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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**AND**  
**GRANT AND RESERVATION OF EASEMENTS**  
**FOR**  
**SKYVIEW TERRACE HOMEOWNERS ASSOCIATION**

Apn #s - 176-04-1B-001  
Hrv 145

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND  
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SKYVIEW TERRACE HOMEOWNERS ASSOCIATION**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANT AND RESERVATION OF EASEMENTS FOR  
SKYVIEW TERRACE HOMEOWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS FOR SKYVIEW TERRACE HOMEOWNERS ASSOCIATION is dated for purposes of reference only as of this 21st day of November, 2017, and is made by American West Development, Inc., a Nevada Corporation ("Declarant").

**PREAMBLE:**

WHEREAS, Declarant is the Owner of the Property all of which is located in Clark County, Nevada, as is more fully described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Properties");

WHEREAS, it is the desire and intention of Declarant to establish certain covenants, conditions, restrictions, reservations, easements, equitable servitudes, Liens and charges upon the Properties and to create thereon a planned community as defined in Nevada Revised Statute 116.1201, for the purpose of enhancing and protecting the value, desirability and attractions of the Properties;

WHEREAS, the Common Elements, and the Improvements thereupon, the expense of which is to be equally shared by the Owners, include but are not limited to, as shown upon the recorded Final Maps of Badura Myers, recorded on May 10, 2017 in Book 153, page 0080 of Plats, in Book No. 20170510, Instrument No. 03368 Official Records of Clark County, Nevada, as may be amended from time to time, and as referenced on Exhibit "B" attached to this Declaration;

WHEREAS, Phase 1 consists of one hundred forty five (145) Lots and pursuant to Article of this Declaration the Declarant reserves the right, but is not obligated to and does not warrant, to annex into the Development additional Lots on Property which Declarant owns or may own as shown upon Exhibit "C" attached to this Declaration; and

NOW, THEREFORE, Declarant hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. Each of the provisions of this Declaration shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons having or acquiring any right, title or interest in the Property, or any

part thereof, including Declarant, its successors and assigns, and the Owners and their heirs, successors and assigns.

## **ARTICLE I DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases when used herein shall have the following specified meanings.

### **Section 1.1     Act.**

“*Act*” shall mean the Uniform Common Interest Ownership Act, NRS Chapter 116, as it may be amended from time to time.

### **Section 1.2     Allocated Interests.**

“*Allocated Interests*” shall mean the Liability for Common Expenses and votes in the Association, which are allocated to Lots in the Project. The Allocated Interests are described in Article VIII of this Declaration.

### **Section 1.3     Annexable Territory.**

“*Annexable Territory*” shall mean the Property that may, from time to time, be made subject to this Declaration pursuant to Article XIII hereof; provided that the maximum number of Lots that may be added to the property shall not exceed two-hundred (200) Lots, exclusive of the Lots in Phase 1. The Annexable Territory is referenced in Exhibit “B” attached hereto.

### **Section 1.4     Articles.**

“*Articles*” shall mean the Articles of Incorporation of the Skyview Terrace as such Articles may be amended from time to time.

### **Section 1.5     Assessment – Annual.**

“*Annual Assessment*” shall mean a charge against a particular Owner and his Lot, representing a portion of the Common Expenses that are to be levied among all Owners and their Lots in the Property, in the manner and proportions provided herein.

### **Section 1.6     Assessment – Special.**

“*Special Assessment*” shall mean a charge: (a) against a particular Owner, levied by the Board after Notice and Hearing, which is directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for damages to the Common Elements; (b) which the Board may from time to time levy against each Owner and his or her Lot, representing a

portion of the cost to the Association for reconstruction, maintenance or repair of any Improvements on any of the Common Elements.

**Section 1.7 Association.**

*"Association"* shall mean the Skyview Terrace Homeowners Association, a nonprofit corporation organized under NRS Chapter 82 and as an "Association" of owners pursuant to NRS 116.011.

**Section 1.8 Beneficiary.**

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

**Section 1.9 Board.**

*"Board"* shall mean the Board of Directors of the Association, elected in accordance with the Bylaws and this Declaration.

**Section 1.10 Budget.**

*"Budget"* shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration.

**Section 1.11 Bylaws.**

*"Bylaws"* shall mean the Bylaws of Skyview Terrace, as such Bylaws may be amended from time to time.

**Section 1.12 Close of Escrow.**

*"Close of Escrow"* shall mean the date on which a deed or other such instrument conveying title to a Lot in the Property is recorded.

**Section 1.13 Common Elements.**

*"Common Elements"* shall mean the Common Lots, Landscape Easements, Private Streets, entry and exit gates, landscape areas, and any Improvements thereon as set forth on the Map and exhibits attached to this Declaration and the entry monument(s), if any. The Common Elements may be subject to easements reserved by the Declarant or required by any governmental agency.

**Section 1.14 Common Expenses.**

*"Common Expenses"* shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of maintenance, management, reserves, operation, repair and replacement of the Common Elements as defined herein, and any improvements thereon, and any unpaid Special Assessments; the costs of all gardening and other services benefiting the Common Elements, if any; the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and Directors, Officer's and agent liability insurance, and other insurance covering the Common Elements and the Directors, Officers and agents of the Association; the costs of bonding of the Directors; taxes paid by the Association; amounts paid by the Association for discharge of any Lien or encumbrance levied against the Common Elements, or portion thereof; and the costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Common Elements, for the common benefit of the Owners.

**Section 1.15 Declarant.**

*"Declarant"* shall mean American West Development, a Nevada Corporation or its successors or assigns.

**Section 1.16 Declarant Control Period.**

*"Declarant Control Period"* shall mean the period of time during which the Declarant is entitled to appoint a majority of the members of the Board of Directors.

**Section 1.17 Declaration.**

*"Declaration"* shall mean this Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements for Skyview Terrace Homeowners Association, as it may be amended from time to time.

**Section 1.18 Deed of Trust.**

*"Deed of Trust"* shall mean a Mortgage as further defined herein.

**Section 1.19 Director(s).**

*"Director(s)"* shall mean a member of the Board elected in accordance with the Bylaws and this Declaration.

**Section 1.20 Family.**

*"Family"* shall mean one or more natural persons related to each other by blood, marriage or adoption, or one or more natural persons not all so related, but who legally maintain a common household within a Residence.

**Section 1.21 FHA.**

“*FHA*” shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States Government that succeeds to the FHA’s function of insuring notes secured by Mortgages on residential real estate.

Section 1.22 **FHLMC.**

“*FHLMC*” shall mean the Federal Home Loan Mortgage Association (also known as The Mortgage Association) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such Association.

Section 1.23 **Fiscal Year.**

“*Fiscal Year*” shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

Section 1.24 **FNMA.**

“*FNMA*” shall mean the Federal National Mortgage Association - a government-sponsored private Association established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such Association.

Section 1.25 **GNMA.**

“*GNMA*” shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successor to such association.

Section 1.26 **Guest.**

“*Guest*” shall mean any invited visitor of an Owner or Resident, including any employee, tenant, guests (whether or not for hire), licensee, agent or invitee of such Owner or Resident, including any transient guest, or any Family member of the Owner or Resident.

Section 1.27 **Improvements.**

“*Improvements*” shall mean all structures and appurtenances thereto of every type and kind, located on the Common Elements and on the Property including but not limited to, concrete, asphalt, drainage pipes, conduit, sidewalks, walkways, walls, gates, monuments, sprinkler and irrigation pipes, landscaping, rocks and boulders, hedges, windbreaks, trees and shrubs.

Section 1.28 **Landscape Easements.**



*"Landscape Easements"* shall mean that portion of the Property designated as Landscape Easements (L.E.) as shown on the Map and as referenced on Exhibit "C" attached to this Declaration. The Landscape Easements and all appurtenances thereto are to be maintained by the Association.

**Section 1.29 Lot.**

*"Lot"* shall mean each and every individual, physical portion of the Property designated for separate Ownership, and which is an intended or proposed site for one Residence and may include all Improvements upon a Lot as well as portions of the Lot designated as Public Drainage Easement, Landscape Easement, Sanitary Sewer Easement, Utility Easement, Public Utility Easement, Traffic Control Device and Street Light Easement as set forth on the Map and as may be referenced on exhibits attached to this Declaration, as well as any other easements reserved by the Declarant or required by any governmental agency.

**Section 1.30 Maintenance Funds.**

*"Maintenance Funds"* shall mean the accounts created for receipts and disbursements of the Association pursuant to Article 3 hereof.

**Section 1.31 Manager.**

*"Manager"* shall mean the Person employed by the Association pursuant to and limited by the provisions of this Declaration, and delegated the duties, powers or functions of the Association as limited by the terms of this Declaration, the Bylaws and the terms of the agreement between the Association and said Person.

**Section 1.32 Map.**

*"Map"* shall mean (i) the Recorded Final Map of Badura Myers recorded on May 10, 2017, in Book 153, Page 0080 of Plats, in Book No 20170510, Instrument No. 03368, Official Records of Clark County, Nevada, as may be amended from time to time; and (ii) the Recorded Final Map on any Property defined as a Phase of Development or Annexable Territory herein. Attached hereto as Exhibit "B", for reference purposes only, is a site plan for the Lots and Common Elements within Property.

**Section 1.33 Member, Membership.**

*"Member"* shall mean any Owner. *"Membership"* shall mean the voting and other rights, privileges and duties of Members as provided herein.

**Section 1.34 Member in Good Standing.**

*"Member in Good Standing"* shall mean any Owner who does not have any unpaid or past due Annual Assessment, Special Assessment or construction penalties that are required to be paid to the Association.

**Section 1.35 Mortgage.**

*"Mortgage"* shall mean any Recorded Mortgage or Deed of Trust relating to one or more Lots or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance.

**Section 1.36 Mortgagee, Mortgagor.**

*"Mortgagee"* shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust. *"Mortgagor"* shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term *"Trustor"* shall be synonymous with the term *"Mortgagor"* and the term *"Beneficiary"* shall be synonymous with the term *"Mortgagee"*.

**Section 1.37 Notice and Hearing.**

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

**Section 1.38 Officer(s).**

*"Officer(s)"* shall mean the person elected annually by the Board at the organizational meeting of each new Board, in accordance with the Bylaws of the Association and this Declaration, to fill one of the offices identified in the Bylaws.

**Section 1.39 Owner.**

*"Owner"* shall mean the Person or Persons, including Declarant holding record fee simple interest to all or any interest in a Lot, excluding those having such interest merely as security for the performance of an obligation. The term *"Owner"* shall include a seller under an executory contract of sale but shall exclude Mortgagees.

**Section 1.40 Person.**

*“Person”* shall mean a natural individual or any other entity with the legal right to hold title to Property.

