. Subject to **Section 6.8** below, each Class A Unit Owner, Including Declarant and Builders, shall be entitled to cast one (1) vote for each Unit owned by such Unit Owner, and each Class B Unit Owner, Including Declarant and Builders, shall be entitled to cast one (1) vote for every five (5) Apartments located on each Multi-Family Unit, on any Association matter that is put to a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.

6.8 Voting Procedures. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit Owner was acting with the authority and consent of all other Unit Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit (or in the case of a Multi-Family Unit, more than one (1) vote is cast by a Member for every five (5) Apartments), none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit and then only to the transferee of ownership to the

Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of Record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Nevada. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit Owner thereof. Each purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming a Unit Owner.

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

6.11 Architectural Review Committee. The Association may, in the discretion of the Board of Directors from time to time, have an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration. In the event no Architectural Review Committee is formed, the Board of Directors shall perform all functions of the Architectural Review Committee except as provided herein to the contrary or as waived in writing by the Board of Directors. The Architectural Review Committee shall be a Committee of the Board of Directors. The Architectural Review Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any property described on **Exhibit A** or **Exhibit B**, the Declarant shall have the sole right to appoint and remove the members of the Architectural Review Committee. At such time as the Declarant no longer owns any property described on **Exhibit A** or **Exhibit B**, the members of the Architectural Review Committee shall be appointed by the Board of Directors. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Review Committee, and in that event the Declarant may require, for so long as the Declarant owns any property described on **Exhibit A** or **Exhibit B**, that specified actions of the Architectural Review Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Review Committee may adopt, amend and repeal Design Guidelines to be used in rendering its decisions. The Design Guidelines may include provisions regarding: (i) the size of Dwellings; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Dwellings and other buildings; (iv) landscaping design, content and conformance with the character of the Community and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; (vii) perimeter and screen wall design and appearance; and (viii) procedures to be used in the architectural review process. Notwithstanding the foregoing, the Association is obligated to comply with the provisions of Development Agreement and the PUD Handbook (as defined in **Subsection 4.1.12**), which sets forth certain architectural and design

standards for the Community. Any adoption or amendment of the Design Guidelines shall be consistent with the PUD Handbook, and any provision of the Design Guidelines that constitutes a violation of the PUD Handbook shall not be enforceable by the Association. Subject to the foregoing, the decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

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

6.13 Change of Use of Common Elements. Upon (i) adoption of a resolution by the Board of Directors stating that in the opinion of the Board of Directors the then present use of a designated part of the Common Elements is no longer in the best interests of the Unit Owners, (ii) the approval of such resolution by Unit Owners casting at least sixty-seven percent (67%) of the votes entitled to be cast by Unit Owners who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such part of the Common Elements under the terms of this Declaration, and (iii) the prior written consent of the Declarant after the expiration of the Period of Declarant Control and for so long as the Declarant owns any property described on **Exhibit A** or **Exhibit B**, to the extent permitted by Nevada law, the Board of Directors shall have the power and right to change the use of such property (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board of Directors to accommodate the new use), provided such new use shall be (a) for the benefit of the Members and Residents, as determined by the Board of Directors, and (b) consistent with any deed restrictions, zoning and other municipal regulations restricting or limiting the use of the land. Notwithstanding the foregoing, if the new use requires the expansion of an existing building or structure or construction of a new building or structure, the Board of Directors shall first obtain the written consent of a majority of the Unit Owners and Residents who own Units or reside within five hundred (500) feet of the proposed location of such building or structure.

6.14 Provision of Services. The Association shall be authorized, but not obligated, to enter into and terminate, in the discretion of the Board of Directors, contracts or agreements with other entities, including Declarant and its affiliates, to provide services to and facilities for the Members of the Association, their guests, lessees and invitees and to charge Special Use Fees for such services and facilities. For example, some services and facilities that might be offered include landscape maintenance, pest control service and similar services and facilities.

6.15 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, and subject to applicable law, the Association

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

6.16 Commencement of Civil Action. With respect to any disputes or claims not subject to the requirements of **Section 12.20** of this Declaration, the Association may not commence a civil action without the prior written consent or affirmative vote of Unit Owners to which more than fifty percent (50%) of the votes of the Members of the Association are allocated. In addition to the notice and meeting requirements set forth in the Act, at least ten (10) days before the Association commences a civil action, the Association shall provide a written statement to all Unit Owners that includes a reasonable estimate of the costs of the civil action, including reasonable attorneys' fees, an explanation of the potential benefits of the civil action and the potential adverse consequences if the Association does not commence the action or if the outcome of the action is not favorable to the Association, and all other disclosures required by law. The provisions of this Section do not apply to a civil action that is commenced to (i) enforce the payment of an Assessment, (ii) enforce the Governing Documents, (iii) enforce a contract with a vendor, (iv) proceed with a counterclaim, or (v) protect the health, safety and welfare of the Members of the Association.

