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H&L Realty and Management Co., Inc.
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PO Box 7440
Las Vegas, Nevada 89125

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
BELLA VISTA HOMEOWNERS ASSOCIATION

Revised April 05, 2004

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- Exhibit "A" - Legal Description of the Project
- Exhibit "B" - Definitions
- Exhibit "C" - ARC Rules

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS FOR
HERITAGE ESTATES II COMMUNITY ASSOCIATION**

THIS DECLARATION is made as of the 31st day of December, 2001, by CONCORDIA BELLA VISTA LLC, a Nevada limited liability company. Revised April 05, 2004

RECITALS:

A. Declarant is the owner of certain real property in the City of Henderson, County of Clark, Nevada, more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Project"), which Project is also described on the Final Map of Maryland Hills recorded in Book 90 at Page 82 of Plats, Official Records of Clark County, Nevada, as amended by the Amended Plat of a Portion of Maryland Hills recorded in Book 102 at Page 76 of Plats, Official Records of Clark County, Nevada (the "Map"), though the Map may describe real property in addition to the Project.

B. Declarant intends to develop the property described in Exhibit "A" as a "planned community," as that term is defined in Section 116.110368 of the Act, and to develop and convey all the Property pursuant to a general plan for the maintenance, care, use and management thereof, and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Property as hereinafter set forth. All property within the Project shall be held and conveyed subject to such covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges herein contained. The name of the planned community shall be Bella Vista and the Lot owners' association shall be known as Bella Vista Homeowners Association. The maximum number of Lots that the Declarant reserves the right to create within the planned community is fifty seven (57). However, Declarant makes no representation, warranty or guarantee that the Project will ultimately be developed as provided in the Plan of Development or pursuant to any other plan, description or map. All of the planned community is located in the City of Henderson, Clark County, Nevada.

C. In furtherance of its desire for efficient management and preservation of the values and amenities in the Project, Declarant has deemed it desirable to create a corporation to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements for its Members; administering and enforcing the covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges; collecting and disbursing the assessments and charges hereinafter created; and performing such other acts as shall generally benefit the Project.

D. Bella Vista Homeowners Association, a Nevada nonprofit corporation (the "Association"), will be incorporated under the laws of the State of Nevada for the purpose of exercising the powers and functions stated above.

NOW, THEREFORE, in consideration of the foregoing recitals, the provisions hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that all property in the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Project, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, sale and lease of the Project, or any portion thereof. The protective covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Project and shall be binding upon all Persons having any right, title or interest in the Project, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Project and any interest

therein; and shall inure to the benefit of and be binding upon Declarant and its successor owner and each Owner and his or her respective successors-in-interest; and may be enforced by any Owner, or by the Association.

ARTICLE I DEFINITIONS

Unless otherwise expressly provided, when used in this Declaration, the words and phrases set forth in Exhibit "B" attached hereto and by this reference incorporated herein shall have the meanings specified therein.

ARTICLE II DEVELOPMENT OF THE PROPERTIES; LAND CLASSIFICATION; ANNEXATION

Section 2.1. Subdivision and Development by Declarant. Declarant intends that the Property be developed for residential and other uses consistent with this Declaration. In addition, Declarant, at its option, may designate areas for maintenance, recreational or other purposes. Declarant (subject to the terms and conditions hereof) may record one or more Supplemental Declarations which will incorporate this Declaration therein by reference, and which may supplement this Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate. The provisions of any Supplemental Declaration may impose such further or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the requirements of the Property. This Declaration shall control in the event of any conflict between any Supplemental Declaration and the provisions of this Declaration, although such documents shall be construed to be consistent with one another to the extent possible. The inclusion in any Supplemental Declaration of conditions, covenants, land uses and limitations which are more restrictive or more inclusive than the restrictions contained in this Declaration shall not be deemed to constitute a conflict with the provisions of this Declaration.

Section 2.2. Conveyance of Association Property to Association. Declarant shall have the right, but not the obligation, from time to time to convey or cause to be conveyed to the Association as Association Property all or any portion of the Property located in the Project or the Annexable Area, including without limitation Property for open space, streets, drainage, landscaping, recreational and aesthetic use and other uses, in fee simple or by easement, license or other right or obligation thereto. All such conveyances of Association Property shall be free and clear of all monetary encumbrances and liens, but otherwise "AS-IS" and subject to all other rights (including without limitation the right of the public to jointly use such Property), reservations, interests, obligations, easements, covenants, restrictions and conditions then of record and those reserved, authorized or otherwise provided for in this Declaration. All such Association Property shall be accepted by the Association upon transfer and thereafter shall be maintained by the Association at Association expense for the benefit of the Owners, subject to any restrictions set forth in the deed or other instrument transferring such Association Property to the Association; provided, however, that the Association shall not be obligated to maintain the Association Property until Common Assessments commence.

Section 2.3. Annexation of Annexable Area.

(a) Annexation. Declarant (subject to Section 2.3(b) below) may, but shall not be required to, at any time or from time to time, so long as Declarant owns any property in the Property or Annexable Area, annex any portion of the Annexable Area to the Property by Recording a Notice of Annexation of Property ("Notice of Annexation") with respect to the real property to be annexed ("Annexed Property"). Such property may be annexed hereunder upon the Recordation of a Notice of Annexation which, in addition to the requirements of Section 2.3(b) below, describes such real property

and amends this Declaration, and is executed by Declarant and all other owners of such property and containing thereon any required approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if the FHA or the VA ceases to issue such written approvals. If the Notice of Annexation for a proposed annexation under this Section 2.3 is not Recorded prior to the seventh (7th) anniversary of the Recordation of this Declaration, then such annexation shall further require the vote or written consent of at least a majority of the voting power of the Association.

Upon the Recording of a Notice of Annexation which contains the provisions set forth herein (which Notice of Annexation may be contained within the Supplemental Declaration affecting any such Annexed Property), the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the Property; and thereafter the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Property shall be the same as with respect to the Property, and the rights, obligations, privileges, duties and liabilities of the Owners, lessees and occupants within the Annexed Property shall be the same as in the case of the Property originally affected by this Declaration.

Nothing in this Declaration shall be deemed to be a representation by Declarant that all or any particular portion (excluding the Property) of the Annexable Area shall be annexed to the Property or be made subject to this Declaration. Declarant makes no assurances that all or any particular portion of the Annexable Area shall be developed in any particular order or that if any portion of the Annexable Area is annexed that the remainder of the Annexable Area will also be annexed.

(b) Notice of Annexation. The Notice of Annexation referred to in Section 2.3(a) above shall be an amendment to this Declaration and shall contain at least the following provisions:

(i) A reference to this Declaration, which reference shall state the date of Recordation hereof and the document number or other relevant Recording data of the Clark County Recorder;

(ii) A statement that the provisions of this Declaration shall apply to the Annexed Property as set forth therein;

(iii) A description of the Annexed Property;

(iv) A description of the Association Property, if any, located in the Annexed Property; and

(v) An identifying number for each new Lot created.

For so long as Declarant has the right to add the Annexable Area to the Property without the approval of the Association, each Notice of Annexation relative to real Property owned by Declarant shall be signed only by Declarant. From and after the date on which any annexation of Annexable Area requires the approval of the Association as herein provided, each Notice of Annexation must also be signed by at least two (2) officers of the Association, certifying that the vote of the requisite percentage of votes have been obtained.