**Section 1.41 Phase of Development.**

*“Phase of Development”* shall mean: (a) Phase 1 or (b) any portion of the Property covered by a Notice of Addition recorded pursuant to Article 11 hereof, unless otherwise defined in such Notice of Addition.

**Section 1.42 Property.**

*“Property”* shall mean all of the Property more particularly described in Exhibit “A” attached to this Declaration.

**Section 1.43 Record or Recordation.**

*“Record” or “Recordation”* shall mean, with respect to any document, the recordation or filing of such document in the Office of the Clark County Recorder.

**Section 1.44 Resident.**

*“Resident”* shall mean any Person who is legally residing in a Residence on a Lot with a legal right to do so, for so long as said Person is so residing, including, but not limited to, an Owner or a tenant.

**Section 1.45 Subsidy Agreement.**

*“Subsidy Agreement”* shall mean an agreement of the type which may be described in this Declaration.

**Section 1.46 VA.**

*“VA”* shall mean the Department of Veterans Affairs of the United States of America and any department or agency of the United States government that succeeds to VA’s function of issuing guarantees of notes secured by Mortgages on residential real estate.

**ARTICLE II  
THE ASSOCIATION**

**Section 2.1 Organization of Association.**

The Association is incorporated under the name of Skyview Terrace Homeowners Association, as a nonprofit Association organized under the provisions of Section 82 of the Nevada Revised Statutes.

**Section 2.2 Duties and Powers.**

The duties and powers of the Association are limited to the following:

(a) The Association, acting through the Board, shall have the right and responsibility to enter into contracts for the design, installation or construction of capital Improvements on the Common Elements;

(b) The Association, acting through the Board may, at any time, and from time to time inspect design, install, construct, reconstruct, repair, replace, maintain, or refinish any Improvements, or portions thereof, upon the Common Elements in accordance with the original design, finish or standard or any accepted modification thereof for construction of such Improvements.

(c) The Association, acting through the Board, shall have the power, but not the duty, to enter into contracts with Owners or other persons to provide services or to maintain and repair Improvements within the Property and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration; provided, however, that any such contract shall provide for the payment to the Association for the costs of providing such services or maintenance; and

(d) The Association, acting through the Board, shall have all other powers necessary to fulfill its obligations under this Declaration, the Bylaws and the Articles of Incorporation; and

(e) The Association shall have all other powers, as set forth in this Declaration, the Bylaws and the Articles of Incorporation.

**Section 2.3 Partition.**

There shall be no judicial partition of the Common Elements, or any part thereof, nor shall Declarant, any Owner or any other Person acquiring any interest in any Lot in the Property seek any such judicial partition.

**Section 2.4 Members' Easements in Common Elements.**

Subject to the provisions of this Declaration, every Member of the Association shall have, for himself/herself, his or her family, guest and/or tenant, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Elements, and such easements shall be appurtenant to and shall pass with title to every Lot in the Property.

#### **Section 2.5 Waiver of Use.**

No Owner may exempt himself/herself from personal liability for Assessments, duly levied by the Association, or effect the release of his or her Lot from the Liens and charges thereof, by waiving use and enjoyment of the Common Elements or by abandoning his or her Lot.

#### **Section 2.6 Membership.**

Every Owner, upon becoming the Owner of a Lot, shall automatically become a Member of the Association, and shall remain a Member thereof until such time as his/her ownership ceases, at which time his/her Membership in the Association shall automatically cease. Ownership of a Lot shall be the sole qualification for Membership in the Association. Membership in the Association shall not be assignable except to the Person to which title to the Lot has been transferred, and every Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. The rights, duties, privileges and obligations of all Members of the Association shall be as provided in this Declaration, Articles and Bylaws of the Association.

#### **Section 2.7 Transfer.**

The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Lot, and then only to the purchaser or Mortgagee of such Lot. A prohibited transfer is void and will not be reflected upon the books and records of the Association. A Member who has sold his or her Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to the contract purchaser his or her Membership rights in the Association. The delegation shall be in writing and shall be delivered to the Board before the contract purchaser may vote. However, the contract seller shall remain liable for all charges and Assessments attributable to his Lot until fee title to the Lot sold is transferred at the Close of Escrow. If the Owner of any Lot fails or refuses to transfer his Membership to the purchaser of the Lot after Close of Escrow, then the Board shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer has been presented to the Board, the purchaser shall not be entitled to vote at meetings of the Association.

The Association may levy a reasonable transfer fee as approved by the Board against a new Owner and his or her Lot (which fee shall be charged to the new owner through the escrow) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association.

#### **Section 2.8 Transfer of Common Elements.**

The Association is responsible for all design, installation, maintenance, repair and replacement of the Common Elements upon transfer from the Declarant.

## Section 2.9 **Board of Directors.**

The affairs of the Association shall be managed by and (unless otherwise provided herein) undertaken through actions of the Board of Directors which may, by resolution, delegate any portion of its authority permitted by law to an executive committee created by the Bylaws of the Association. The number and qualifications of Directors and their terms of office shall be as provided in the Articles of Incorporation and Bylaws.

## Section 2.10 **Easements and Licenses.**

(a) *Easement of Record.* The Common Elements and Lots within the Project are subject to certain easements or licenses which are (a) of public record, (b) shown on Plats, (c) of an apparent nature (including without limitation easements for telephone, electricity, natural gas, cable television, fiber optic cable, water, sanitary sewer, storm sewer, and drainage, which may serve portions of the Property and/or other Property), and/or (d) otherwise contained herein. In addition, the Project may be subject to other easements or licenses granted by Declarant pursuant to its powers under this Declaration, liens created under this Declaration, and easements granted by the Association pursuant to its powers under this Declaration.

(b) *Encroachment Easement.* The Project, and all portions thereof, shall be subject to an easement of up to one foot from the Lot border lines or Common Elements boundaries for the actual extent of encroachments created by construction as designed or constructed by Declarant, including its contractors and subcontractors, and for settling, shifting, and movement of any portion of the Property, except that no such easement is created for an encroachment which is the result of willful conduct on the part of Declarant, an Owner, a tenant, the Association, or any other person or entity. A valid easement for said encroachments and for the maintenance thereof shall exist. Such encroachments shall not be considered to be encumbrances upon any part of the Project. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of improvements constructed on any Lot, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any improvements on the Property.

(c) *Utility Easement.* There is hereby created a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including, but not limited to water, sewer, gas, telephone, electrical, television and a master communications system. By virtue of this easement, it will be expressly permissible and proper for the County of Clark, any other municipality, or companies providing electrical, television, telephone and other communication services to install and maintain necessary equipment on the Property and to affix and maintain electrical, television, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement will use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Association and Declarant; will prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible; and will restore the surface to its original condition as soon as possible after completion

of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, either Declarant or the Association will have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement will in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

(d) *Easement for Expansion and Warranty Obligations.* Declarant hereby reserves to itself and for Owners of Lots in all future phases of the Project a perpetual easement and right-of-way and access over, upon, and across the Property for construction, utilities, drainage, ingress and egress, and for use of the Common Elements. The location of said easements and rights-of-way may be made certain by Declarant or the Association by recorded documents.

(e) *Reservation of Easements. Exceptions, and Exclusions.* Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Elements, for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, ducts, shafts, flues, and conduit installation areas, and to create other reservations, exceptions, and exclusions consistent with the ownership of the Project for the best interest of all the Owners and the Association, in order to serve all the Owners within the Project as initially built and expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, rights of ingress and egress, and exclusions convenient or necessary for the use and operation of any other property of Declarant, as long as it does not materially hamper the enjoyment of the Project, as built or expanded, by the Owners.

(f) *Drainage Easement.* An easement is hereby reserved to Declarant and granted to the Association, and their respective officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property. Best efforts shall be made to use this easement so as to disturb as little as possible the uses of the Owners, the Association and Declarant, as applicable, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work. Declarant shall inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval shall not be unreasonably withheld.

(g) *Maintenance Easement – Lots.* An easement is hereby reserved to Declarant, and granted to the Association, and any Director or Manager, and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Lots and a right to make such use of the Lots as may be necessary or appropriate to make emergency repairs or to

perform the duties and functions which the Association is obligated or permitted to perform pursuant to the governing documents, including the right to enter upon any Lot for the purpose of performing maintenance to the hardscaping or the exterior of Improvements to such Lot (including without limitation the perimeter walls) as required and/or authorized by the Documents. The Association shall not unreasonably interfere with the rights of the Owners in the use of this easement.

*Common Elements – Landscape Easements.* An easement is hereby reserved and granted to the Declarant and the Association and its Directors, Managers, officers, agents, employees, and assigns, upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including without limitation, the right to enter upon the Common Elements for the purpose of performing maintenance to the landscaping or the exterior of Improvements thereon as required by this Declaration.

(h) *Private Street Access Easements.* Declarant hereby grants to the Association and each Owner, and their respective guests, tenants, invitees, successors, and assigns, a non-exclusive easement over the Private Streets (including, without limitation, those which may yet be built from time to time), for vehicular and pedestrian access, ingress and egress to the Property, Lots and Common Elements, and for vehicular parking (collectively the “*Private Street Access Easements*”). Each Private Street Access Easement shall run with the land.

(i) *Easements for Declarant Banners and Signs.* Declarant hereby reserves an easement over and across all Lots and Common Areas to place signs and/or flags identifying Declarant and/or the Project and indicating that Lots are available for sale. Such easements shall automatically terminate ten (10) years after the initial conveyance of such Lot by Declarant (or any of its affiliates) to a Purchaser (as defined in the Act). Said Easement further allows Declarant, including its employees, representatives, agents and customers, to access any model homes through the drainage easement at the east end of Carpenter Creek Avenue.

(j) *Easements Deemed Created.* All conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Section appears in the instrument for such conveyance.

#### **Section 2.11 Repair and Maintenance by the Association.**

(a) *Maintenance Standards.* Subject to the Articles pertaining to destruction of Improvements and to eminent domain, the Association shall maintain, repair and replace the Common Elements, and any Improvements thereon, or shall contract for such maintenance, repair and replacement to assure maintenance of the Common Elements, and Improvements thereon, in a clean, sanitary and attractive condition reasonably consistent with prudent property



management practices and the Budget. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Elements.

(b) *Charges to Owners.* All such costs of maintenance, repairs and replacements for the Common Elements shall be paid for as Common Expenses out of the Maintenance Funds as provided in this Declaration. The cost of any maintenance, repair or replacement by the Association which is not the responsibility of the Association or which arises out of, or is caused by, the act of an Owner, Resident, or such Owner's or Resident's Family or Guests shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner.