6.17 Subsidiary Associations. If any Subsidiary Association is to be formed within the Community, then in addition to any requirements set forth in the Master Declaration, the covenants, conditions and restrictions, and the articles of incorporation, bylaws and other governing documents for such Subsidiary Association, and any amendments thereto, shall not be effective unless the contents thereof have been approved by Declarant so long as Declarant owns any property described on **Exhibit A** or **Exhibit B**, and thereafter by the Board of Directors, and such governing documents specify that (i) such Subsidiary Association and the rights of its members are subject and subordinate to the provisions of this Declaration, any applicable Supplemental Declaration, the Articles and Bylaws, the Association Rules and the Design Guidelines, as any or all of the foregoing may be amended from time to time; and (ii) any lien for assessments levied pursuant to such Subsidiary Association's governing documents shall be subordinate to the Assessment Lien. Any covenants, conditions and restrictions Recorded without such approval being endorsed thereon shall be null and void.

6.18 Master Association. The Community is part of a master planned community known as Anthem Mesquite. This Declaration, the Association and the Unit Owners are subject and subordinate to the provisions of the Master Governing Documents. Each Unit Owner shall

be a member of the Master Association pursuant to and in accordance with the terms of the Master Declaration and shall remain a member of the Master Association for so long as such Person continues to be a Unit Owner. The Unit Owners and Residents of Units subject to this Declaration must comply with the Master Governing Documents, as well as comply with all covenants, conditions and restrictions set forth in this Declaration. All assessments and amounts payable to the Master Association pursuant to the Master Governing Documents shall be in addition to any Assessments or other amounts due to the Association pursuant to this Declaration. Each Unit Owner subject to this Declaration and the Association acknowledges and agrees that the Master Association shall not be responsible for the maintenance, repair or replacement of any Common Element unless such responsibility has been accepted by the Master Association in a Recorded instrument.

6.19 Relations with Other Properties. The Association may enter into contractual agreements with the Master Association, other neighboring associations and/or the owners of properties, facilities or Private Amenities within or outside of Anthem Mesquite for maintaining and/or operating shared or mutually beneficial properties or facilities. Each Unit Owner acknowledges and agrees that the Association may be obligated under such a contractual agreement to contribute funds for, among other things, shared or mutually beneficial property or services within Anthem Mesquite or the Master Plan.

ARTICLE 7 ASSESSMENTS

7.1 Allocation of Common Expense Liability. The liability for the Common Expenses of Association shall be allocated among the Units in the same manner as the allocation of votes set forth in **Section 6.4**. Accordingly, each Unit other than Multi-Family Units shall be assessed one Common Expense Assessment and each Multi-Family Unit shall be assessed one Common Expense Assessment for every five (5) Apartments located on such Multi-Family Unit. As of the date this Declaration is Recorded, each Unit's fractional interest in the Common Expenses of the Association shall be 1/99. Upon the annexation of any portion of the Additional Property, the amount of the Common Expense Assessment levied against each Unit shall be recalculated based upon a fraction, the numerator of which is one (1) and the denominator of which is the new number of Units then subject to Assessments based upon the foregoing allocation. Nothing contained in this **Section 7.1** shall prohibit certain Common Expenses from being apportioned to particular Unit(s) under **Articles 5, 7** and other provisions of this Declaration.

7.2 Preparation of Budgets.

7.2.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt (i) a budget for the Association containing an estimate of the annual revenue of the Association and an estimate of the total amount of funds that the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses

(other than Common Expenses relating to Neighborhood Assessment Areas and Neighborhood Services that are to be assessed as Neighborhood Assessments, and except for the Common Expenses that are to be assessed against less than all of the Units pursuant to **Subsections 7.3.3 and 7.3.4**, and except as otherwise expressly provided for in this Declaration), Including contributions to be made to the reserve fund, and (ii) a budget to provide adequate funding for the reserves for the repair, replacement and restoration of the major components of the Common Elements prepared in accordance with applicable law.

7.2.2 Within sixty (60) days after the adoption of the budgets, the Board of Directors shall send to each Unit Owner a summary of the budgets (with the complete budgets available for review and/or copying at the Association's office upon request) and a statement of the amount of the Common Expense Assessment assessed against each Unit in accordance with **Section 7.3** of this Declaration and shall set a date for the meeting of the Unit Owners to consider ratification of the budgets not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Unit Owners reject the budgets, the budgets are ratified, whether or not a quorum is present. If the proposed budgets are rejected, the periodic budgets last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify subsequent budgets proposed by the Board of Directors. The failure or delay of the Board of Directors to prepare or adopt budgets for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay such Unit Owner's allocable share of the Common Expenses as provided in **Section 7.3** of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

7.3 Common Expense Assessment.

7.3.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses relating to Neighborhood Assessment Areas and Neighborhood Services that are to be assessed as Neighborhood Assessments, and except for the Common Expenses that are to be assessed against less than all of the Units pursuant to **Subsections 7.3.3 and 7.3.4**, and except as otherwise expressly provided for in this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in **Section 7.1** of this Declaration, for the purpose of providing funds for the Association to pay Common Expenses. The amount of the Common Expense Assessment assessed pursuant to this **Subsection 7.3.1** shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.3.2 Except as otherwise expressly provided for in this Declaration, all Common Expenses shall be assessed against all of the Units in accordance with **Subsection 7.3.1** of this Declaration.