(c) Deannexation. Declarant may unilaterally, for any reason, at any time and from time to time, delete any portion of the Property from coverage of this Declaration and the jurisdiction of the Association or amend a Notice of Annexation covering such portion of the Property (such deleted portion of the Property, the "Deannexed Area"), so long as Declarant is the owner of all of such Property, and provided that (i) a notice of deletion of Property ("Notice of Deletion of Property") is Recorded in the same manner as the applicable Notice of Annexation was Recorded, (ii) there has been no Close of Escrow for the sale of any Lot in such Deannexed Area, (iii) the Association does not own any Association Property within the Deannexed Area, and (iv) VA and FHA, if necessary and as applicable, have approved such deannexation or amendment in writing; provided, however, that such written confirmation shall not be a condition precedent if the VA or the FHA ceases to issue such written confirmations. Each parcel in the Property is a separate portion of the Property which may be deannexed from the Property. No assurance is made regarding (1) the location and boundaries of the de-Annexable

Area nor (2) the order, if any, in which portions of the Property may become subject to de-annexation. In the event Declarant deletes a portion of the Property from coverage of this Declaration and the jurisdiction of the Association, Declarant may, but shall not be obligated to, delete any further portion of the Property from the coverage of this Declaration and the jurisdiction of the Association. The deannexation shall be effective on the Recordation of the Notice of Deletion of Property, and such Deannexed Area described therein shall no longer be part of the Association or subject to this Declaration, as more fully set forth in the Notice of Deletion of Property.

Section 2.4. Expansion of Annexable Area. The Annexable Area may, from time to time, be expanded to include additional real Property, not as yet identified. Such Property may be added to the Annexable Area upon the Recordation of a document describing such real Property, executed by Declarant and all other owners of such Property; provided, however, that (i) in the event Declarant obtains VA or FHA approval of the Property, so long as the FHA or the VA continues to insure or guaranty Mortgages or has agreed to insure or guaranty Mortgages for Lots in the Property, then, to the extent required by the FHA or VA, prior to any expansion of the Annexable Area in accordance with this Section 2.4, plans for the development of the additional Property must be submitted to the VA and FHA and the VA and FHA must approve the development plan and so advise Declarant, and (ii) such addition is consistent with any applicable provisions of the Act.

Section 2.5. Contraction of Annexable Area. The Annexable Area may be contracted to delete such real Property effective upon the Recordation of a Notice of Deletion of Property which describes such real Property, and is executed by Declarant and all other owners of such real Property, and declares that such real Property shall thereafter be deleted from the Annexable Area. Such real Property may be deleted from the Annexable Area without a vote of the Association or the approval or consent of any Person other than Declarant.

Section 2.6. Declarant's Right to Modify Plan of Development. Declarant makes no representations or warranties that the Property or the Project will be developed as provided in the Plan of Development or in accordance with any site plan, depiction, rendering, model or statement or representation of the Property or the Project or Improvements thereon. Nothing in this Declaration shall be construed to prevent, and Declarant hereby reserves the right, to amend and modify the Plan of Development and all such other materials, and any portion thereof, including without limitation the land use designations and classifications set forth therein.

ARTICLE III
COMMON ELEMENTS
PERMITTED USES AND RESTRICTIONS

Section 3.1. Easements of Enjoyment. Every Member of the Association shall have a non-exclusive easement, license or other right of use and enjoyment in and to the Common Elements, which easement, license or other right shall be appurtenant to and shall pass with title to every Lot subject to the following:

- (a) The right of Declarant to designate additional Common Elements;
- (b) The right of the Association to establish uniform rules and regulations consistent with this Declaration pertaining to the use of the Common Elements and, subject to any applicable provisions of the Act, the right of the Association to impose reasonable fines and penalties and other enforcement measures to ensure compliance with the Restrictions;
- (c) The right of the Association, to (i) subject to the provisions of Section 12.3 and 12.13 hereof and subject to any approval of Members required by the Act, convey the Common Elements,

(ii) borrow money for the purpose of improving the Common Elements and, (iii) subject to the provisions of Sections 12.3 and 12.13 hereof and subject to any approval of Members required by the Act, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(d) The right of the Association to suspend the voting rights, the right of any Member to use the Common Elements and, subject to any applicable provisions of the Act, other rights, of any Member, and the Persons deriving such rights from any Member, (i) for any period during which any assessment against such Member's Lot remains unpaid and delinquent; (ii) for a reasonable period of time not to exceed sixty (60) days for any infraction of this Declaration, and, (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period. Any suspension of voting rights and right to use the Common Elements shall be made only after Notice and Hearing as provided in the Bylaws;

(e) Subject to the provisions of Sections 12.3 and 12.13 hereof, the right of the Association to transfer a fee interest, easement, license or other interest in all or any portion of the Common Elements to any public agency, authority, utility or any other Person for such purposes and subject to such conditions as may be agreed to by the Association. No such transfer shall be effective unless any approval required by the Act is obtained. A certificate signifying any such approval shall be executed by two (2) officers of the Association and Recorded. Recordation of such certificate shall constitute *prima facie* evidence that such approval has been given;

(f) The right, but not the obligation, of Declarant and, subject to approval of any Capital Improvement Assessments necessary to pay the cost of the same pursuant to Section 6.9 hereof, the Association, to construct new or additional Improvements on the Common Elements at any time and from time to time for the improvement and enhancement thereof and for the benefit of the Association. Declarant shall convey or transfer such Improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same;

(g) The right of Declarant (and its agents, employees, prospective customers, guests, invitees, licensees and representatives) to the non-exclusive use of the Common Elements and the facilities thereon, without charge, for sales, display, signs, sales office, access, ingress, egress, exhibits and other purposes deemed useful by Declarant and its representatives in advertising and promoting the Project, so long as Declarant owns any property in the Project. Such use shall not unreasonably interfere with the rights of enjoyment of the Members as provided herein;

(h) The right of the Association to maintain, replace, redesign, refurnish, reconstruct or repair any Improvement, trees or other vegetation on Common Elements and to plant trees, shrubs, ground cover and other vegetation thereon, and the right of the Association to close or limit the use of such Common Elements, or portions thereof, while maintaining and repairing the same; and

(i) The right of the Association to regulate the use of the Common Elements and to prohibit access to the Common Elements, or portions thereof.

Section 3.2. Rights of Declarant Incident to Construction. An easement and an irrevocable license are reserved by and granted to Declarant, its successors and assigns, for access, ingress, and egress over, in, upon, under, and across the Common Elements, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use and development of the Project; provided, however, that no such rights, licenses or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner to or of that Owner's Lot. The easement and license created pursuant to this Section 3.2 shall exist so long as Declarant shall own any portion of the Project.

Section 3.3. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, or release his Lot owned by him from the liens and charges thereof, or by abandonment of his Lot.