Notwithstanding the foregoing, an Owner is responsible for any costs incurred by the Association for damages to the Common Elements resulting from an Owner building within or placing any type of Improvements on the Common Elements or any other Property for which the Association has the obligation to maintain under this Declaration.

#### **Section 2.12 Reservations.**

The perimeter walls shall be maintained, repaired, replaced and restored by the Owner of the Lot. The Association reserves the right, but not the obligation, after notice and providing an opportunity to be heard, to inspect, maintain, repair, replace, the Perimeter Walls if an Owner shall fail to satisfy his or her obligations with regard to same. The cost of any maintenance, repair or replacement by the Association which is not the responsibility of the Association or which arises out of, or is caused by, the act of an Owner, Resident or such Owner's or Resident's Family or Guest shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner or Resident.

#### **Section 2.13 Damage by Member.**

To the extent permitted by Nevada law, each Member shall be liable to the Association for any damage to the Common Elements which are not fully reimbursed to the Association by insurance if such damage is sustained due to the negligence, willful misconduct or unauthorized or improper use of any Common Elements, or Improvements thereon, by the Member or Resident or the Member's or Resident's Family or Guests, or any other Persons deriving their right and easement of use and enjoyment of the Common Elements from the Member, or his or her, or their respective Family and Guests. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as provided in the Bylaws, to levy a Special Assessment against such Members equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the Person for whom the Member may be liable as described above. In the case of joint ownership of a Lot, the liability of the Owners shall be joint and several, except to the extent that

the Association shall have previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against such Member's Lot, and may be enforced as provided herein.

#### **Section 2.14 Use of Agent.**

The Board, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. If the Association employs a community management agent, then the manager must hold a certificate to engage in community management issued by the Nevada Real Estate Division. Unless otherwise prohibited by law, the *maximum* term of any such contract ("*Management Contract*") shall be three (3) years, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association, in which case the maximum term of the Management Contract shall be three (3) years. The maximum term of any contract providing for Declarant's services to the Association or the Property shall also be three (3) years. Each such contract for Declarant's services and each Management Contract shall provide for its termination by either party thereto with cause upon no more than thirty (30) days' written notice to the other party, and without cause and without payment of a termination fee upon no more than ninety (90) days' written notice to the other party.

#### **Section 2.15 Landscape Easement.**

No Owner may obstruct, construct, install, or place any Improvement within or upon the Landscape Easements as shown upon Exhibits attached to this Declaration.

### **ARTICLE III ALLOCATED INTERESTS**

#### **Section 3.1 Allocation of Interests.**

The Allocated Interests shall be allocated and calculated in accordance with the formulas set forth in this Article. The same formulas are to be used in reallocating interests if Lots are added to the Project pursuant to this Declaration.

#### **Section 3.2 Formulas for the Allocation of Interests.**

The interests allocated to each Lot have been calculated by the following formulas:

(a) *Liability for Common Expenses.* The percentage of Liability for Common Expenses allocated to each Lot shall be one equal share for each Lot. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Lots under Article V of this Declaration.

(b) *Votes.* Each Lot in the Project shall have one (1) vote with regard to Association matters.

**Section 3.3 Assignment of Allocated Interests Pursuant to Exercise of Development Rights.**

The effective date for assigning Allocated Interests to Lots created pursuant to this Declaration shall be the date on which the amendment creating the Lots is recorded in the Recorder's Office for Clark County, Nevada.

**ARTICLE IV  
PROJECT AND ASSOCIATION**

**Section 4.1 Project.**

The name of the Project is Skyview Terrace ("Project"), a planned community under the Act.

**Section 4.2 Association.**

The name of the Association is Skyview Terrace Homeowners Association. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be consistent with the provisions of this Declaration.

**ARTICLE V  
MAINTENANCE FUNDS AND ASSESSMENTS**

**Section 5.1 Personal Obligation of Assessments.**

Declarant, on behalf of itself and all future Owners, hereby covenants and agrees to pay, and each Owner by accepting title to a Lot or any interest therein, whether or not it shall be expressed in the deed or other instrument conveying title, shall be deemed to covenant and agree to pay to the Association, Annual Assessments, Special Assessments, and other amounts as required or provided for in this Declaration. Each Owner shall bear personal liability for the payment of all Assessments which are allocable to his/her Lot. Amounts payable for Annual Assessments and Special Assessments are generally referred to herein as "Assessments." Other amounts payable by an Owner to the Association, (or payable with respect to an Owner's Lot), including charges, fines, interest, attorneys' fees and other costs or expenses incurred by the Association in collecting unpaid amounts shall be added to the Annual or Special Assessments

charged to his or her Lot and shall be enforceable and collectible as Annual or Special Assessments to the extent permitted by law.

Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Annual or Special Assessments, including, without limitation, power and authority to determine where, when and how Assessments shall be paid to the Association, and each Owner shall comply with all such determinations.

#### **Section 5.2 Apportionment of Common Expenses.**

Except as otherwise provided in this Declaration, all Common Expenses shall be assessed at a uniform rate for all Lots in accordance with the percentage of Liability for Common Expenses as set forth in this Declaration. Notwithstanding the foregoing, annexed property may not share the same amenities and, on that basis, the Owners of certain annexed Lots may be charged assessments at a rate which is difference from other Owners.

#### **Section 5.3 Common Expenses Attributable to Fewer than all Lots: Exempt Property.**

(a) Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited. The expenses, costs and fees of maintenance, improvement, repair and replacement by the Association of Common Elements that are a Limited Common Elements, if any, shall be assessed to the Owners of the Lots to which such Limited Common Elements are allocated.

(b) An assessment to pay a judgment against the Association may be made only against the Lots in the Project at the time the judgment was entered, in proportion to their respective Liability for Common Expense.

(c) If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Lot.

(d) If the Liability for Common Expenses is reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

(e) Fees, charges, late charges, fines, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments against that Owner's Lot.

(f) The following portions of the Property shall be exempt from the assessments, charges, and liens created herein:

(1) All properties dedicated and accepted by a governmental municipality and devoted to public uses, whether the governmental municipality's interest is

represented by a fee ownership, by an easement, or in any other form of property ownership;

- (2) All utility lines and easements; and
- (3) The Common Elements.

#### **Section 5.4 Maintenance Funds.**

The Board of Directors shall establish no fewer than two (2) separate Association Maintenance Funds, into which shall be deposited all funds paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (1) an Operating Account for current Common Expenses of the Association, (2) an adequate Reserve Account for Capital Improvements, replacements, and repairs of the Common Elements (which cannot normally be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for policies of insurance which the Association obtains and (3) any other funds which the Board may establish to the extent necessary under the provisions of this Declaration. Nothing contained herein shall limit, preclude or impair the establishment of additional Association Maintenance Funds, so long as the amounts assessed to, deposited into, and disbursed from any Association Maintenance Funds are earmarked for specified purposes authorized by this Declaration.

#### **Section 5.5 Purpose of Assessments.**

The Assessments levied by the Association shall be used exclusively for the operation, replacement, improvement and maintenance of the Common Elements, and to discharge any other obligations of the Association under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from the Operating Account shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Account are to be used. Only the Board shall make disbursements from the Reserve Account for the purposes specified in the Declaration. Nothing in this Declaration shall be construed in such a way as to permit the use of Assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Property. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws.

#### **Section 5.6 Fiscal Year and Determination of Budget.**

The Fiscal Year of the Association shall be the calendar year. Prior to the commencement of each Fiscal Year, the Board shall adopt a proposed Budget for the Association for such Fiscal Year in the following manner:

(a) *Operating Budget.* The Board shall prepare or cause to be prepared and approve an operating budget for the Fiscal Year showing, in reasonable detail, the financial plan for the day-to-day operation of the Association, plus the contribution of funds required by the Operating Budget. The Board shall follow the applicable provisions of NRS 116.31151.

(b) *Reserve Fund.* The Board shall also determine the amount to be set aside, in a reserve fund allocated for any maintenance and replacement of Improvements not required to be performed annually.

The Board shall at least once every five (5) years cause to be conducted a study of the reserves required to repair, replace and restore the major components of the Common Elements. At least annually, the Board of Directors shall review the results of the study to determine whether those reserves are sufficient and, at least annually, make any adjustments to the Association's funding plan which the Board deems necessary to provide adequate funding for the required reserves. The study of the reserves required herein shall comply with the requirements of NRS 116.31152.

#### **Section 5.7 Assessments – Annual.**

Annual Assessments shall commence on the earlier of January 1, 2019 or following the close of escrow of the last Lot in the Project. The Declarant may extend its offer to subsidize the Association's expenses at its discretion. The amount to be raised by Annual Assessments during a Fiscal Year shall be equal to (i) the Budget for such period, plus (ii) the Reserve Account to be set aside for said period, less the amount attributable to the Budget collected but not disbursed in the immediately preceding Fiscal Years or partial Fiscal Year; provided, however, that in lieu of such subtraction the Board may elect to refund said surplus to the Owners, utilize such funds to pay other common expenses, or to place the surplus in the Reserve Account.

If the Board fails to determine or causes to be determined the total amount to be raised by Annual Assessments in any Fiscal Year and/or fails to notify the Owners of the amount of such Annual Assessments for any Fiscal Year, then the amounts of Annual Assessments shall be deemed to be the amounts assessed in the previous Fiscal Year. Except as emergencies may require, the Association shall make no commitments or expenditures in excess of the funds reasonably expected to be available to the Association.

#### **Section 5.8 First Annual Assessment and Maximum Annual Increases.**

(a) *First Annual Assessment.* The initial Annual Assessment for the Fiscal Year in which Assessments first commence shall be calculated as determined from the Budget. The Board shall estimate and prepare a Budget for the costs and expenses to be incurred by the Association in fulfilling the financial obligations of the Association prior to the commencement of Annual Assessments.

(b) *Maximum Annual Increase.* Unless otherwise permitted by law, the Annual Assessments may be increased as provided herein. However, the Annual Assessment for a particular Fiscal Year shall not, without approval of the Members, be increased by an amount which is more than 125% of the last installment of Annual Assessments levied in the last quarter (or other installment period) of the immediately preceding Fiscal Year, annualized over an entire year, without approval of the Members. The Annual Assessment may be increased above such maximum if such increase is approved by Members holding a majority of the votes cast by each class of voting rights then in existence, at a meeting at which a quorum is present.

#### **Section 5.9 Assessments – Special.**

In addition to Annual Assessments, the Association may levy Special Assessments, payable over the period of a Fiscal Year (i) for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, maintenance, repair or replacement of the Common Elements; (ii) for the purpose of defraying any other expense incurred or to be incurred by the Association as provided in this Declaration; or (iii) to cover any deficiency in the event that, for whatever reason, the amount received by the Association from Annual Assessments is less than the amount determined to be necessary and assessed by the Board. Special Assessments for these purposes which exceed five percent (5%) of the budgeted gross expenses of the Association shall not be levied unless approved by Members holding a majority of the voting power of the Association. Special Assessments for the purpose of funding the reserve account do not require member approval.