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

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

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

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

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

7.5 Neighborhood Assessments.

7.5.1 The purpose of a Neighborhood Assessment is to provide for the payment of (i) the expenses of repair, maintenance, upkeep and replacement of any Limited Common Element within a Neighborhood Assessment Area; (ii) the expenses of special services provided by the Association to the Units within the Neighborhood Assessment Area and not to the Unit Owners as a whole, including special maintenance of Units or any Improvements thereon; and (iii) the extra bookkeeping and accounting expenses created by the Neighborhood Assessment Area.

7.5.2 Each Neighborhood Area Budget (defined below) shall be ratified by the Members owning Units within the Neighborhood Assessment Area in the manner provided in **Section 7.5.4** below and shall include estimated expenditures for the following purposes: (i) the cost of maintenance, management, operation, repair and replacement of the Limited Common Elements and all Improvements thereon within the Neighborhood Assessment Area, (ii) the cost of insurance premiums for fire, liability, workers' compensation, and the cost of compensation, wages, services, supplies and other expenses required for the administration and operation of the Limited Common Elements within the Neighborhood Assessment Area; (iii) the costs of rendering to the Unit Owners all services required to be rendered by the Association under the Supplemental Declaration creating the Neighborhood Assessment Area; (iv) such amount as is established by the Association as a reserve for the cost of repair and replacement for the major components of the Limited Common Elements within the Neighborhood Assessment Area, which may be used only for Neighborhood Expenses that involve major repairs or replacement, and that may not be used for daily maintenance, (v) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (vi) the cost of any other item or items incurred by the Association for any reason whatsoever in connection with the Neighborhood Assessment Area for the common benefit of the Unit Owners within the Neighborhood Assessment Area.

7.5.3 Each of the Neighborhood Assessments shall be levied against the Unit Owners of each of the Units within the applicable Neighborhood Assessment Area at a uniform rate per membership. A Supplemental Declaration that establishes a Neighborhood Assessment Area shall set forth (i) the number of votes within the Neighborhood Assessment Area, which shall be allocated among the Units in the applicable Neighborhood Assessment Area in the same

manner as the allocation of votes set forth in **Section 6.4**, and (ii) each Unit's fractional interest in the Neighborhood Expense Liability, which shall be based upon a fraction, the numerator of which is one (1) and the denominator of which is the number of Units then subject to the applicable Neighborhood Assessment. Each Supplemental Declaration that annexes additional Units to a Neighborhood Assessment Area shall set forth (a) a reallocation to each Unit in the Neighborhood Assessment Area of the Neighborhood Expense Liability, and (b) the number of votes in the Neighborhood Assessment Area.

7.5.4 At such time as the Board of Directors meets for the purpose of preparing the proposed budgets described in **Subsection 7.2.1** for the next succeeding fiscal year, the Board of Directors also shall establish (i) a budget for the expenses of each Neighborhood Assessment Area within the Community containing an estimate of the annual revenue of the Neighborhood Assessment Area and an estimate of the total amount of funds that the Board of Directors believes will be required during the ensuing fiscal year to pay all Neighborhood Expenses, including contributions to be made to the reserve fund, and (ii) a budget to maintain a reserve fund for the repair, replacement and restoration of the major components of the Limited Common Elements within the Neighborhood Assessment Area prepared in accordance with applicable law (collectively, with respect to each Neighborhood, the "Neighborhood Area Budgets"). Within thirty days after adoption by the Board of Directors of the proposed Neighborhood Area Budgets for each Neighborhood Assessment Area, the Board of Directors shall provide a summary of the applicable proposed Neighborhood Area Budgets to all Unit Owners within the Neighborhood Assessment Area, and the ratification of the Neighborhood Area Budgets shall be considered by the Unit Owners within the Neighborhood Assessment Area as a separate agenda item at the same meeting of the Members where the budgets for Common Expenses are considered for ratification. Unless at such meeting at least a majority of all Unit Owners within the applicable Neighborhood Assessment Area reject the Neighborhood Assessment Budgets, the Neighborhood Assessment Budgets are ratified, whether or not a quorum of such Unit Owners is present. If the proposed Neighborhood Assessment Budgets are rejected, the periodic Neighborhood Assessment Budgets last ratified by the applicable Neighborhood Assessment Area Unit Owners must be continued until such time as such Unit Owners ratify subsequent Neighborhood Area Budgets proposed by the Board of Directors. The failure or delay of the Board of Directors to prepare or adopt Neighborhood Area Budgets for any fiscal year shall not constitute a waiver of or release in any manner a Unit Owner's obligation to pay such Unit Owner's allocable share of the Neighborhood Expenses as provided in this **Section 7.5**, and each Unit Owner shall continue to pay the Neighborhood Assessment against such Unit as established for the previous fiscal year until notice of the Neighborhood Assessment for the new fiscal year has been established by the Board of Directors.