Section 3.4. Violation of Restrictions. If any Member or his Family, guests, licensees, lessees or invitees violates the Restrictions, the Board of Directors may, in addition to the other remedies available, and subject to any applicable provisions of the Act, impose a reasonable Special Assessment upon such Owner for each violation. Subject to any applicable provisions of the Act, the Board of Directors may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess as a Special Assessment against an Owner for failure of a resident of, or visitor to, his Lot to comply with any provision of the Restrictions. Such fines or penalties may only be assessed by the Board of Directors after Notice and Hearing.

ARTICLE IV COMMUNITY ASSOCIATION

Section 4.1. Organization. The Association shall be organized as a non-profit corporation under NRS Chapter 82 no later than the date the first Lot is conveyed to a Person other than Declarant. The Association shall have the duties, powers and rights prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or the Bylaws, then such provision shall be construed, to the extent possible, consistently with the provisions of this Declaration.

Section 4.2. Board of Directors and Officers.

(a) The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of Directors shall be composed of at least three (3) and no more than five (5) directors. The initial Board of Directors consists of three (3) Directors, all of whom have been appointed by Declarant. Each member of the Board of Directors shall, at his or her appointment or election, certify in writing that he or she has read and understands the Restrictions and the applicable provisions of the Act.

(b) Subject to Sections 4.2(c) and (d), Declarant (or persons designated by Declarant) shall solely be entitled to appoint and remove the officers of the Association and members of the Board of Directors until the earlier of ("Control Termination Date"): (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Approved Units to Owners other than Declarant; (ii) five (5) years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or (iii) five (5) years after any right to annex any real property to the Project was last exercised. Declarant may voluntarily surrender the right to appoint and remove all or a portion of the officers of the Association and all or a portion of the members of the Board of Directors before termination of the above-mentioned period, but in that event Declarant may require, for the duration of the period of Declarant's control, 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 Approved Units 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 Approved Units to Owners

other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors shall be elected by Owners other than Declarant.

(d) Not later than the Control Termination Date, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom must be Owners. The Board of Directors shall elect the officers. The officers and members of the Board of Directors shall take office upon election. Within thirty (30) days after the Control Termination Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, including without limitation that property set forth in Section 116.31038 of the Act or any successor statute.

(e) The Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Owners at which a Quorum is present, may remove any members of the Board of Directors with or without cause, other than a member appointed by Declarant.

(f) Any individual Owner, an officer, employee, agent or director of a corporate Owner, a member, manager, employee or agent of a limited liability company Owner, a trustee or designated beneficiary of a trust that owns a Lot, a partner of a partnership that owns a Lot, and a fiduciary of an estate that owns a Lot or any officer, employee, agent, designated appointee, member or manager of Declarant may be an officer or member of the Board of Directors. In all events where the person serving or offering to serve as an officer or member of the Board of Directors is not a record Owner, such person shall file proof of authority in the records of the Association.

(g) Subject to this Section 4.2, the number, term, election and qualifications of the Board of Directors shall be fixed in the Articles and/or Bylaws. The Association, through the Board of Directors, except to the extent specifically provided otherwise herein or by the Articles, Bylaws or applicable law, shall have (i) the power, authority and right of enforcement of all the Restrictions, (ii) the power, authority and right and be responsible for the proper and efficient management and operation of the Common Elements, including those powers and duties specifically listed in Article IV hereof and elsewhere in this Declaration and (iii) the power, authority and right in all instances to act on behalf of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, Manager, agent or employee without a vote of the Members, except as otherwise specifically provided in the Articles, Bylaws or this Declaration.

Section 4.3. Membership Rights.

Members of the Association shall be (a) Declarant (irrespective of whether Declarant is the Owner of a Lot), for so long as Declarant shall own any property in the Project, and (b) each Owner (including Declarant) of one (1) or more Lots. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership in the Association, which Membership shall be appurtenant to the Lot. Such Membership shall automatically pass with fee simple title to the Lot. Ownership of a Lot shall be the sole qualification for an Owner's Membership in the Association. Declarant shall hold a separate Membership for each Lot owned by Declarant. Membership shall not be assigned, transferred, pledged or alienated in any way separate and apart from the transfer of fee simple title to a Lot. In the event the Project is terminated as a common-interest community, Members in the Association shall be all Owners of former Lots entitled to distributions of proceeds under the Act, or their heirs, successors or assigns.

Any attempt to make a prohibited Membership transfer shall be void and will not be reflected on the books of the Association. If the Owner of any Lot fails or refuses to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee simple title thereto, the Board of Directors shall, nonetheless, have the right to record the transfer upon the books of the Association. The

Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be added to the Common Assessment chargeable to such new Owner) to reimburse the Association for the administrative costs of transferring, on the records of the Association, the Memberships to the new Owners.

Section 4.4. Voting Rights. The Association shall have one (1) class of voting membership. Each Member shall be entitled to cast one (1) vote for each Lot owned by such Member for which assessments have commenced. Except as provided in Section 4.3 above, Voting Rights shall be appurtenant to the Lot and shall not be transferred, pledged or alienated in any way, except upon the transfer of title to the Lot, and then only to the purchaser of such Lot.

Section 4.5. Vote Distribution.

(a) All voting rights shall be subject to the Restrictions. No votes allocated to a Lot owned by the Association may be cast.

(b) When more than one Person holds an interest or interests in any Lot for which a vote may be cast ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. If only one of several co-owners is present at a meeting of the Association, that co-owner is entitled to cast all votes allocated to that Lot. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as mutually agreed upon by the majority of the co-owners of the Lot.

(c) Unless the person presiding over the Members' meeting receives a written objection from a non-voting co-owner at the meeting and before the time the votes of all Members on each subject are counted, it shall be conclusively presumed that the voting co-owner is acting with the consent of his co-owners and the vote on such subject shall be final. No vote shall be cast for any Lot where the majority of the co-owners, present in person or by proxy, owning the majority interests in such Lot cannot agree to said vote or other action. All co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

(d) Any Mortgagee who acquires title to a Lot pursuant to a judgment of foreclosure or a trustee sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.

Section 4.6. Proxies. Votes allocated to a Lot may be cast pursuant to a proxy executed by the Owner thereof. Subject to Section 4.5 hereof, if a Lot is owned by co-owners, each co-owner may vote or register protest to the casting of votes by the other co-owners through an executed proxy. An Owner may revoke a proxy given pursuant to this Section 4.6 only by actual notice of revocation to the Person presiding over a meeting of the Association, which notice shall be given before the time the votes of all Members on such subject are counted. A proxy may only be given to a member of the Owner's immediate family, a tenant of such Owner who resides in the Project or another Owner who resides in the Project. A proxy is void if it is not dated or purports to be revocable without notice, it does not designate the votes that must be cast on behalf of the Owner who executed the proxy, or if the proxy holder does not disclose at the beginning of the meeting for which the proxy is executed the number of proxies pursuant to which he will be casting votes and the voting instructions received for each proxy. A proxy terminates immediately after the conclusion of the meeting for which it was executed. Notwithstanding anything

herein to the contrary, a vote may not be cast pursuant to a proxy for the election or removal of a member of the Board of Directors.

(a) The proxy must designate each specific item on the agenda of the meeting for which the Member has executed the proxy except that the Member may execute a proxy without designating any specific items on the agenda if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy does designate one or more specific item on the agenda, the proxy must indicate whether the holder of the proxy must cast a vote in the affirmative or the negative. If the proxy does not indicate an affirmative or negative on a particular item, the proxy must be treated with regard to that item as not voting on the issue. The proxy holder may not cast a vote on behalf of the Member contrary to the proxy.