#### **Section 5.10 Subsidy Agreements and Declarant Advances:**

(a) *Subsidy Agreements.* The Association is specifically authorized to enter into an agreement (a “Subsidy Agreement”) with the Declarant or other entities under which such party agrees to subsidize, directly or indirectly, the operating costs of the Association in exchange for a temporary suspension of Common Expense Assessments which would otherwise be payable by Declarant with respect to Units owned by Declarant and/or those Units owned by any Declarant affiliate, holding company, finance company or other third party, while the Unit is used by Declarant as model home and/or sales office.

(b) *Declarant Advances.* During the Declarant Control Period, Declarant shall have the right, but not the obligation, to advance funds and/or make loan(s) to the Association (“Declarant Advances”) from time to time for the sole purpose of paying Common Expenses in excess of Association funds then reasonably available to pay Common Expenses. The aggregate amount of any Declarant Advances outstanding from time to time, together with

interest at a reasonable rate established by Declarant, shall be repaid by Association to Declarant as soon funds are reasonably available therefore (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Common Expense Assessments and/or contributions to reserve accounts, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration, any Subsidy Agreement, or under applicable Nevada law).

#### **Section 5.11 Time for Payments.**

The amount of any Assessment, charge, or other amount payable by an Owner with respect to such Owner's Lot shall become due and payable as specified herein and if said payment is not received, then said Owner shall also be responsible for any late charges, interest, or attorneys' fees related thereto. Unless paid when due, any such amount shall bear interest as set forth in Section 3.9 below. Annual Assessments shall be paid and collected on a monthly basis, unless the Board agrees otherwise. Special Assessments shall be paid and collected as determined by the Board.

#### **Section 5.12 Delinquency.**

Any installment of an Assessment provided for in this Declaration shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board of Directors. Upon such delinquency, the full amount of the Assessment (i.e., not simply the delinquent Installment) may become due and payable upon notice to the Owner from the Board. The Board shall be authorized to adopt a system pursuant to which the full amount of any Annual Assessments or Special Assessments not paid within thirty (30) days after the due date, plus all reasonable charges, or other costs of collection, including attorneys' fees and late charges to the extent permitted by law, shall bear interest commencing sixty (60) days from the due date until paid at a rate equal to the prime rate of the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions on January 1<sup>st</sup> or July 1<sup>st</sup>, as the case may be, immediately preceding the date the assessment becomes past due, plus two (2%) percent. The rate shall be adjusted accordingly, on each January 1<sup>st</sup> or July 1<sup>st</sup> thereafter, until the balance is satisfied. The Board may also require the delinquent Owner to pay a late charge.

#### **Section 5.13 Creation and Release of Lien.**

All sums assessed in accordance with the provisions of this Declaration shall constitute a Lien on the respective Lot. A Lien under this Section is prior to all other Liens and encumbrances on a Lot except:

(a) Liens and encumbrances recorded before the recordation of the Declaration and, in a cooperative, Liens and encumbrances which the Association creates, assumes or takes subject to.



(b) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) A first security interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the Lot's Owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, except that a Lien under this Section is prior to a security interest described in this paragraph to the extent set forth below.

(d) Liens for any fee or charge levied pursuant to subsection 1 of NRS 444.520.

(e) To the extent permitted by law, a Lien under this section is prior to all security interests described in paragraph (b) above to the extent of:

- (1) Any charges incurred by the Association on a Lot pursuant to NRS 116.310312;
- (2) The unpaid amount of assessments, not to exceed an amount equal to assessments for Common Expenses based on the periodic budget adopted by the Association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the nine (9) months immediately preceding the date on which the Notice of Default and Election to Sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162; and
- (3) The costs incurred by the Association to enforce the Lien in an amount not to exceed the amounts set forth in subsection 5, unless Federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the Lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the Lien, the period during which the Lien is prior to all security interests described in paragraph (b) of subsection 2 must be determined in accordance with those Federal regulations, except that notwithstanding the provisions of the Federal regulations, the period of priority for the Lien must not be less than the six (6) months immediately preceding the recording of a Notice of Default and Election to Sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162 or the institution of a judicial action to enforce the Lien.

(f) The amount of the costs of enforcing the Association's Lien that are prior to the security interest described in paragraph (b) above 2 must not exceed the actual costs incurred by the Association, must not exceed any amounts specified by Nevada law.

The Lien shall relate only to the individual Lot against which the Assessment was levied and not to the Property as a whole. Upon payment to the Association of the full amount claimed in the Lien, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Release of Lien") stating the satisfaction and release of the amount claimed. The Board may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and Recordation of the Release of Lien before recording it. Any purchaser or encumbrance who has acted in good faith and extended value may rely upon the Release of Lien as conclusive evidence of the full satisfaction of the sums stated in the Lien. A Lien for unpaid Assessments is extinguished unless proceedings to enforce the Lien are instituted within three (3) years after the full amount of the Assessment becomes due.

#### **Section 5.14 Enforcement of Liens.**

It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration or in any other manner permitted by law. The Lien on a Lot may be enforced by sale of the Lot by the Association, the Association's attorneys, any title insurance company authorized to do business in Nevada, or other persons authorized to conduct the sale as a trustee, or in any other manner permitted by law, after failure of the Owner to pay any Annual or Special Assessment, or installments thereof, as well as any charges, late charges, interest or attorneys' fees as provided herein. The sale shall be conducted in accordance with the provisions of Nevada law. The Association, through its agents, shall have the power to enter a credit bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Residence, and the defaulting Owner shall be required to pay the reasonable rental value for such Residence during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid Assessments, charges, penalties, fines, late charges, interest or attorneys' fees, shall be maintainable without foreclosing or waiving any Lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this section may include reasonable attorneys' fees as fixed by the Court.

#### **Section 5.15 Capital Contributions.**

Upon acquisition of record title to a Lot from Declarant, each Owner of a Lot shall contribute to the capital of the Association an amount equal to Three Hundred Dollars (\$300.00). This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed there from to the Association or to Declarant if Declarant has previously advanced such funds to the Association. If disbursed to the Association, the Association shall deposit Two Hundred

Dollars (\$200.00) into the Operating Account and One Hundred Dollars (\$100.00) into the Reserve Account.

## **ARTICLE VI INSURANCE**

### **Section 6.1   Duty to Obtain Insurance.**

#### **(a)   *Liability Insurance:***

Liability insurance, including medical payments insurance, will be maintained as determined by the Board of Directors. This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and the activities of the Association.

Insurance policies carried pursuant to this Section shall provide that:

- (i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.
- (ii) The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner.
- (iii) An act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.
- (iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.
- (v) Losses must be adjusted with the Association.
- (vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and otherwise to the Association, but, in that case, it is to be held in trust for each Owner and the Owner's mortgagee.
- (vii) The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

(b) *Fidelity Bonds / Crime Coverage.* Fidelity bond or crime coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, Officers, Directors, trustees, employees and agents of the Association and employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than three (3) months of aggregate assessments on all Lots, plus reserve funds, or \$5,000,000.00, whichever is less.

(c) *Property Insurance Coverage.*

Property insurance will cover:

- (i) All fixtures, equipment and any improvements and betterments which are affixed to or a part of the Common Elements; and
- (ii) All personal property owned by the Association.
- (iii) The insurance will be for an amount (after application of any deductions) equal to 100 percent of the actual cash value of the covered items at the time the insurance is purchased and at each renewal date.

(d) *Other Insurance.* The Board may purchase such other insurance, as the Board may deem necessary, including but not limited to, errors and omissions, Director's, Officer's and agents liability insurance, medical payments, malicious mischief, liquor liability, casualty, flood and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

(e) *Beneficiaries.* Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein.

(f) *Owner Policies.* It is the responsibility of each Owner to provide insurance on his or her such Lot, personal property and all other property and Improvements on or part of the Lot. Nothing herein shall preclude any Owner from carrying any liability insurance as such Owner deems desirable to cover the Owner's individual liability for damage to person or property occurring on or within the Owner's Lot or elsewhere upon the Real Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association.

## **Section 6.2 Waiver of Claim Against Association.**

As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one

another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

#### **Section 6.3    Notice of Expiration Requirements.**

If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its term, without thirty (30) days prior written notice to the Board and Declarants, and to each Owner and Beneficiary, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds or crime coverage shall provide that they may not be canceled or substantially modified without thirty (30) days prior written notice to any insurance trustee and to each FNMA service who has filed a written request with the carrier for such notice.

#### **Section 6.4    Insurance Premiums.**

Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the Annual Assessments levied by the Association and collected from the Owners.

#### **Section 6.5    Trustee for Policies.**

The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insured under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies shall be paid to the Board as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the Property for which the insurance was carried or otherwise disposed of. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 5.4 of this Declaration. Any two (2) Officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insures. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

#### **Section 6.6    Actions as Trustee.**

Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of a majority of the Mortgages held by First Mortgagees who have filed requests for notice. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

#### **Section 6.7    Annual Insurance Review.**

The Board shall review the insurance carried by or on behalf of the Association at least annually for the purpose of determining the adequacy of the casualty and fire insurance carried by the Association.

#### **Section 6.8    Required Waiver.**

All policies of physical damage and liability insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a)    any defense based upon coinsurance;
- (b)    any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (c)    any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;
- (d)    notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot; and
- (e)    any right to require any assignment of any Mortgage to the insurer.

Each such policy shall also provide that each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or Membership in the Association.

### **ARTICLE VII DESTRUCTION OF IMPROVEMENTS**

#### **Section 7.1     Restoration of the Property.**

Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Elements, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair to a reasonably similar condition, as it had been prior to the incident, as promptly as practical. The proceeds of any insurance maintained for reconstruction or repair of the Common Elements shall be used for such purpose, unless (a) the Association is terminated; (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or (c) eighty percent (80%) of the Owners' vote not to rebuild. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Elements shall be reconstructed or rebuilt substantially in accordance with the applicable Map and the original construction plans if they are available, unless changes have been approved in writing by sixty-seven percent (67%) of the Owners and by the Beneficiaries of fifty-one percent (51%) of First Mortgages upon the Lots. A Special Assessment shall be levied by the Board to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the entire Property is not repaired or replaced, then the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Property.

#### **Section 7.2     Partition.**

No Owner shall have the right to partition his or her interest in the Lot and there shall be no judicial partition of the Property, or any part thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in any Lot. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Lot, and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Property and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

#### **Section 7.3     Residence Damage.**

Restoration and repair of any damage to any individual Residence shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article, such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board as provided herein.