7.5.5 Any additional or increased services for a Neighborhood Assessment Area that were not initially provided for in the Supplemental Declaration for such Neighborhood Assessment Area and any additional capital improvements to the Limited Common Elements within the Neighborhood Assessment Area ("Special Neighborhood Assessment") shall not be authorized unless such Special Neighborhood Assessment shall have first been approved by Unit Owners representing at least sixty-seven percent (67%) of the votes in the Neighborhood

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

7.6 Declarant Subsidy. Declarant may, but shall not be obligated to, reduce the Common Expense Assessment and/or any Neighborhood Assessment for any fiscal year by payment of a subsidy, which shall be in addition to the Assessments paid by Declarant pursuant to **Section 7.3** and **Section 7.5** and may be either a contribution or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the applicable budget, and if Declarant elects to provide the subsidy as a loan to the Association, such loan also shall be disclosed on the financial statement of the Association. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

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

7.8 Commencement Date of Assessment Obligation.

7.8.1 Until the conveyance of the first Unit to a Purchaser, the Declarant shall pay all Common Expenses. All Units described on **Exhibit A** to this Declaration shall be subject to Assessments upon the conveyance of the first Unit to a Purchaser. Units annexed pursuant to **Section 2.8** of this Declaration shall be subject to Assessments on the date that the amendment annexing the additional Units is Recorded or upon the conveyance of the first Unit to a Purchaser, whichever is later.

7.8.2 Until the conveyance of the first Unit within a Neighborhood Assessment Area to a Purchaser, the Declarant shall pay all Neighborhood Expenses. All Units described in a Supplemental Declaration establishing a Neighborhood Assessment Area shall be

subject to Neighborhood Assessments upon the conveyance of the first Unit in such Neighborhood Assessment Area to a Purchaser. Units annexed to a Neighborhood Assessment Area pursuant to **Section 2.7** of this Declaration shall be subject to Neighborhood Assessments on the date that the amendment annexing the additional Units to the Neighborhood Assessment Area is Recorded or upon the conveyance of the first Unit in such Neighborhood Assessment Area to a Purchaser, whichever is later.

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

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

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

7.10.2 The Association shall have a lien on each Unit for: (i) all Assessments levied against the Unit; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Unit or payable by the Unit Owner of the Unit; (iii) all construction penalties and fines levied against the Unit Owner of the Unit; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to a Unit Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by a Unit Owner; and (v) any amounts payable to the Association pursuant to **Section 5.2 or 5.3** or any other provision of this Declaration. The Recording of this Declaration constitutes Record notice and perfection of the Assessment Lien, and no further Recordation of any claim of lien shall be required. The Association may, at its option, Record a Notice of Lien setting forth the name of the delinquent Unit Owner as shown in the records of the Association, the legal description or street address of the Unit against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, Including interest, lien Recording fees and

reasonable attorneys' fees. Before Recording any Notice of Lien against a Unit, the Association shall make a written demand to the delinquent Unit Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Unit.

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

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

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

shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

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

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

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

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

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

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

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

7.18 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person acquiring a Unit from the Declarant or a Builder shall pay to the Association immediately upon becoming a Unit Owner a sum equal to one-half (1/2) of the then current annual Common Expense Assessment attributable to the Unit. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Governing Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.19 Reserve Fund. The Association shall establish and maintain, from Common Expense Assessments, an adequate reserve fund to provide for the replacement of Improvements to the Areas of Common Responsibility. In addition to the funds collected through Common Expense Assessments, each Person acquiring a Unit from the Declarant or a Builder shall pay to the Association immediately upon becoming a Unit Owner a sum equal to one-half (1/2) of the then current annual Common Expense Assessment attributable to the Unit. Funds paid to the Association pursuant to this Section shall be deposited in the reserve fund of the Association. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

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

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

ARTICLE 8 INSURANCE

8.1 Scope of Coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Directors determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