Section 4.7. No Cumulative Voting. There shall be no cumulative voting on any specified matter, including the election of the members of the Board of Directors.

ARTICLE V FUNCTIONS OF THE ASSOCIATION

Section 5.1. Powers and Duties. The Association shall have all of the powers of a Nevada nonprofit corporation, including without limitation, those powers set forth in Section 116.3102 of the Act, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions and applicable law. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing provisions, the Association may act through its Board of Directors and shall specifically have:

(a) Assessments. The power and duty to levy assessments against the Owners of Lots in which assessments have commenced, and to enforce payment of such assessments in accordance with the provisions of Article VI hereof.

(b) Repair, Maintenance and Replacement of Common Elements. The power and duty to paint, plant, maintain, repair and replace in a neat and attractive condition and in accordance with standards adopted therefore by the Architectural Review Committee, all Common Elements and all Improvements thereon, and to obtain and pay for utilities, gardening and other necessary services for the Common Elements.

(c) Taxes. The power and, except to the extent Declarant shall be required to pay such taxes by the Act, the duty to pay all taxes and assessments levied upon the Common Elements and all other taxes and assessments payable by the Association.

(d) Utility Services. The power and duty to obtain, for the benefit of the Common Elements, all commonly metered water, gas and electric services.

(e) Easements and Rights-of-Way. Subject to any applicable requirements of the Act, the power but not the duty to grant and convey to any Person, (i) easements, licenses and rights-of-way in, on, over or under the Common Elements; and (ii) fee title to parcels or strips of land which comprise a portion of the Common Elements, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, paths, driveways and parkways; (2) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (3) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and (4) any

similar public or quasi-public Improvements or facilities. This Section 5.1(e) shall not be construed to limit the right or power of the Association under Section 3.1(e).

(f) Manager. The power but not the duty to employ or contract with a professional Manager who meets the requirements of Section 116.31139 of the Act to perform all or any part of the duties and responsibilities of the Association, and shall have the power but not the duty to delegate its powers to committees, officers and employees of the Association. Any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not more than thirty (30) days written notice, and without cause (and without penalty to or the payment of a termination fee by the Association) at any time upon sixty (60) days written notice.

(g) Rights of Entry and Enforcement. The power but not the duty, after Notice and Hearing, to enter upon any Lot, without being liable to any Owner except for damage caused by the Association's entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such Lot if for any reason whatsoever the Owner thereof fails to maintain and repair any such area as required by the Restrictions. The cost of any such maintenance and repair which is the responsibility of the Owner shall be assessed against such Owner as a Special Assessment. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Residence without the prior consent of the Owner thereof. Any damage caused by an entry upon any Lot shall be repaired by the entering party, except in an emergency when such entry was believed to be reasonably necessary to protect persons or property. Subject to Section 12.7, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Restrictions. Subject to any applicable provisions of the Act, the Association shall be entitled to recover from any Owner, as a Special Assessment, all costs of enforcement of the Restrictions against such Owner, including without limitation attorneys fees, whether or not an action is brought by the Association to enforce the Restrictions. If an action is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees to be fixed by the court. Notwithstanding the Notice and Hearing provisions of this Declaration or the provisions of the Bylaws, the Association shall have the power to enter onto a Lot to maintain or remove any landscaping to the extent the landscaping itself or the maintenance of the landscaping does not comply with the terms of this Declaration, but not before delivering to the Lot Owner of a written notice of the Association's intent to do so and a ten (10) day opportunity to cure the failure to comply or such longer period of time as is required by applicable law. The foregoing shall be at Owner's sole cost and expense, except that no such expense shall be charged to the Lot Owner before the compliance with the Notice and Hearing procedures as set forth in the Bylaws.

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

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

(j) Construction on Common Elements. The power but not the duty, by action of the Board of Directors, to construct new Improvements or additions to the Common Elements, or demolish existing Improvements (other than maintenance, repair or replacement of existing Improvements).

(k) Budget, Records and Accounting. The power and the duty to keep, or cause to be kept, true and correct books and records of account in accordance with generally accepted accounting principles and the Act. The annual Budget for each fiscal year shall be prepared and distributed as set forth in Section 6.4 hereof.

(l) Inspection of Books and Records. The power and the duty to authorize the verification of Membership, books of account and minutes of meetings of the Members and of the Board of Directors by making them, and any other items or records required by the Act, available for inspection, examination, photocopying and audit by any Member of the Association, or by his duly appointed representative, at such Member's sole cost and expense, and at any reasonable time and for a purpose reasonably related to his interest as a Member (but excluding any commercial or other purpose not related to his interest as a Member), at the office of the Association or at such other place within the Project as the Board of Directors may prescribe.

(m) Fines. The power and authority to impose fines and penalties (collectively, "Fines") against Owners for violations of rules and regulations adopted by the Board of Directors or for non-compliance with the Restrictions; provided that (i) at least 30 days before the alleged violation, the person alleged to have violated the rule, regulation or Restriction was given notice of the rule, regulation or Restriction and a schedule of the fines must be either mailed or hand-delivered to the Owner, and (ii) each such fine and penalty may (A) not exceed \$100 for each violation or a total amount of \$500, whichever is less, unless the non-compliance is of a type that threatens the health and welfare of the Project and (B) only be assessed after Notice and Hearing. If the violation is not cured within 14 days after the imposition of the fine, the violation shall be deemed a continuing violation and the Board of Directors may thereafter impose additional fines for the violation for each 7 day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard. The Association may place lien on a Unit for unpaid fines but may not foreclose on a lien for unpaid fines unless the violation is a type that threatens the health and welfare of the residents.

Section 5.2 Limitations. Notwithstanding the description of the power and duties of the Association expressed in Section 5.1 or anything to the contrary in the Restrictions and to the maximum extent permitted by law, the Association has no power to enforce, on behalf of Owners, individual rights of Owners against third parties, including Declarant, by way of a class action or other proceeding where the Association represents Owners as a group. The foregoing restriction is not intended to limit the power of the Association to discharge its obligations under the Restrictions, including the enforcement of rights that directly or indirectly benefit Owners, but is merely intended to limit the authority of the Association to act as a representative of a class of Owners, whether directly or indirectly, asserting rights that are inherently personal to Owners.

ARTICLE VI FUNDS AND ASSESSMENTS

Section 6.1. Personal Obligation and Lien for Assessments. Each Owner of a Lot subject to assessment hereby covenants and agrees, by acceptance of a deed or other conveyance of any property within the Project, to pay to the Association (a) Common Assessments for Common Expenses, (b) Capital Improvement Assessments, and (c) Special Assessments, which assessments shall be established and collected as hereinafter provided. All assessments, together with interest thereon at a rate established by the Board of Directors, but not more than 18% per annum, late charges, costs, lien fees and reasonable attorneys' fees for the collection or enforcement thereof and the enforcement of the Restrictions, shall be a charge on and continuing lien upon the Lot against which such assessment is made, which lien, except as provided herein, shall run with such Lot. All assessments also shall be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for assessments shall not pass to the successors-in-title of any Owner unless expressly assumed by such successors.