#### **Section 7.4     Notice to Owners and Listed Mortgagees.**

The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Elements, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of First Mortgages on Lots in the Property, who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Lot, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Lot who has filed a written request for such notice with the Board.

## **ARTICLE VIII EMINENT DOMAIN**

The term "*taking*" as used in this Article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Members, with the exception of the Secretary, Department of Veterans Affairs, or an officer of the United States of America, in any proceedings, negotiations, settlements, or agreements regarding taking. All taking proceeds for Common Elements which have been conveyed or granted to the Association shall be payable to the Association for the benefit of the Members and their Mortgagees. All taking proceeds for Lots and/or Common Elements that are owned by Declarant shall be paid to Declarant. Said proceeds shall be distributed to Members, Declarant and Mortgagees as provided for in this Declaration.

### **Section 8.1     Condemnation of Common Elements.**

If there is a taking of all or any portion of the Common Elements, or any interest therein, other than the taking of an undivided interest therein taken as a result of the taking of a Lot, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Account. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation.

### **Section 8.2     Notice to Owners and Mortgagees.**

The Board, upon learning of any taking affecting a material portion of the Common Elements, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantors of Mortgages on request for such notice with the Association. The Board, upon learning of any taking affecting a Lot, or any threat thereof, shall promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Lot who has filed a written request for such notice with the Association.

## **ARTICLE IX RIGHTS OF MORTGAGEES**

Except as otherwise authorized by law, and notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust upon one (1) or more Lots made in



good faith and for value, provided that after the foreclosure of any such Deed of Trust such Lot(s) shall remain subject to this Declaration, as amended. For purpose of this Declaration, "*First Mortgage*" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Lot, and "*First Mortgagee*" shall mean the Beneficiary of a First Mortgage. For purposes of any provision of this Declaration which requires the vote or approval of a specified percentage of First Mortgagees, such vote or approval shall be determined based upon one (1) vote for each Lot encumbered by each such First Mortgage. In order to induce VA, FHA, FHLMC, GNMA and FNMA to participate in the financing of the sale of Lots within the Property, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration, these added provisions shall control): [?]

(a) Each Beneficiary, insurer and guarantor of a First Mortgage encumbering one (1) or more Lots, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (1) any condemnation or casualty loss which affects either a material portion of the Property or the Lot(s) securing the respective First Mortgage; and (2) any delinquency of sixty (60) days or more in the performance of any obligation under this Declaration, including without limitation the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the respective First Mortgage, which notice each Owner hereby consents to and authorizes; and (3) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Association; and (4) any proposed action of the Association which requires consent by a specified percentage of First Mortgagees.

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

(c) Subject to Section 3.10 of this Declaration, each Mortgagee of a First Mortgage encumbering any Lot which obtains title to such Lot, pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such Mortgages acquired title to such Lot.

(d) Unless at least sixty-seven percent (67%) of the First Mortgagees and sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, neither the Association, nor the Owners, shall:

- (1) by act or omission seek to abandon or terminate the Property; or
- (2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner; or
- (3) partition or subdivide any Lot or Residence; or

- (4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause); or
  - (5) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design, the exterior appearance or the maintenance of the Residences or the Common Elements; or
  - (6) fail to maintain or cause to be maintained fire and extended coverage insurance on insurable Common Elements as provided in Article 4 of this Declaration; or
  - (7) use hazard insurance proceeds for losses to any Association Property (i.e., Improvements to the Common Elements) for other than the repair, replacement or reconstruction of such Association Property, subject to the provisions of Article 5 of this Declaration; or
  - (8) change the pro rata interest or obligations of any Lot in order to levy Assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards or determine the pro rata share of Ownership of each Lot in the Common Elements.
- (e) All Beneficiaries, insurers and guarantors of First Mortgages, upon written request to the Association, shall have the right to:
- (1) examine current copies of the Association's books, records and financial statements during normal business hours; and
  - (2) require the Association to submit a copy of the annual audited financial statement to the entity requesting the statement provided one has been prepared; and
  - (3) receive written notice of all meetings of Owners; and
  - (4) designate in writing a representative who shall be authorized to attend all meetings of Owners.
- (f) All Beneficiaries, insurers and guarantors of First Mortgages, upon written request, shall be given thirty (30) days' written notice prior to the effective date of (1) any proposed material amendment to the Declaration or Maps; (2) any termination of an agreement

for professional management of the Property following any decision of the Owners to assume management of the Property.

(g) The Reserve Account must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large Special Assessments except where necessary to replenish such account.

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

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

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

## **ARTICLE X USE RESTRICTIONS**

Each of the following use restrictions are subject to other provisions of this Declaration with respect to obtaining Architectural Review Committee approval for any construction or Improvement.

### **Section 10.1 Single Family Use.**

Lots within the Property shall be used exclusively for private, single-family residential purposes and no structure whatsoever, other than one detached, single family, private Residence which may include a private garage for not more than two (2) cars constructed by Declarant, or its contractors during the original construction of the Property, and such other structures as may, from time to time, be approved by the Architectural Review Committee, may be erected or maintained thereon at any one time.

### **Section 10.2 Community Use.**

No Residence shall be used for business, commercial, manufacturing, storage, vending or other non-residential purposes, other than occupations conducted in compliance with applicable governing ordinances and/or which are incidental to the residential use of any Lot within the Property. Ingress and egress of vehicles associated with the occupational use of Residences shall be limited so as not to cause a nuisance.

#### **Section 10.3 Leasing.**

Owners may lease his, her or their Residence for single family purposes provided that the Residence is leased pursuant to a written agreement which is (a) for a term of at least six (6) months and (b) subject to the terms of this Declaration and any Rules which may be adopted by the Board of Directors. Copies of all leases, including renewals thereof, must be delivered to the Association prior to their effective dates.

#### **Section 10.4 Trash.**

No trash receptacle of any kind or nature shall be left on the public streets or sidewalks, except for the sole purpose of scheduled municipal trash removal and only on days designated by an authorized trash removal company. Except as otherwise authorized by law, no trash receptacle shall be placed or stored between the Residence and the front property line of the Lot. Such receptacles shall be stored only in a side yard in an area adjacent to the Residence and the side property line or rear yard and behind a screened gate, or inside the garage of the Residence.

#### **Section 10.5 Exterior Attachments.**

No device, structure or fixture of any kind, including but not limited to solar panels, solar receptors or systems, wiring of any kind, water softeners, or other appliances or equipment shall be installed, mounted, placed or affixed to the exterior walls or the roof of a Residence within the Property (with the exception of those items installed during the original construction of a Residence), unless the prior written approval of the Architectural Review Committee has first been obtained. The Architectural Review Committee or the Board of Directors may, but shall not be required to, establish rules, regulations or other criteria for the installation of solar panels, solar receptors or systems to the extent permitted by law, wiring, water softeners or other appliances or equipment. These minimum standards are given by way of illustration only and do not remove the Owners obligation to submit a request for approval to the Architectural Review Committee or restrict the Architectural Review Committee from adopting other similar or related standards as conditions to approval, including, but not limited to, visual impact, color and harmony with existing construction.

Any satellite dish, antenna, or other video programming service ("*Antenna*"), that does not fall within the scope of, or is otherwise not covered by the provisions of 47 C.F.R. 1.4000 (*Telecommunications Act of 1996*), as may be amended from time to time, or any subsequent federal or state law, shall not be placed, permitted or maintained on any Lot, without the prior written consent of the Architectural Review Committee. Any antenna that falls within the scope

of, or is otherwise covered by, the provisions of 47 C.F.R. 1.4000, as may be amended from time to time, or any subsequent federal or state law, may be installed without the prior consent of the Architectural Review Committee so long as said device is placed at least ten (10) feet behind the front of the Residence. Notwithstanding the foregoing, prior to installing any Antenna, the Owner, Resident or occupant installing said Antenna must notify the Architectural Review Committee, in writing, of its intent to install the Antenna, the type of Antenna being installed and the location where the Antenna will be installed. The Board of Directors reserves the right to establish other preferred antenna placement locations for any Antenna subject to the provisions of 47 C.F.R. 1.4000, which will become effective upon publication to all Owners. The Board of Directors further reserves the right to object to the location of the Antenna consistent with the provisions of 47 C.F.R. 1.4000 and the published preferred antenna placement locations, as may be amended from time to time.

#### **Section 10.6 Subsurface Activities.**

No tools or equipment and no derrick or structure designed for use in boring for oil, minerals, gas or other similar substances, or designed for use in boring for water, or designed for use in any mining operation or exploration shall hereafter be erected or placed upon the Property; and no Owner of any Lots within the Property shall ever consent to the use of the surface of the land, or any portion of the subsurface thereof, by any lessee under any lease to be negotiated or under any lease now of record affecting any of said Lots, which lease pertains to the exploration, mining or operating for minerals, oil, gas or other hydrocarbon substance and the taking, storing, removing and disposition of same.

#### **Section 10.7 Landscaping Installation and Maintenance.**

Declarant shall install all Lots' front yard landscaping prior to the close of escrow for each Lot. Declarant shall have no responsibility however, for the care, maintenance and/or replacement of such landscaping after the close of escrow. An Owner may modify the Declarant installed landscaping only upon receiving ARC approval. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate or grow upon any Lots within the Property, or any portion thereof, so as to render said Lot a fire hazard, unsanitary, unsightly, offensive or detrimental to any other Lot within the Property, or the occupants thereof. The Owner of each Lot within the Property agrees to complete installation of landscaping on all other areas of said Lot within six (6) months from the date of conveyance of said Lot from Declarant and to care for, cultivate, prune and maintain in good condition any and all irrigation equipment, landscape material, hardscape, trees, lawns, and shrubs growing on said Lot. Should an Owner fail to maintain the landscape as described herein above, or fail to keep said Lot free from rubbish, brush, weeds, undergrowth or debris of any character, Declarant or Association, upon thirty (30) days written notice to the Owner of its intention to do so, shall have the right, but not the obligation, to enter upon said Lot after notice and hearing, in order to remove such rubbish, brush, weeds, undergrowth or debris or to perform such maintenance deemed reasonably necessary, and assess said Owner for the costs thereof.

Declarant or Association shall notify Owner in writing of the cost thereof. In the event such person or persons fails to remit to Declarant, such charges shall constitute a Lien on said Lot which may be enforced by Declarant or Association, in the same manner provided by law with respect to a mortgage or other Lien on Property. All other parties, other than Declarant or Association, having or occupying any right, title or interest in a Lot within the Property may cause the Owner of any Lot within the Property to complete installation of landscaping on all areas of said Lot within six (6) months from the date of close of escrow conveying title from Declarant and to keep said Lot free from rubbish, brush, weeds, undergrowth or debris of any character and to care for, cultivate, prune, and maintain in good condition any and all landscape irrigation, landscape material, hardscape, trees, lawns and shrubs growing on said Lots through the initiation of any appropriate judicial proceeding in law or in equity; provided that the Declarant, during the Declarant Control Period, and thereafter, the Association, may enter upon any Lot within the Property for the purpose of enforcing any of this Article.