8.8 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Common Responsibility that are damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Unit Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association, and the Board of Directors may, without the necessity of a vote of the Unit Owners, levy an equal assessment against all Unit Owners. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction. Any assessment levied pursuant to this **Section 8.8** will be deemed to be a part of the Assessments and will be secured by the Assessment Lien. If all of the Common Elements are not repaired or replaced, insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Community and that is not in violation of any state or local health or safety statute or ordinance. The remainder of the proceeds shall either (a) be distributed to all Unit Owners or lien holders in proportion to the allocated interest of each Unit Owner as determined pursuant to **Section 7.1** of this Declaration, or (b) be retained by the Association as an additional capital reserve or used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9 RIGHTS OF FIRST MORTGAGEES

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

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

ARTICLE 10 RESERVATION OF DEVELOPMENTAL AND SPECIAL DECLARANT'S RIGHTS

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

10.1 Developmental Rights. Declarant hereby reserves, for a period of twenty-five (25) years following the Recordation of this Declaration, all developmental rights under N.R.S. § 116.039. Declarant specifically reserves the right to withdraw real estate described on **Exhibit A** from the Community until the first Unit has been conveyed to a Person other than Declarant. If Declarant elects to add any portion of the Additional Property to the Community pursuant to **Section 2.8** of this Declaration, each Unit and Common Element within such portion of the Additional Property, when annexed, shall be deemed a "separate portion" of the Community (for purposes of N.R.S. § 116.211(4)), and Declarant hereby reserves the right to withdraw any such Unit or Common Element so annexed during the time period set forth in this Section.

10.2 Right to Complete Improvements and Construction Easement. Declarant hereby reserves the right, for a period of thirty (30) years following the Recordation of this Declaration, to complete the construction of Improvements in the Community and an easement over the Community for the purpose of doing so. Any damage caused to a Unit or the Common Elements by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

10.3 Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain offices for sales and management and models as provided in **Section 3.4** above, and to maintain signs on the Common Elements until Declarant no longer owns any property described on **Exhibit A** or **Exhibit B**, or for a period of thirty (30) years following the Recordation of this Declaration, whichever occurs first.

10.4 Use of Easements. Declarant reserves the right to use easements through the Common Elements for the purpose of making Improvements within the Community or within the Additional Property until Declarant no longer owns any property described on **Exhibit A** or **Exhibit B**, or for a period of thirty (30) years following the Recordation of this Declaration, whichever occurs first.

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

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

10.7 Appointment and Removal of Directors and Officers. Declarant reserves the right to appoint and remove a majority of the Board of Directors and the officers of the

Association or any master association or any member of the Board of Directors as set forth in **Section 6.2** above, for the time period set forth therein.

ARTICLE 11
PRIVATE AMENITIES; ADDITIONAL DISCLAIMERS, DISCLOSURES
AND RELEASES

11.1 Private Amenities.

11.1.1 Access to and use of any Private Amenity within Anthem Mesquite is strictly subject to the rules and procedures of the owner of such Private Amenity, and no Person gains any right to enter or to use any Private Amenity by virtue of Membership in the Association, ownership of a Unit or occupancy of a Dwelling. All Persons, including all Unit Owners, are hereby advised that no representations or warranties have been or are made by Declarant Parties, the Association, any Builder or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenities. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the Record Owner of the Private Amenity. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether, subject to direct contractual obligations with third parties and obligations that may be set forth in a Recorded instrument and the zoning and use regulations of any municipality, county, state or the United States applicable to the Private Amenity and the land upon which it is located.

11.1.2 Certain Private Amenities may be required to pay to the Association reasonable amounts to reimburse the Association for the use and benefit of Improvements constructed and installed within the Community, which amounts shall be based upon calculations determined by Master Declarant in its sole and absolute discretion and set forth in Recorded instruments encumbering the Private Amenities. No other payment shall ever be required by or for the benefit of the Association from the owner of any Private Amenity. It is not intended that the Private Amenities will be subject to the terms and provisions of this Declaration.

11.1.3 Except as otherwise set forth in one or more Recorded instruments encumbering the Private Amenities, the Private Amenities are not subject to architectural or any other review process by the Association. The Association shall have no power to establish rules or regulations affecting the activities on or use of the Private Amenities without the prior written consent of the owners of such Private Amenities affected thereby.

11.2 Abutting Golf Course.

11.2.1 Portions of the Community abut the Golf Course. Each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges and agrees as follows:

(i) No representations or warranties have been or are made by Declarant Parties, the Association or any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Golf Course.

(ii) Water hazards, the clubhouse, maintenance facilities and other installations located on the Golf Course may be attractive nuisances to children.