Section 6.2. Purpose of Assessments. All amounts received as Common Assessments must be used and disbursed solely for purposes authorized by this Declaration and to the common benefit of all Owners.

Section 6.3. Common Assessments.

(a) A sum sufficient to pay Common Expenses and to establish reserves shall be assessed at least annually as Common Assessments against the Owners of Lots within the Association consistent with the Budget. The Board of Directors shall establish the amount of Common Assessments for each Assessment Year concurrent with the preparation of the Budget pursuant to Section 6.4.

(b) Common Assessments shall be assessed against each Owner in accordance with the number of Assessment Units attributable to such Owner. The Owner of each Single Family Residential Lot shall be charged with one (1) Assessment Unit for each such Lot. With respect to any Lots owned by Declarant which have not been subdivided into parcels which are intended to be conveyed to home buyers, Declarant shall be charged with one (1) Assessment Unit for each of the maximum number of Single Family Residential Lots which are permitted on such Lot until such time as the Lot has been so subdivided. Each Owner's proportionate share of the Common Assessments shall be a fraction, the numerator of which shall be the number of Assessment Units charged to such Owner and the denominator of which shall be the total number of Assessment Units charged to all Lots in the Project which are subject to assessment.

(c) All installments of Common Assessments shall be collected in advance on a monthly, quarterly or annual basis as determined by the Board of Directors, on such due dates as the Board of Directors shall determine from time to time in its sole and absolute discretion. At the end of any Assessment Year of the Association, the Board of Directors may determine that excess funds remaining in the operating fund, over and above the amounts used for the operation of the Project and appropriate reserves, may be retained by the Association for use in reducing the following year's Common Assessment.

Section 6.4. Budget. At least thirty (30) but not more than sixty (60) days before the beginning of each Assessment Year, the Board of Directors shall prepare and distribute to each Owner a copy, or summary (accompanied by a written notice that the budgets are available for review at the business office of the Association), of the Budget of the estimated Common Expenses to be incurred during the coming Assessment year. The Budget shall include (a) estimated annual income and expenses of the Association and the amount of money to be made to the reserve account, (b) a reserve budget to include current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements; at the end of the budgeted year, estimate of the current amount of cash reserves that are necessary and the current amount of accumulated cash reserves that are set aside to repair, replace or restore the major components of the common elements; (c) statement by the Board as to whether the Board has determined or anticipates the need for a special assessment to repair, replace or restore any major component of the common elements or to provide adequate reserves for that purpose; (d) a general statement describing the procedures used for the estimation and accumulation of cash reserves, including the qualification of the person responsible for the reserve study; (e) a statement disclosing any "in-kind" contributions by Declarant and any subsidies by the Declarant and (f) any other matters required by the Act. Assessments allocable to the reserve fund shall not be used for daily maintenance obligations of the Association. Within thirty (30) days after adoption of the proposed Budget, the Board of Directors shall provide a summary of the Budget and the amount of the proposed Common Assessments to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting of Owners seventy-five percent (75%) of the total voting power of the

Association rejects the proposed Budget, the Budget shall become effective. A Quorum is not necessary for the Budget meeting to be valid. If the proposed Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners approve a subsequent Budget proposed by the Board of Directors.

Section 6.5. Date of Commencement of Common Assessments. Common Assessments on all Lots shall commence on the later of (a) the first day of the month following the month in which such Lot shall be made subject to this Declaration, or (b) the month in which the Board of Directors first levies Common Assessments pursuant to this Association. The Common Assessments for the then current Assessment Year for each Lot shall be pro-rated on the basis of the number of months in such Assessment Year remaining from the date of commencement of such assessments to the end of such Assessment Year.

Section 6.6. Study of Reserves. The Board of Directors, not less than once every five (5) years, shall cause to be conducted a study of the reserves required to repair, replace and restore the major components of the Common Elements. The Board of Directors shall review the results of the study no less than once per year to determine whether the reserves are sufficient and shall make any adjustments it deems necessary to maintain the required reserves. The study shall be conducted by a person qualified by training and experience to conduct such a study and shall include all of those items required by Section 116.31152(2) of the Act. The reserve study must include the following information: a summary of an inspection of the major components of the common area that the Association is obligated to repair, replace or restore; an identification of the major components which have a useful life of less than 30 years; an estimate of the remaining useful life of each major component, an estimate of the cost to repair, replace, restore during and at the end of its useful life; an estimate of the total annual assessment that may be required to cover the cost of repairing, replacing or restoring after deducting the existing reserves as of the date of the study.

Section 6.7. Capitalization of Association. Provided Common Assessments have commenced, upon acquisition of Record title to a Lot from Declarant, the Owner of such Lot shall make a contribution to the capital of the Association in an amount equal to fifty percent (50%) of the then applicable annual Common Assessment for such Lot. Such capital contribution shall be (a) deposited by the Owner into the purchase and sale escrow and disbursed therefrom to the Association and (b) in addition to, and not in lieu of, annual Common Assessments.

Section 6.8. Additional Assessments.

(a) Supplemental Common Assessments. If the Board during such fiscal year, determines that the important and essential functions of the Association cannot be funded by the existing Common Assessment, the Board may levy one (1) or more supplemental Common Assessments to pay the cost of such functions.

(b) Common Assessment Adjustments. Notwithstanding any other provisions of this Section 6.8, upon the annexation of Annexable Area pursuant to Article II hereof, the Common Assessments shall be adjusted to reflect the additional Lots and any additional Common Expenses.

Section 6.9. Capital Improvement Assessments. The Board of Directors, with the vote of the majority of votes cast at a meeting of the Members at which a Quorum shall be present, may levy in any fiscal year a Capital Improvement Assessment, for the purpose of defraying, in whole or in part, the cost of any construction of a new capital Improvement or material alteration of an existing capital Improvement upon the Common Elements, including fixtures and personal property related thereto. All members shall be given at least twenty-one (21) days' prior written notice of the meeting at which a Capital Improvement Assessment is to be considered. All Capital Improvement Assessments must be

fixed at a uniform rate for all Lots in the same proportion as Common Assessments are levied, and they may be collected in the manner and frequency as determined from time to time by the Board of Directors.

Section 6.10. Special Assessments. Subject to any applicable provisions of the Act, the Board of Directors may assess a Special Assessment against a particular Owner and his Lot for all or any of the following:

- (a) to cover costs incurred in bringing the Lot into compliance with or to enforce the Restrictions, and costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests;
- (b) to pay Fines;
- (c) to pay or cover all costs for any maintenance, repairs or replacements to or within the Common Elements arising from or caused by the willful or negligent act or omission of any Owner or their Family, guests, agents, contractors, employees, licenses or invitees;
- (d) to pay or cover any other cost or amount that may be assessed as a Special Assessment under any other provisions of this Declaration; and
- (e) all costs and expenses, including attorneys' fees, incurred in connection with Sections 6.9 (a), (b), (c) and (d) hereof, whether or not an action or proceeding to enforce the Restrictions has been commenced.