#### **Section 10.8 Nuisance.**

No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to any other Owner or occupant of a Residence within the Property. No odors shall be permitted to arise from any portion of any Lot within the Property so as to render any such Lot unsanitary, unsightly, offensive or detrimental to any other Lot within the Property; and no nuisance shall be permitted to exist or operate upon any Lot within the Property so as to be offensive or detrimental to any other Lot within the Property or to the occupants thereof, and without limiting the generality of any of the foregoing provisions, no horns, barking dogs, whistles, bells, or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any Lot within the Property.

#### **Section 10.9 Roof Decks.**

Covered additions to rooftop decks are prohibited.

#### **Section 10.10 Owner Maintenance and Repair.**

No Improvements within the Property, including but not limited to Residences, garages, carports and walls shall be permitted to fall into disrepair. All Residences and other Improvements shall at all times be kept in good condition and repair by its Owner, and adequately and reasonably painted or otherwise finished. Any and all repairs, re-decorations, modifications or additions, interior or exterior, shall fully comply with all applicable building code requirements and restrictions. No Owner shall permit anything or condition to exist upon any Lot within the Property which shall induce, breed or harbor Infectious plant diseases, noxious insects or vermin.

#### **Section 10.11 Temporary Structures.**

No structure of a temporary character, trailer, camper, tent, shack, recreational vehicle, detached garage, or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

#### **Section 10.12 Easements.**

Easements for installation and maintenance of utilities, sewer and drainage facilities are reserved as shown on the recorded Map covering the Property. Within these easements no structure, landscaping, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may alter, obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority, utility company or homeowner's association or landscape maintenance corporation is responsible.

#### **Section 10.13 Signs.**

No billboards, signs or advertising of any kind, except a conventional "*for sale*" or "*for lease*" sign no larger than 18" x 24" shall be erected or maintained upon any Lot within the Property, without the written consent of Declarant except that this restriction shall not apply to Declarant or to any construction company owned or controlled by Declarant.

#### **Section 10.14 Declarant Sales Activity.**

Notwithstanding any other provision hereof, Declarant, its construction company or its sales agents may, during the sales campaign of Lots within the Property, and/or any other project owned and/or being marketed by Declarant, and/or in the general vicinity thereof, maintain on property owned, rented or leased by it, in the Property, a real estate sales office and/or trailer, model homes, parking facilities, lights, decorative entry wall and/or monuments, signs, flags and any other sales aids as it may desire to promote such sales. Declarant may, with prior oral or written permission of the Owner of any Lot within the Property, erect and maintain advertising and other signs upon any Lot or other portion of the Property.

#### **Section 10.15 Animals.**

No livestock, animals, poultry or fowl of any kind, bees or other insects, other than commonly recognized household pets, shall be kept or maintained on any Lot or any portion thereof. At any one time the total number of household pets maintained by an Owner, tenants, lessees, or other occupants or Residents of a Lot within the Property, shall not exceed the total number allowable by the local governing agency and other State and Federal law. Such dogs, cats, or other household pets shall be kept in conformance with the requirements, regulations, ordinances and laws of all governmental entities with jurisdiction over pets. Nor shall any animal be bred, kept or maintained for any commercial purpose. Animals belonging to Owners or occupants of a Lot, their licensees, tenants, or invitees within the Property must be either kept

within an enclosure, an enclosed yard, or on a leash or other restraint being held by a person capable of controlling the animal. To the extent permitted by law, any Owner of a Lot within the Property shall be liable to each and all remaining Owners of Lots within the Property, their Families, Guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by an Owner of a Lot within the Property or by a member of his Family, his tenants, Guests, or invitees; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Property.

#### **Section 10.16 Walls.**

Block walls exceeding three (3) feet or the original height installed by Declarant, and not extending beyond three (3) feet behind the front elevation of the Residence to the street may be erected constructed if the location and quality thereof are first approved in writing by the Architectural Review Committee This provision shall not apply to Declarant or its construction company, Such block walls shall be consistent with the rules, regulations and requirements established from time to time by the applicable local governmental entities having jurisdiction over any of the Property. No wall, hedge, construction or obstruction shall be installed or constructed upon any Lot within the Property unless such hedge, wall, construction or obstruction is designed so as to provide one opening for every three feet of length at ground level to permit free drainage of waters falling upon or flowing across said Lot or flowing onto said Lot from adjoining property. An Owner may not alter the established drainage pattern on his/her Lot without the prior written approval of the Association.

#### **Section 10.17 Party and Perimeter Walls.**

The rights and duties of Owners with respect to Party Walls and Perimeter Walls shall be as follows:

(a) The Owners of a Party Wall shall be responsible for installing, maintaining, repairing and replacing it. The costs of such maintenance, repair and/or replacement shall be shared equally by the respective Owners; provided, however, that all costs of any maintenance, repair or replacement necessitated by the negligent or willful action of an Owner, his Family, Guest, tenants, invitees, or agents shall be borne by that Owner, In the absence of negligent or willful conduct, any necessary maintenance, repair or replacement performed by an Owner shall entitle that Owner to a right of contribution from the other Owner(s) of the Party Wall. The right of contribution shall be appurtenant to the Lot and shall pass to the successors in interest of the Owner entitled to contribution.

(b) Any addition or alterations to any Party Wall constructed as part of the original construction of a Residence on a Lot within the Property shall require the prior written approval of the Architectural Review Committee as provided in Article II herein and the approval of the common Owners who make use of the Party Wall. The aforementioned approval shall not be unreasonably withheld and may only be withheld where such alterations or additions



have a substantial adverse effect upon or injury to the Property or the common Owner's Lot. In no case shall the common Party Wall exceed a height of six feet (6') or above ground, and the original height of any wall installed by the Declarant, which shall be measured from the Lot having the highest grade or elevation which abuts the common Party Wall.

(c) Any cost of maintenance, repairs and replacements for which the Association is responsible for shall be paid for as a Common Expenses out of the Association Maintenance Funds.

(d) Perimeter Walls within the Property, which separate a Lot from neighboring projects, public rights of way, Common Elements or any easements reserved or granted to any governmental agency shall be maintained, repaired and replaced by the Owner of the Lot on which the Perimeter Wall is constructed. Said Owner shall be responsible for maintenance of the interior side of said Perimeter Wall including the ground area at the base of the wall and shall be solely responsible for payment of any expenses incurred in maintaining such wall and ground area. No structures, plant materials, or irrigation shall be permitted within two (2) feet of the interior side of the perimeter wall. The Association shall be responsible for maintaining the appearance of the exterior side of the Perimeter Wall but not for damages which result from an occupant's neglect. In such cases, the Association has the right but not a duty to perform repairs.

(e) The Perimeter Walls or any wall abutting the Common Elements may not be modified, altered or changed in any way. Removal, modification, addition or alteration of any kind to a Perimeter Wall is not permitted.

Declarant upon thirty (30) days written notice to Owner of its intention to do so, during the Declarant Control Period, and thereafter, the Association, shall have the right, but not the obligation to enter upon said Lot to perform maintenance or repair or replace any wall within the Property deemed reasonably necessary and assess the Owner for the cost incurred, Declarant and/or the Association, as the case may be, shall notify Owner in writing of the cost incurred. In the event such Owner fails to remit the cost incurred to Declarant of the Association, such charges shall constitute a Lien on said Lot which may be enforced by Declarant. The enforcement of said Lien will be the same as provided by law with respect to a mortgage or other Lien on Property.

#### **Section 10.18 Grading.**

Each Owner shall maintain the grading upon his Lot at the grade, slope and pitch fixed by the final grading thereof as approved by the local governing entity, including landscaping and maintenance of the slopes. Each Owner of a Lot within the Property agrees that he will not in any way interfere with the natural or established drainage of water over his Lot from adjoining or other Lots within the Property, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over said Lot.

#### **Section 10.19 Clothes Lines.**

No clothes lines shall be placed nor shall any clothes be hung in any manner whatsoever on any Lot within the Property in a location visible from a Private Streets.

#### **Section 10.20 Fires.**

No outdoor fires except for fires contained in outdoor fireplaces or barbecue fixtures commercially designed and installed for such purposes shall be permitted on a Lot within the Property.

#### **Section 10.21 Recreational Vehicles.**

No boat, trailer, mobile home, recreational vehicle, camper, commercial vehicle, aircraft, truck larger than one (1) ton, or any inoperable or junk vehicle of any kind may be parked (except for a twelve (12) hour period for the purpose of loading, unloading or cleaning), stored, kept or repaired at any time on any Lot or on the private streets or sidewalks. No unregistered or inoperable vehicle may be parked or stored on the private streets and sidewalks within the Property. Parking, storing, or keeping a boat, trailer, mobile home, recreational vehicle, camper, commercial vehicle, aircraft, truck larger than one (1) ton, or any inoperable or junk vehicle on a Lot shall not be permitted. No Resident of a Lot within the Property shall conduct repairs or restoration of a boat, trailer, mobile home, recreational vehicle, camper, commercial vehicles, aircraft, truck or any inoperable or junk vehicle upon any portion of any Lot within the Property, except wholly within the said Owner's garage or screened side yard area described in this section; provided, however, that such activity shall at no time be permitted if it is determined to be a nuisance. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any applicable City or County ordinance.

#### **Section 10.22 Parking and Garages.**

No garage door is to be left open except at such time as a vehicle is entering or exiting said garage or said garage is in use. Garages shall be utilized to park automobiles to the maximum extent for which they are designed. Thereafter, additional vehicles should be parked on the Lot's driveway. When garages and driveways have been used to their maximum capacity by an Owner, his or her family, guests and invitees, Private Streets may be used for parking. All vehicles parked on the Private Streets must be moved every twenty four (24) hours.

#### **Section 10.23 Exterior Lights.**

Each Owner shall be solely responsible for the repair, maintenance and replacement of all lighting, including fixtures and bulbs, upon their Lot. All building coach lights must be

illuminated at sunset and remain until dawn. All coach lights shall function using photoelectric cells. Owners may only replace the coach light fixtures with dissimilar designs only with ARC approval. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the Residents of adjacent or nearby property.