(iii) The operation, maintenance and use of the Golf Course will entail the operation and use of (a) noisy power equipment such as tractors, lawn mowers and blowers on various days of the week, including weekends, during various times of the day, including early morning and late evening hours; (b) sprinkler and other irrigation systems in operation during the day and at night; (c) electric, gasoline or other power driven vehicles and equipment used by maintenance and operations personnel; (d) pesticide, herbicide and fertilizing chemicals; and (e) refuse removal trucks, delivery trucks and other vehicles entering and exiting the Golf Course on various days of the week, including weekends, during various times of the day, including early morning and late evening hours.

(iv) The Golf Course has exterior lighting and amplified exterior sound and will be regularly used for entertainment and social events on various days of the week, including weekends, during various times of the day, including early morning and late evening hours.

(v) Play on the Golf Course will be allowed during all daylight hours up to seven (7) days a week (and may be allowed for evening and night-time hours), and golf tournaments may be conducted at any time during the year. Large numbers of people will be entering, exiting and using the Golf Course during all daylight hours (and may include evening and night-time hours) up to seven (7) days a week.

(vi) Water used to irrigate the Golf Course and to fill the lakes on the Golf Course may be reclaimed (effluent) or other non-potable water when available for such purposes. The irrigation water is not potable (drinkable) water and consumption of such irrigation water by humans or animals may cause severe illness.

(vii) The Property is subject to a golf ball easement, as set forth in **Section 3.10** of this Declaration, and play on the Golf Course may result in damage to a Dwelling or other Improvements on Units or Common Elements as a result of golf balls leaving the Golf Course, including damage to windows and exterior areas of Dwellings and other Improvements, damage to automobiles and other personal property of the Unit Owners and Residents and their families, invitees and licensees whether outdoors or within a Dwelling or other building, and injury to persons.

(viii) At the option of the Golf Course Owner (subject to any required approval of Master Declarant and/or the Master Association and/or any other third party pursuant to a Recorded instrument), fencing, screening, landscaping and other features may be incorporated into the Golf Course (Including areas adjacent to Units and Common Elements); furthermore, any Improvements within the Golf Course (Including tee boxes, greens, water and sand hazards and course layout) may be relocated, reconfigured, eliminated, added or modified from time to time (subject to any required approval of Master Declarant and/or the Master Association and/or any other third party pursuant to a Recorded instrument), which actions may affect the risk associated with golf balls entering the Community from the Golf Course.

(ix) Certain Units and Common Elements may be more susceptible to incursions and damage by golf balls than others.

(x) The Community is subject to certain covenants, conditions, restrictions and easements and benefits contained in the Golf Course Restrictions, Including easements for utilities, drainage and access, that may affect the Units and Common Elements.

11.2.2 Each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges, understands and agrees that the existence of the Golf Course may cause inconvenience and disturbance and possible injury or damage to persons and property. Each Unit Owner and Resident has considered the location of the Community and the Unit and Dwelling or other real property or Improvement being purchased or leased and its proximity to the Golf Course (and the possibility that any Golf Course layout modifications could in the future affect such proximity) before becoming a Unit Owner and/or Resident. By acceptance of a deed or by acquiring any interest in the Community, each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges the risks of the aforesaid nuisance, inconvenience, disturbance and possible injury, death or damage to persons and property.

11.2.3 Each Unit Owner and Resident, for himself and his family, invitees and licensees, hereby releases the Declarant Parties, the Association, Builders, the Golf Course Owner and any operator of the Golf Course from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this **Section 11.2**.

11.3 High Power Electric Transmission Lines; Release of Claims.

11.3.1 High power electric transmission lines and related towers, systems and other equipment, including an electric substation, are located along the southern boundary of the Community and may be upgraded and supplemented from time to time. The high power electric transmission lines, related towers, systems and other equipment and the electric substation are hereinafter referred to as the “Electric Facilities.” Each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges and agrees as follows:

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

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

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

11.3.3 Each Unit Owner and Resident hereby releases the Declarant Parties, the Association and Builders from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this **Section 11.3**.

11.4 Gated Entrances; Release of Claims.

11.4.1 Entrances leading into certain portions of the Community have an entry gate in order to limit vehicular access and to provide some privacy for the Unit Owners and Residents within such portions of the Community. Each Unit Owner and Resident, for himself and his family, invitees and licensees, acknowledges and agrees as follows:

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

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

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

11.4.3 Each Unit Owner and Resident, for himself and his family, invitees and licensees, hereby releases the Declarant Parties, the Association and Builders from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this **Section 11.4.**

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

ARTICLE 12 GENERAL PROVISIONS

12.1 Enforcement.

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

12.1.2 All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In the event the Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Governing Documents, the prevailing party in any such

action (Including any such action maintained under **Section 12.20**) shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in the action.

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

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

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

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

12.5 Amendment.

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

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

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

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

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

12.5.6 The provisions of **Sections 3.9, 3.10, 11.1 and 11.2 and Subsections 5.5.6 and 5.5.7** of this Declaration may not be amended without the written approval of the Golf Course Owner or the owner of any other Private Amenity affected by such amendment, as

applicable, with such approval having been endorsed on the Recorded amendment, and any such amendment Recorded without such approval being endorsed thereon shall be null and void.