Section 6.11. Exempt Property. The following property subject to this Declaration shall be exempt from all assessments:

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

Section 6.12. Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or other amount due to the Association hereunder not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate established by the Board of Directors, not to exceed eighteen percent (18%) per annum, as well as a late charge, as determined by the Board of Directors, to compensate the Association for bookkeeping, billing, administrative costs and any other appropriate charges. No such interest or late charge on any delinquent installment of an assessment shall exceed the maximum amount allowable by law. If any installment of an assessment is not paid within thirty (30) days after it is due, the Association may foreclose or otherwise enforce the lien against such Owner's Lot in accordance herewith and with applicable law and/or exercise any other remedies against the Owner or such Owner's Lot as may be available hereunder or at law or equity provided, however, the Association shall not foreclose the lien against such Owner's Lot arising from a Special Assessment for a violation(s) of the Restrictions unless such violation is a type that threatens the health, safety or welfare of the Owners of the Project. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot. All interest, late charges and all other costs and expenses incurred in enforcing the Restrictions, including attorneys' fees, shall be payable as a Special Assessment by the Owner against whom enforcement is sought. No action shall be brought to enforce any assessment lien herein unless notice shall be given in accordance with applicable law. The Association or other Person conducting the

sale shall also mail a copy of such notice (a) not more than ten (10) days after the notice is recorded, by first-class mail to any Mortgagee who has notified the Association in writing at least thirty (30) days before the Recordation of the notice of the existence of the Mortgage, (b) to a purchaser of the Lot, if the Owner has notified the Association in writing at least thirty (30) days before Recordation of such notice that the Lot is subject of a contract of sale and (c) not more than ten (10) days after the notice is recorded, by first class mail to all others required to be given notice by applicable law. The Association, through its authorized agents, shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage or convey the same. While a Lot is owned by the Association following foreclosure (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged in addition to its usual assessment, its pro rata share of the assessment that would have been charged such foreclosed Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Section 6.13. Curing of Default. Upon the timely curing of any default for which a notice was filed by the Association, the officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board of Directors to cover the cost of processing, preparing and Recording such release.

Section 6.14. Cumulative Remedies. The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including without limitation, a suit to recover a money judgment for unpaid assessments and/or the taking of a deed in lieu of foreclosure.

Section 6.15. Statement of Unpaid Assessments. The Association, upon written request and upon payment of a reasonable fee therefor, shall furnish to an Owner or Mortgagee a statement setting forth the amount of unpaid assessments, which statement shall be in Recordable form. Such statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board of Directors and every Owner.

Section 6.16. Mortgagee Protection. Notwithstanding any other provisions hereof, except for the Priority Lien described in Section 6.17, no lien created under this Article VI, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Mortgage encumbering a Single Family Residential Lot, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Single Family Residential Lot by a judicial foreclosure, other foreclosure, or exercise of power of sale, such Single Family Residential Lot shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

Section 6.17. Priority of Assessment Lien. The Association has a lien on a Lot for any assessment levied against the Owner from the time the assessment or fine becomes due. Recording of this Declaration constitutes record notice and perfection of the lien. The lien shall be prior to all other liens and encumbrances on a Lot except (a) liens and encumbrances Recorded before the Recordation of this Declaration, (b) except for the Priority Lien, a First Security Interest on a Lot Recorded before the date on which the assessment sought to be enforced became delinquent and (c) liens for real estate taxes and other governmental assessments or charges against the Lot. The assessment lien is also prior to all First Security Interests on a Lot Recorded before the date on which the assessment sought to be enforced became delinquent to the extent of Common Assessments based on the Budget adopted by the Association which would have become due in the absence of acceleration during the six (6) months

immediately preceding institution of an action to enforce the lien ("Priority Lien"). The above provisions of this Section 6.17 shall not affect the priority of mechanic's or materialman's liens or the priority of liens for other assessments by the Association. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of assessments becomes due. The sale or transfer of any Lot shall not affect or extinguish an assessment lien, except for sale or transfer pursuant to judicial or nonjudicial foreclosure of a First Mortgage, which shall, except for the Priority Lien, extinguish the lien for all assessments coming due prior to such foreclosure sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Lots, including the Lot belonging to such Person and his successors and assigns.

Section 6.18. Declarant's Obligation for Common Expenses and Assessments. Until the Association commences Common Assessments as provided in Section 6.5, Declarant shall pay all Common Expenses. After Common Assessments commence, Declarant shall be entitled to credit against and deduct from any assessments payable by Declarant the reasonable value of "in-kind" contributions to the Association, including without limitation, materials and management, accounting, administrative, maintenance of the Common Elements and other services; provided that Declarant's "in-kind" contributions must be supported by detail sufficient to determine the amount of the credit. Declarant's calculation of the amount of the "in-kind" credit shall be binding on the Association and all Owners absent manifest error or bad faith on the part of Declarant. After Common Assessments commence, Declarant shall be entitled, but shall not be obligated, from time to time to pay all or any portion of the Common Expenses as a subsidy, which at Declarant's election, may be treated as a loan or an advance against future assessments payable by Declarant. The amount of any such subsidy shall be disclosed in the Budget.

ARTICLE VII ARCHITECTURAL REVIEW COMMITTEE

Section 7.1. Organization, Power of Appointment and Removal of Members. There shall be an Architectural Review Committee ("ARC"), organized as follows:

The ARC shall consist of three (3) members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. Unless the members of the ARC have resigned or been removed, their term of office shall be for a period of one (1) year, or until the appointment of their respective successors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired, may be reappointed. The right to appoint and remove all members of the ARC, at any time, shall be and is hereby vested solely in Declarant, for so long as Declarant owns any property in the Project. When Declarant no longer owns any property in the Project, the Board of Directors shall have the power to appoint, remove and/or replace such members. Any member of the ARC may at any time resign from the ARC by giving written notice thereof to the other members. Vacancies on the ARC, however caused, shall be filled by Declarant, for so long as Declarant owns any property in the Project and thereafter by the Board of Directors. A vacancy or vacancies on the ARC shall be deemed to exist in the case of death, resignation or removal of any member.

Section 7.2. Duties. It shall be the duty of the ARC to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt ARC Rules and to carry out all other duties imposed upon it by this Declaration.

Section 7.3. Meetings and Compensation. The ARC shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two (2) members, at a meeting or otherwise, shall constitute the act of the ARC. The ARC shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the ARC shall not be entitled to compensation for their services.

Section 7.4. ARC Rules. The ARC may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by written consent, architectural guidelines, rules and regulations, to be known as "ARC Rules". The ARC Rules shall interpret and implement this Declaration by setting forth the standards and procedures for ARC review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes, and materials and similar features which are recommended for use within the Project. The initial ARC Rules are attached hereto as Exhibit "C".

Section 7.5. Waiver. The approval by the ARC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the ARC under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7.6. Liability. Neither the ARC nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Project, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, provided, however, that with respect to the liability of an ARC member, such member has acted in good faith on the basis of such information as may be possessed by such member. Without in any way limiting the generality of any of the foregoing provisions of this Section 7.6, the ARC, or any member thereof, may, but is not required to, consult with or hear the views of any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ARC.

Section 7.7. Time for Approval. In the event the ARC fails to approve or disapprove any matter requiring its review under this Declaration or the ARC Rules within forty-five (45) days after all relevant plans, drawings, specifications and other materials requested by the ARC in connection therewith have been submitted to it, approval will not be required.