#### **Section 10.24 Construction Activities-Owners**

(a) *Approval Required.*

No Owner shall commence construction within the Property until the construction plans and specifications and a site plan showing the location of the structures on the Lots have been approved by the ARC with regard to the desirability, attractiveness, drainage, harmony of external design with existing structures, topography and finished grade elevations.

(b) *Hours and Nuisances.*

Construction activities may only be performed Monday-Saturday during the hours of 8:00 a.m. and 5:00 p.m. Owners shall ensure that such activities do not create unreasonable levels of noise, dust and/or vibration. Owners must also ensure that their Lots remain debris free at all times.

#### **Section 10.25 Streets.**

All persons operating motor vehicles on the Private Streets shall drive at a speed of ten (10) miles an hour or less, and shall obey all posted traffic signs.

### **ARTICLE XI DURATION AND AMENDMENT**

#### **Section 11.1 Duration.**

This Declaration shall continue in full force for a term of fifty (50) years from the date of Recordation hereof, after which the term shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination satisfying the requirements of an amendment to this Declaration is Recorded. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the concomitant Membership in the Association, as long as this Declaration shall continue in full force and effect.

#### **Section 11.2 Termination and Amendment.**

(a) Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than

sixty-seven percent (67%) of the voting power in attendance at a meeting which quorum is present. In the event VA or FHA is a First Mortgagee or insurer of a First Mortgagee, a draft of the proposed amendment shall be submitted to VA and FHA for approval prior to its approval by the Membership of the Association. The Member approval described above shall not be required for amendments that may be executed by the Association under NRS 116.1107.

(b) In addition to the required notice and consent of VA, FHA, Members and Declarant provided above, the Beneficiaries of fifty-one percent (51%) of the First Mortgages on all the Lots in the Property who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of First Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

- (1) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers or guarantors of First Mortgages as provided in this Declaration.
- (2) Any amendment which would necessitate a Mortgagee after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid Assessment(s) accruing after such foreclosure.
- (3) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes.
- (4) Any amendment relating to the insurance provisions as set out in Article 4 hereof, or to the application of insurance proceeds as set out in Article 6 hereof, or to the disposition of any money received in any taking under condemnation proceedings.
- (5) Any amendment which would or could result in partition or subdivision of a Lot or Residence in any manner inconsistent with the provisions of this Declaration.
- (6) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Lot is proposed to be sold, transferred, or otherwise conveyed.
- (7) Any amendment concerning:
  - (i) Voting rights;
  - (ii) Rights to use the Common Elements;

- (iii) Reserves and responsibility for maintenance, repair and replacement of the Common Elements;
- (iv) Boundaries of any Lot;
- (v) Owner interests in the Common Elements;
- (vi) Leasing of Residences;
- (vii) Establishment of self-management by the Association where professional management has been required by any
- (viii) Assessments, Assessment Liens, or the subordination of such Lien.

(c) Termination of this Declaration shall require approval by Members representing at least sixty-seven percent (67%) of the Association's voting power. No such termination shall be effective unless it is also approved in advance either by fifty-one percent (51%) of the Beneficiaries of the First Mortgages on all of the Lots in the Property (if said termination is proposed by reason of the substantial destruction or condemnation of the Property) or by sixty- seven percent (67%) of such Beneficiaries (if said termination is for reasons other than such substantial destruction or condemnation).

(d) Each Beneficiary of a First Mortgage on a Lot in the Property which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the Beneficiary fails to submit a response to the notice within thirty (30) days after the Beneficiary receives the notice.

(e) A copy of each amendment shall be certified by at least two (2) Officers of the Association, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by two (2) Officers of the Association that the requisite number of Owners and Mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Beneficiaries of First Mortgages shall include a certification that the requisite approval of such First Mortgagees has been obtained.

(f) Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow for the sale of a Lot, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

(g) Notwithstanding any other provisions of this Section, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of the City, County, State, Federal, VA, FHA, FNMA, GNMA or FHLMC then in effect.

(h) Any amendment or action requiring the approval of First Mortgagees pursuant to this Declaration; or

(i) Any significant reduction of Association maintenance or other services.

## **ARTICLE XII ARCHITECTURAL REVIEW**

The Architectural Review Committee (the "ARC") shall review and either approve or deny Owner's Architectural Review Applications. As long as the Declarant owns at least one Lot in the Property, the Declarant shall have the right in its sole discretion, at any time and from time to time, to remove any member from the ARC and to replace such member or members or otherwise to appoint, re-appoint, or designate any person to serve on the ARC at the pleasure of the Declarant. Thereafter, the Board of Directors shall serve as the ARC unless it establishes to create a separate body for such purpose. The Board may appoint and/or remove any Member of the ARC.

In order to ensure that proposed plans and Improvements conform harmoniously to the exterior design and existing materials of the buildings in the Property, the ARC shall have the right and duty to propose reasonable standards to the Board of Directors against which to examine any request made pursuant to this Article.

No building, structure, addition, alteration or Improvement to an existing structure, shall be constructed, erected, placed, modified, converted, installed or altered on any Lot or Residence within the Property without the written approval of the ARC. Said plans, specifications and other information shall show, at a minimum, exterior design, height, materials, color, location of the structure or Improvement, or addition thereto, plotted horizontally and vertically, location and size of Improvements, grading plan, as applicable, as well as such other materials and information as may be reasonably required by the ARC. The ARC shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, alterations of and to Residences, other structures and Improvements within the Property, conform to and harmonize with the existing surroundings, Improvements, Residences, and structures.

Improvements, including but not limited to, landscape plans and material, swimming pool and spa plans, patio covers and other front and rear yard Improvements shall be submitted to the ARC for review and approval.

The ARC shall approve or disapprove all requests for architectural review approval within thirty (30) days after the complete submission of all plans, specifications, and other materials and information which the ARC may require in conjunction therewith. A stamped or printed notation, initialed by a member of the ARC, affixed to any of the plans and specifications shall be deemed a sufficient writing. However, the ARC shall not be required to maintain records of plans, specifications, or other documents or information that have been submitted to it for approval. Approval by the ARC shall be conclusive evidence of compliance with this Article, provided that the Improvements are constructed in substantial compliance with the plans and specifications as approved. Decisions of the ARC may be appealed to the Board of Directors.

In the event that the ARC or its designated representative fails, within thirty (30) days after the submission of such plans and specification to approve or disapprove any request for which plans, specifications, and other materials and information have been completely submitted to the ARC, then approval will be deemed to have been rejected.

All plans, specifications and other materials and information must be submitted to the ARC, care of, the Association's community management company.

The ARC and the members thereof, as well as any representative of the ARC designated to act on its behalf, shall not be liable for damages to any person submitting requests for approval or to any Owner or other person, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

The ARC may grant reasonable variances or adjustments from any conditions and restrictions imposed under this Declaration, in order to overcome practical difficulties and to prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained herein. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to other Lots or Improvements in the Property, and shall not militate against the general intent and purpose of this Declaration.

The approval or consent of the ARC, or any representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

In addition to approval by the ARC of all matters within the scope of this Article, such matters may require the approval, and issuance of permits by the governmental or quasi-governmental agencies or entities with jurisdiction over the Property. Approval of any matters by the ARC shall not be deemed to constitute approval by said agencies or any other applicable agency or entity, and the seeking and obtaining of all such approvals, and any required permits, shall be the responsibility of the Owner for whom the applicable work is to be done.

No building, structure or other Improvement, including without limitation garages, shall be painted or repainted other than its original color(s), or the original color of the Residence without the written approval of the ARC. Approval shall be obtained as provided in this Article.

No building material of any kind or character shall be placed or stored upon any Lot except in connection with construction, alterations or Improvements approved by the ARC as herein provided. As soon as building materials are placed on any Lot, construction shall be promptly commenced and diligently prosecuted. No building materials of any kind or character shall be placed or stored within the Property in such a manner as to impede access of Private Streets or sidewalks, or the access to adjacent Lots or properties. Declarant shall be exempt from the provisions of this Section.

### **ARTICLE XIII DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

#### **Section 13.1   Reservation of Development Rights:**

(a)     The right, but not the obligation, by amendment to expand the Project to include all or part of the Annexable Property. Declarant shall have the unilateral right to transfer to any other person the right to expand which is herein reserved. Declarant shall pay all taxes and other governmental assessments relating to the Annexable Property owned by Declarant until expansion.

Such expansion may be accomplished by recording one or more deeds, notices, declarations, or supplements hereto (which forms of recorded instruments are each referred to herein as an “*Annexation Amendment*”) in the records of the County Recorder of Clark County, Nevada, (i) describing the Property to be annexed, any Common Elements to be annexed, and any Limited Common Elements to be annexed, (ii) submitting it to the covenants, conditions, and restrictions contained herein, and (iii) providing for the readjustment of voting rights and assessment allocations provided for herein on the basis of formulas provided herein. Each Annexation Amendment shall not require the consent of the Owners. Any such expansion shall be effective upon the filing for record of the Annexation Amendment except as provided therein. The expansion may be accomplished in stages by successive Annexation Amendments or in one expansion through an Annexation Amendment. Upon the recordation of any Annexation Amendment, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property as expanded. Such Annexation Amendment may add, delete, or modify provisions of this Declaration as it applies to all or any portion of the Annexable Property then being subjected to the Declaration, provided, however, that this Declaration may not be modified with respect to the Property previously subject to the Declaration except as provided herein for amendment.

(b)     The right, but not the obligation, by amendment to create Lot and Common Elements upon all or parts of the Annexable Property as well as any Property adjacent thereto that shall be annexed into the Project.



(c) The right, but not the obligation, by amendment to subdivide Lots located on the Property or convert such Lots into Common Elements.

(d) The right, but not the obligation, to construct underground utility lines, pipes, wires, ducts, conduits and other facilities upon the Property in the Project, for the purpose of furnishing utility and other services to buildings and Improvements to be constructed in the Project. Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Project not occupied by buildings, for the purposes mentioned above.

(e) The right, but not the obligation, to withdraw any Lot from this Declaration at any time prior to the sale or conveyance of that Lot by Declarant. Such withdrawal shall be accomplished by recording a declaration of withdrawal in the records of the Recorder of Clark County, Nevada, describing the Property to be withdrawn, and providing for the readjustment of voting rights and assessment allocations provided for herein. Such declaration of withdrawal shall not require the consent of the Owners. Any such withdrawal shall be effective upon the filing for record of such declaration of withdrawal except as provided therein. The withdrawal may be accomplished in stages by successive declarations or in one declaration of withdrawal.

(f) The right, but not the obligation, to unilaterally amend this Declaration at any time prior to the close of the first sale of a Lot.