12.5.7 Notwithstanding any other provision of this Declaration to the contrary, this Declaration may not be amended without the prior written approval of the Master Declarant or the Master Association, whichever is applicable pursuant to Section 4.2 of the Master Declaration, with such approval(s) having been endorsed on such amendment.

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

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

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

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

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

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

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

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

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

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

compliance that shall state the legal description of the Unit against which the notice of violation was Recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

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

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

12.18 Interpretation. Except for judicial construction, and subject to the terms and conditions of the Master Declaration, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction or any contrary interpretation by the Master Association, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control except to the extent the Declaration is inconsistent with the Act or the Master Declaration. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Design Guidelines, the Bylaws shall control. In the event of any conflict between this Declaration and a Supplemental Declaration, this Declaration shall control, although such documents shall be construed to be consistent with one another to the extent possible. The inclusion in any Supplemental Declaration of covenants, conditions and restrictions that are more restrictive or more inclusive than the provisions of this Declaration shall not be deemed to constitute a conflict with the provisions of this Declaration or the applicable Supplemental Declaration. In the event of any conflict between this Declaration and the Master Governing Documents, the Master Governing Documents shall control, although such documents shall be construed to be consistent with one another to the extent possible. The inclusion of any covenants, conditions and restrictions in this Declaration that are more restrictive or more inclusive than the provisions of the Master Governing Documents shall not be deemed to constitute a conflict with the provisions of the Master Governing Documents.

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

and such grantee's, Unit Owner's or other Person's heirs, executors, administrators, successors and assigns.

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

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

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

defect, which right shall continue until such time as the Dispute is resolved as provided in **Subsection 12.20.3**.

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

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

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

(i) Position Memoranda; Dispute Materials; Pre-Mediation Conference. Within fifteen (15) days after the selection of the mediator, each party shall (i) submit a brief memorandum setting forth its position with regard to the issues that need to be

resolved, and (ii) provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the Dispute that are not privileged. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within thirty (30) days following the submittal of the memoranda and shall be concluded within forty-five (45) days following the submittal of the memoranda unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Community is located or such other place as is mutually acceptable by the parties.

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

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

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

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

agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

12.20.6 Arbitration. Should mediation pursuant to **Subsection 12.20.5** above not be successful in resolving the Dispute, then the Person who delivered the Claim Notice shall have ninety (90) days after the date of termination of the mediation to submit the Dispute to binding arbitration. If timely submitted, such Dispute shall be resolved by binding arbitration through the American Arbitration Association in accordance with the Construction Industry AAA Rules, as modified or as otherwise provided in this **Subsection 12.20.6**. If the Person who delivered the Claim Notice fails to timely submit the Dispute to arbitration within the ninety (90) day period, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. A Person with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No Person may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. All Declarant Parties and any Person(s) with a Dispute and/or submitting a Claim Notice, together with any additional Persons who agree to be bound by this **Section 12.20.6**, such as contractors, subcontractors, brokers, suppliers, architects, engineers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Community (collectively, the "Bound Parties"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this **Subsection 12.20.6**, and waive the right to have the Dispute resolved by a court, including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause any Person who may be liable to any other Bound Party to be included in the arbitration proceeding. Subject to the limitations imposed in this **Subsection 12.20.6**, the arbitrator shall have the authority to try all issues, whether of fact or law.

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

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

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

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

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

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

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

12.20.7 WAIVERS

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by _____, the _____ Attorney-in-Fact _____ for PN II, Inc., a Nevada corporation d/b/a Del Webb, on behalf of the corporation.

Notary Public

My Commission Expires:

EXHIBIT A

PROPERTY SUBMITTED TO COMMUNITY

UNITS

PARCEL 1:

Lots 6, 7, 14, 15, 19, Lots 25 through 28, inclusive, Lots 32 through 43, inclusive, Lots 46, 47, 52 and 53, Lots 68 through 75, inclusive, Lots 81 through 83, inclusive, and Lots 121 through 124, inclusive, Final Map of WAGON TRAIL SUBDIVISION, according to Book 135 of Plats, page 87, Official Records, County Recorder, Clark County, Nevada.

PARCEL 2:

Lots 9 through 11, inclusive, Lots 20 through 31, inclusive, Lots 38 through 44, inclusive, Lots 54 through 57, inclusive, Lots 62 and 63, Lots 66 through 82, inclusive, Lots 89 and 90, and Lots 102 through 105, inclusive, Final Map of SPLIT RAIL SUBDIVISION, according to Book 134 of Plats, page 33, Official Records, County Recorder, Clark County, Nevada.