ARTICLE VIII
DAMAGE, DESTRUCTION OR CONDEMNATION
OF COMMON ELEMENTS

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

Section 8.1. Damage by Member. To the extent permitted by law, each Member shall be liable to the Association and the Association may, after Notice and Hearing, assess a Special Assessment, for any damage to Common Elements not fully reimbursed to the Association by insurance; provided the damage is sustained as a result of the negligence, willful misconduct or unauthorized or improper use, installation or maintenance of any Improvement by the Member, his guests, tenants or invitees, or any

other Persons deriving their right to the use and enjoyment of the Common Elements from the Member, or his or their respective Family and guests.

Section 8.2. Repair or Replacement of Damaged or Destroyed Portion of the Project.

(a) Any portion of Project which the Association is required to insure and which is damaged or destroyed shall be repaired or replaced promptly by the Association unless:

(i) The Project is terminated as a common-interest community (as such term is defined in the Act);

(ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

(iii) The Approval not to rebuild is obtained within ninety (90) days after the loss from eighty percent (80%) of the Owners.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

(b) If the entire Project is not repaired or replaced, (i) 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 Project, (ii) the proceeds attributable to Residences that are not rebuilt must be distributed to Owners of those Residences, and (iii) the remainder of the proceeds must be distributed in proportion to the liabilities of all Lots for Common Expenses.

Section 8.3. Condemnation. If at any time, all or any portion of Common Elements, or any interest therein, is taken for any governmental or public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

ARTICLE IX
INTEREST, SPECIAL RIGHTS AND EXEMPTION OF DECLARANT

Section 9.1. Interest of Declarant. Declarant has a substantial interest to be protected with regard to assuring compliance with, and enforcement of, the covenants, conditions, restrictions, reservations and other matters contained in this Declaration along with any amendments thereto. Consequently, until the later of such time as Declarant no longer owns any property in the Project, the following actions, before being undertaken by the Members or by the Association, shall first be approved in writing by Declarant:

(a) Any amendment of this Declaration;

(b) The levy of a Capital Improvement Assessment for the construction of new facilities not originally included in the Common Elements;

(c) Any significant reduction of Association maintenance or other services; or

(d) Any termination or change of a Manager.

Section 9.2. Special Rights of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner (except Declarant), or the Association or other person shall do anything to interfere with, the right of Declarant to exercise any Developmental Rights or to develop all or any portion of the Project, including without limitation the right to subdivide or resubdivide any portion of the Project or the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Project for so long as any property in the Project or Annexable Area is owned by Declarant.

(b) This Declaration shall in no way limit the right of Declarant to (i) grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as may from time to time be reasonably necessary to the proper development and disposal of Lots in the Project, (ii) use all or any portion of the Common Elements or Lots owned or leased by Declarant for sales and management facilities, model homes, offices, signs, special promotions, marketing, advertising and for such other use as is, in Declarant's sole discretion, necessary, appropriate, convenient or incidental to the development, construction, sale or management of the Project or any part thereof or any other property owned by Declarant or an affiliate or Declarant, including, without limitation, on property adjacent to or in the general vicinity of the Project, and (iii) to use easements or licenses on, over, under and through the Common Elements for the purpose of making Improvements therein or in the Project.

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

(d) The rights and reservations of Declarant referred to in this Section 9.2 shall terminate on the earlier of (i) the date Declarant shall no longer owns any property in the Project or (ii) with respect to Declarant's rights and reservations, the date Declarant shall voluntarily terminate in writing its rights hereunder (which termination shall be effective only as to the specific rights so terminated).

Section 9.3. Reservation and Exercise of Developmental Rights and Special Declarant's Rights. Declarant hereby reserves all Developmental Rights and Special Declarant's Rights as to the Property and the Project and each portion thereof, and to all real property described on the Map, which rights may be exercised at different times and in any order elected by Declarant; provided, however, that Declarant reserves no Developmental Rights as to Association Property after transfer to the Association. If any Developmental Right or Special Development Right is exercised in any portion of the real estate subject to such right, the right need not be exercised in all or in any other portion of the remainder of the real estate. The rights and reservations of Declarant referred to in this Section 9.3, including, without limitation, Developmental Rights and Special Declarant's Rights, shall terminate on the fifteenth (15th) anniversary of the Recordation of this Declaration; provided, however, that if Declarant still owns any portion of the Property or Annexable Area on such fifteenth (15th) anniversary date, such rights and reservations shall continue for one (1) successive period of ten (10) years. Declarant makes no assurances that all or any particular one of Declarant's Developmental Rights or Special Declarant's Rights shall be exercised or that any such rights shall be exercised in any particular order.

Section 9.4. Water Rights. Declarant hereby reserves with the same force and effect as a reservation in each deed to the Property, all ownership, right, title and interest in any and all water, water rights and ditch rights appurtenant to or serving the Property and all portions thereof, including without

limitation storm water runoff and effluent used, located or produced within the Property, and all right to appropriate, collect and use the same, together with easements to construct, maintain, replace and repair all equipment, facilities, pumps, pipes, ditches and other apparatus necessary, convenient or appropriate to collect, carry, use or transport such water, water rights, runoff and effluent. The rights reserved or created by this Section shall survive termination of this Declaration.

Section 9.5. Non-Liability of Declarant. Nothing in this Article IX or elsewhere in this Declaration shall be understood or construed to compel Declarant to construct any Improvements, nor to compel Declarant to annex any additional real property into the Project. The purpose of this Article and the other provisions of this Declaration is merely to describe the rights of Declarant and the relationship of those rights to the Project in the event Declarant constructs any Improvements or annexes additional real property into the Project.

ARTICLE X INSURANCE

Section 10.1. Duty to Obtain Insurance: Types. Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Board of Directors shall cause to be obtained and maintained (a) adequate blanket public liability insurance (including medical payments), with such limits as the Board of Directors in its discretion considers prudent covering 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 (b) to the extent the Common Elements are insurable, fire and casualty insurance with extended coverage, insuring against all risks of direct physical loss commonly insured against, without deduction for depreciation, in an amount not less than eighty percent (80%) (or such higher percentage as FNMA, VA, FHA, FHLM or GNMA may require) of the actual cash value of the Common Elements Improvements at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from fire and casualty policies. However, the Board of Directors shall not be required to obtain such casualty insurance if there are no material Improvements constructed on the Common Elements. If the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements as set forth herein. Such insurance shall, to the extent reasonably available, provide that each Owner is an insured Person under such policy with respect to liability arising out of his interest in the Common Elements or Membership in the Association. The Board of Directors may purchase such other insurance as it shall deem necessary or appropriate, including, but not limited to, errors and omissions, directors, officers and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation, and such other risks as shall customarily or reasonably be covered with respect to projects similar in construction, location, and use. Fidelity bond coverage shall be obtained to cover such persons and in such amounts as the Board of Directors shall require. Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond, meeting the insurance and fidelity bond requirements established by FHA, VA, FHLMC, FNMA, GNMA or any similar entity, so long as any of them is an Owner of a Lot or holder or insurer of a Mortgage on a Lot, except to the extent such coverage is not available or has been waived in writing by the FHA, VA, FHLMC, FNMA, GNMA or such other similar entity, as applicable. Certificates of insurance shall be issued to each Owner and Mortgagee upon written request.