### **Section 13.2 Limitations on Development Rights.**

The Development Rights are limited as follows:

(a) The Development Rights may be exercised at any time within ten (10) years after the recording of the initial Declaration;

(b) All Lots and Common Elements created pursuant to the Development Rights will be restricted to Residential Use in the same manner and to the same extent as the Lots created under this Declaration as initially recorded; and

(c) All taxes, assessments, mechanic's liens and other charges affecting the Property arising in connection with Declarant's ownership of, and construction of improvements upon, the Annexable Property which may adversely affect the rights of existing Owners, or the priority of any Eligible Mortgagee on Lots in the Property, are to be paid or otherwise satisfactorily provided for by Declarant.

### **Section 13.3 Phasing of Development Rights.**

No assurances are made by Declarant as to the Annexable Property as to whether Declarant will exercise its Development Rights or the order in which such portions, or all of the

areas, will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise its Development Rights as to other portions.

#### **Section 13.4 Special Declarant Rights.**

Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Project:

- (a) To complete any Improvements indicated on the Plats;
- (b) To exercise any Development Right reserved in this Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Project and models which are reasonably necessary to market the Lots or any other Property the Declarant (or any of its affiliates) owns or has the right to acquire, regardless of whether such Property is part of the Project;
- (d) To use easements through the Common Elements for the purpose of making Improvements within the Project or within real estate which may be added to the Project or any other Property owned by Declarant (or any of its affiliates) regardless of whether such Property is part of the Project;
- (e) To merge or consolidate the Project with another project of the same form of ownership; and
- (f) To appoint or remove any officer of the Association or a Board of Directors member during the Declarant Control Period.

#### **Section 13.5 Models. Sales Offices and Management Offices.**

For so long as Declarant (or any of its affiliates) is an Owner or lessee of a Lot, or is the owner of any part of the Annexable Property, Declarant and its duly authorized agents, representatives and employees may maintain any Lot owned by Declarant or any portion of the Common Elements as a model Lot, sales office or management office or as a parking area for any such Lot or offices.

#### **Section 13.6 Construction; Declarant's Easement.**

Declarant (including its affiliates and assigns), as well as Declarant's contractors and subcontractors, shall have the right to perform warranty work, repairs and construction work upon Lots and in the Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs through completion until the end of any applicable warranty period. All work may be performed by Declarant (and its representatives) without the consent or approval of the Board of Directors. Declarant (and its representatives) has an

easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners or upland owners to fulfill the plan of development.

#### **Section 13.7 Signs and Marketing:**

For so long as Declarant (or any of its affiliates) is an Owner or lessee of a Lot or is the owner of any part of the Annexable Property, Declarant reserves the right to reasonably market the homes within the Association or any other project. Among other things, Declarant may post signs, fly flags, illuminate its model homes and offices in the evening, maintain sales offices and model homes, maintain parking areas and to use the Private Streets for its marketing and sales efforts. Declarant reserves the right to begin and to terminate its marketing efforts within the Association as it deems reasonable. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

#### **Section 13.8 Declarant's Personal Property.**

Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Project or other Project for which Declarant is using models that have not been represented as property of the Association. Declarant reserves the right, for up to sixty (60) days, following the close of escrow of the last Lot in the community, to remove from the Project any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

#### **Section 13.9 Declarant Control of the Association:**

(a) There shall be a Declarant Control Period during which Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board of Directors. The Declarant Control Period terminates no later than the earliest of:

- (1) Sixty (60) days after conveyance of 75 percent of the Lots that may be created to Owners other than Declarant; or
- (2) Five (5) years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or
- (3) Five (5) years after any right to add new Lots was last exercised; or
- (4) The day the Declarant, after giving notice to Owners, records an instrument voluntarily surrendering all rights to control activities of the association.

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

(c) Not later than sixty (60) days after conveyance of twenty five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one member and not less than twenty five percent (25%) of the members of the Board of Directors shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than one-third of the members of the Board of Directors must be elected by Owners other than Declarant.

(d) Not later than the termination of the Declarant Control Period, each member of the Board of Directors must have been elected by the Owners as provided in the Bylaws.

(e) Notwithstanding any provision of this Declaration to the contrary, the termination of the Declarant Control Period under this Section shall not affect Declarant's rights as an Owner to exercise the vote allocated to Lots which Declarant owns.

#### **Section 13.10 Limitations on Special Declarant Rights.**

Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant until the later of the following: as long as Declarant (or any of its affiliates) (a) is obligated under any warranty or obligation, (b) holds a Development Right to create additional Lots or Common Elements, (c) owns or leases any Lot; (d) owns any Security Interest in any Lots; or (e) fifteen (15) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

#### **Section 13.11 Interference with Special Declarant Rights.**

Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

#### **Section 13.12 Declarant's Rights to Complete Development.**

No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development, construction, promotion, marketing, sale and leasing of properties within the boundaries of the area comprised of the Property and the Annexable Property; to construct or alter Improvements on any property owned by Declarant (or any of its successors, assigns and/or other representatives) within such boundaries; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by

Declarant or owned by the Association within such boundaries; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Project. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approval to: (a) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, remodel, demolish or replace any Improvements on any of the Property or any property owned by Declarant; (b) use any structure on any of the Property or any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within such boundaries; or (c) require Declarant to seek or obtain the approval of the ARC or of the Association for any such activity or Improvement to property by Declarant on any of the Property or any property owned by Declarant. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

## ARTICLE XIV GENERAL PROVISIONS

### Section 14.1 **Enforcement of Restrictions.**

(a) *Right to Notice and Hearing.* Whenever the governing documents or the law require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

(b) *Appeals.* Any person having a right to Notice and Hearing shall have the right to appeal to the Board of Directors from a decision of persons other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision.

(c) *Legal Proceedings.* Failure to comply with any of the terms of this Declaration by an Owner, Resident, or his or their Guests, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any Lien, or any combination thereof.

(d) *No Waiver.* Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof.

(e) *Attorneys' Fees.* Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court cost.

### Section 14.2 **Severability.**

The provisions hereof shall be deemed independent and several, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

### **Section 14.3 Interpretation.**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential planned community and for the maintenance of Common Elements, and any violation of this Declaration shall be deemed to be a nuisance. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

### **Section 14.4 Mergers or Consolidations.**

Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties rights and obligations of the Association as a surviving association pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one (1) plan. The merger or consolidation must be evidenced by an agreement prepared, executed, recorded and certified by the president of the Association following approval by the percentage of Owners needed to terminate the Association, as set forth in this Declaration.

### **Section 14.5 No Public Right or Dedication.**

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public or for any public use.

### **Section 14.6 No Representations or Warranties.**

No representations or warranties of any kind, express or implied, other than the standard warranty required by VA and FHA, have been given or made by Declarant or its agents or employees in connection with the Property or any portion thereof, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned community, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with any governmental authority.

### **Section 14.7 Nonliability and Indemnification.**

(a) *General Limitation.* Except as specifically provided in this Declaration or as required by law, no right, power, or responsibility conferred on the Board by this Declaration,

the Articles or the Bylaws shall be construed as a duty or obligation charged upon the Board, or any Director, or any other Officer, employee or agent of the Association. Such Persons are subject to the insulation from liability provided for Directors of associations by the laws of the State of Nevada. Directors and Officers are not personally liable to the victims of crimes occurring on the Property.

(b) *Indemnification.* When liability is sought to be imposed on an Officer or Director for actions undertaken in such Person's role as an Officer or Director, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, unless and until it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the Officer or Director who so acted. Punitive damages may not be recovered against the Association, but may be recovered from Persons whose activity gave rise to the damages. This Section 14.7(b) shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

(c) *Limited Liability.* Neither Declarant nor any agent, representative or employee of Declarant shall be liable to any Owner, Resident, corporation, the Board nor any Officer or Director, guest, family, tenant, or any other person for (a) any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith; (b) for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, specifications or materials relating to any Property within the Association, including but not limited to surface water drainage plans, whether or not defective; (c) the construction or performance of any work within the Property, whether or not pursuant to approved plans, specifications and materials, the development or manner of development of any Property within the Association; (d) the performance of any other function pursuant to the provisions of this Declaration, as may be amended from time to time or Protective Covenants, as may be amended from time to time, of record or hereafter placed of record against or with respect to any Property within the Association; (e) or any other act or omission of Declarant or any agent, representative or employee of Declarant. Declarant, on behalf of all future Owners, hereby waives, and each Owner by accepting title to a Lot or any interest therein, whether or not it shall be expressed in the deed or other instrument conveying title, shall be deemed to waive any right of recovery for any such action or failure if the action taken or failure to act was in good faith.

(d) *Common Element Responsibility and Liability.* In connection with this Declaration, it shall be the responsibility of the Declarant to convey the Common Elements to the Association. The liability of the Declarant with regard to the Common Elements shall terminate upon the conveyance of the Common Elements to the Association and the Association shall release and hold harmless the Declarant for any claims relating to the Common Elements. It shall be the responsibility of the Association to design and install the Improvements within the Common Elements in accordance with approved plans and specifications and to maintain and



insure said Improvements. The liability of the Association to the Owners and Declarant with regard to the design, installation, maintenance and insurance of the Common Elements shall continue until the termination of the Association.

(e) *Approval by Owner in legal claims.* No Owner may be represented or included as a plaintiff nor in any other offensive posture in any legal or equitable action or proceeding, whether civil, administrative, or otherwise, including, without limitation, as a member of a plaintiffs' class in a class action lawsuit, nor may any Owner's Residence or Lot be encumbered or burdened in any manner by virtue of any such representation or inclusion, without the prior written consent of the Owner.

#### **Section 14.8 Notices.**

Except as otherwise provided in this Declaration, notice to be given to an Owner shall be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any Officer or agent for the service of process on an Association shall be deemed delivery to the Association. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Residence. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board in which case the notice provisions of the Bylaws shall control. Any notice to be given to the Association may be delivered personally to any Director, or sent by United States mail, postage prepaid addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

#### **Section 14.9 Priorities and Inconsistencies.**

If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

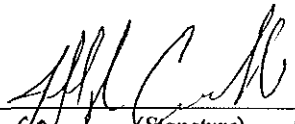
#### **Section 14.10 Constructive Notice and Acceptance.**

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

*[Signatures Follow]*

IN WITNESS WHERE OF, the undersigned Developer has executed this Declaration as of the date first set forth above.

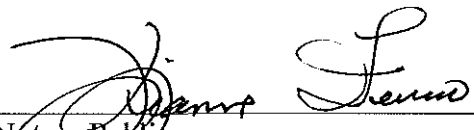
AMERICAN WEST DEVELOPMENT, a  
Nevada corporation

By   
Jeffrey Canarelli (Signature)  
Its: President (Print)

State of Nevada )  
County of Clark )

On 11-21-17, before me, Dianne Ferraro, Notary Public, personally appeared Jeffrey Canarelli, [ ] personally known to me – OR – [ ] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public



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