PARCEL 3:

Lots 36, 40, 41, 42, 43, 46, 50 and 52, Final Map for Unit 19A, BRANDING IRON SUBDIVISION, according to Book 135 of Plats, page 16, Official Records, County Recorder, Clark County, Nevada.

COMMON ELEMENTS

PARCEL A:

Common Elements A through E, inclusive, Final Map of WAGON TRAIL SUBDIVISION, according to Book 135 of Plats, page 87, Official Records, County Recorder, Clark County, Nevada.

PARCEL B:

Common Element A and Common Elements C through F, inclusive, Final Map of SPLIT RAIL SUBDIVISION, according to Book 134 of Plats, page 33, Official Records, County Recorder, Clark County, Nevada.

EXHIBIT A

PROPERTY SUBMITTED TO COMMUNITY

COMMON ELEMENTS (continued)

PARCEL C:

Common Elements A through L, inclusive, Final Map for Unit 19A, BRANDING IRON SUBDIVISION, according to Book 135 of Plats, page 16, Official Records, County Recorder, Clark County, Nevada.

EXHIBIT B

ADDITIONAL PROPERTY

PARCEL 1

Lots 1 through 5, inclusive, Lots 8 through 13, inclusive, Lots 16, 17, 18, Lots 20 through 24, inclusive, Lots 29 through 31, inclusive, Lots 44, 45, 48, 49, 50 and 51, Lots 54 through 67, inclusive, and Lots 76 through 80, inclusive, Lots 84 through 120, inclusive, and Lots 125 through 129, inclusive, Final Map of WAGON TRAIL SUBDIVISION, according to Book 135 of Plats, page 87, Official Records, County Recorder, Clark County, Nevada.

PARCEL 2

Lots 1 through 8, inclusive, Lots 12 through 19, inclusive, Lots 32 through 37, inclusive, Lots 45 through 53, inclusive, Lots 58 through 61, inclusive, Lots 64 and 65, Lots 83 through 88, inclusive, Lots 91 through 101, inclusive, and Lots 106 through 114, inclusive, Final Map of SPLIT RAIL SUBDIVISION, according to Book 134 of Plats, page 33, Official Records, County Recorder, Clark County, Nevada.

PARCEL 3

Lots 1 through 35, inclusive, Lots 37 through 39, inclusive, Lots 44, 45, 47, 48, 49, 51, and Lots 53 through 68, inclusive, Final Map for Unit 19A, BRANDING IRON SUBDIVISION, according to Book 135 of Plats, page 16, Official Records, County Recorder, Clark County, Nevada.

PARCEL 4

All Lots and Common Elements lying within the Final Map of ANTHEM AT MESQUITE – CONESTOGA CAMP, according to Book 134 of Plats, page 93, Official Records, County Recorder, Clark County, Nevada.

PARCEL 5

All Lots and Common Elements lying within the Final Map for Unit 4A, WATER BARREL SUBDIVISION, according to Book 135 of Plats, page 18, Official Records, County Recorder, Clark County, Nevada.

EXHIBIT B

ADDITIONAL PROPERTY

PARCEL 6

All Lots and Common Elements lying within the Final Map for Unit 19B, REUNION VALLEY SUBDIVISION , according to Book 135 of Plats, page 17, Official Records, County Recorder, Clark County, Nevada.

PARCEL 7

All Lots and Common Elements lying within the Final Map of ANTHEM AT MESQUITE – PRAIRIE SCHOONER, according to Book 135 of Plats, page 35, Official Records, County Recorder, Clark County, Nevada.

PARCEL 8

Parcels 1, 2, 3 and 5, MAP OF DIVISION INTO LARGE PARCELS, according to File 4 of Miscellaneous Maps, page 90, Official Records, County Recorder, Clark County, Nevada

PARCEL 9

Parcels 2 and 4 as shown by map thereof in File 112 of Parcel Maps, page 87, Official Records, County Recorder, Clark County, Nevada.

PARCEL 10

Parcels 1, 2 and 3 as shown by map thereof in File 113 of Parcel Maps, page 3, Official Records, County Recorder, Clark County, Nevada.

PARCEL 11

Parcel 2 as shown by map thereof in File 113 of Parcel Maps, page 11, Official Records, County Recorder, Clark County, Nevada.

PARCEL 12

Parcels 1 and 4 as shown by map thereof in File 113 of Parcel Maps, page 12, Official Records, County Recorder, Clark County, Nevada.

EXHIBIT B

ADDITIONAL PROPERTY

PARCEL 13

Parcels 1, 2 and 4 as shown by map thereof in File 113 of Parcel Maps, page 13, Official Records, County Recorder, Clark County, Nevada.

PARCEL 14

Parcel 2 as shown by map thereof in File 113 of Parcel Maps, page 93, Official Records, County Recorder, Clark County, Nevada.