Section 10.2. Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owner, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, 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 such Persons, except as may be provided elsewhere in this Declaration.

Section 10.3. Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not expire or be canceled, terminated, or materially modified without thirty (30) days prior written notice to the Board of Directors, Declarant, Owners and those holders or insurers of First Mortgages who have filed a written request with the carrier for such notice, and every other Person in interest who requires such notice of the insurer.

Section 10.4. Insurance Premiums. The cost of fidelity bonds and insurance premiums for any insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense.

Section 10.5. Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under the policies provided for in Section 10.1 shall be paid to the Board of Directors as trustee and not to any Mortgagee. The Board of Directors shall hold any proceeds in trust for the Association, Owners and Mortgagee as their interests may appear. The Board of Directors shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Subject to the provisions of Article VIII, insurance proceeds shall first be used by the Association for the repair or replacement of the property for which the insurance was carried and the Association, Owners and Mortgagee shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Project is terminated as a common-interest community, as such term is defined in the Act. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors 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 insureds. Notwithstanding the foregoing, there may be named as an insured a representative chosen by the Board of Directors, including a trustee or any successor to such trustee, with whom the Association may enter into an insurance trust agreement, who shall have such authority as is delegated by the Board of Directors to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

Section 10.6. Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board of Directors, 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. 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 Mortgagees who have requested the same in writing.

Section 10.7. Annual Insurance Review. The Board of Directors shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount and type of the insurance to be carried pursuant to Section 10.1 and, to the extent and at the times deemed necessary by the Board of Directors, shall obtain an evaluation or appraisal of the insured property.

Section 10.8. Required Waiver. All policies of insurance shall provide, to the extent reasonably available, for waiver of the following rights to the extent that the respective insurers would have the rights without such waivers:

(a) subrogation of claims against the Owners, the Owner's Family and tenants of the Owners; (b) any defense or limitation of coverage based upon co-insurance; (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (d) any invalidity, other adverse effect or defense as a result of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (e) any right of the insurer to repair, rebuild, or replace, and, if the Improvement is not repaired, rebuilt, or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (f) notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Lot; (g) any right to require any assignment of any Mortgage to the insurer; and (h) any right to void the policy or condition recovery under the policy due to an act or omission by any Owner unless such Owner was acting within the scope of his authority on behalf of the Association.

Section 10.9. Owner's Insurance. The Association shall have no obligation to maintain any insurance other than the insurance required to be maintained by the Association pursuant to Section 10.1. By accepting title to such Owner's Lot, each Owner (other than Declarant) covenants and agrees to maintain property insurance for the full replacement cost of all insurable Improvements on such Owner's Lot, with a reasonable deductible thereon, and liability insurance covering all risks to Persons or property on such Owner's Lot. All insurance other than the insurance required to be maintained by the Association hereunder shall be the responsibility of the Owner of the property or interest to be insured. To the extent reasonably available, policies maintained by the Association shall provide that if at any time of a loss under such policies, there is other insurance in the name of an Owner covering the same risk covered by such policy, the Association's policy provides primary insurance.

Each Owner further covenants and agrees that in the event of damage to or destruction of Improvements on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Architectural Review Committee. Alternatively, the Owner shall clear the Lot and maintain the Lot in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

Section 10.10. Insurance Rates. Nothing shall be done or kept in the Project which will increase the rate of insurance on any Lot, or other portion of the Project without the approval of the Board of Directors, nor shall anything be done or kept in the Project which would result in the cancellation of insurance on any Lot, or other portion of the Project or which would be in violation of any law.

ARTICLE XI
GENERAL RESTRICTIONS AND EASEMENTS

Subject to and except for the exemptions and special rights of Declarant as set forth herein and without limiting any other provision of this Declaration, all real property within the Project shall be held, used and enjoyed subject to the following easements, limitations and restrictions:

Section 11.1. Single Family Residential Use. Except for the Common Elements, all of the Project shall be used, improved, and devoted exclusively to single Family residential use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any of the Project. Nothing herein shall be deemed to prevent the leasing of a Lot from time to time by the Owner thereof, subject to all of the provisions of this Declaration. No structure whatsoever, other than one (1) private single Family Residence, together with a private garage, and one (1) detached recreational vehicle garage if approved by the ARC, shall be erected, placed or permitted to remain on any Single Family Residential Lot. Lots owned or leased by Declarant may be used as model homes for sales and construction offices for the purpose of enabling Declarant to sell Lots and lots on any other property owned by Declarant or an affiliate of Declarant, including, without limitation, on property adjacent to or in the general vicinity of the Project.

Section 11.2. Utility Service. No lines, wires, or other devices for the transmission of electric current or power, including without limitation, telephone, shall be erected placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the ARC. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the ARC.

Section 11.3. Improvements and Alterations. No Improvements, alterations, repairs, painting, excavation or other work which in any way alters the exterior appearance of any Lot or the Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed or transferred by Declarant to a public purchaser shall be made or done without the prior approval of the ARC, except as otherwise expressly provided in this Declaration. Without limiting the generality of the foregoing, without the prior approval of the ARC and the Board (i) no building addition, structure or wall in excess of six (6) feet in height shall be permitted on Lots 1-14, inclusive, Lots 20-23, inclusive, and Lots 40-47, inclusive, shall be permitted, and (ii) no construction, erection or placement of any permanent structure exceeding the height of the rear wall or fence of a Lot shall be permitted. No building, fence, wall or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the ARC. No carport or garage may be converted to finished space for use as an apartment or other integral part of the living area on any Lot without the prior approval of the ARC. Pursuant to its rule making power, the ARC shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The ARC shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring Lots. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the ARC. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the ARC. All decisions of the ARC shall be final and no Owner or other parties shall have recourse against the ARC or any of its members, for or with respect to any decisions made in

good faith. Notwithstanding anything contained in the Restrictions and unless otherwise permitted by applicable law, there shall be no covenant, restriction or condition that prohibits or unreasonably restricts any Owner from using a system for obtaining solar energy. "Unreasonably restricting the use of a system for obtaining solar energy" shall mean placing a restriction or requirement on the use of such a system which significantly decreases the efficiency or performance of the system and does not allow for the use of an alternative system at a comparable cost and comparable efficiency and performance.

Section 11.4. Overhangs. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or to otherwise encroach upon any other Lot.

Section 11.5. Utility Easements. There is hereby created a blanket easement upon, across and under the Project for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines or systems, including, but not limited to, water, sewers, gas, telephones, electricity, street lights, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Project and subject to Section 11.2, to affix and maintain wires, circuits and conduits in the Project. Notwithstanding anything to the contrary contained in this Section 11.5, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Project except as initially developed and approved by Declarant or thereafter approved by the ARC. This easement shall in no way affect any other recorded easements on the Project. This easement shall be limited to Improvements as originally constructed.

Section 11.6. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom, so as to render any Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot. The ARC, in its sole discretion, shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Project. The discharge of firearms, including without limitation, "B-B" guns and pellet guns, is prohibited. On-site storage of gasoline or other fuels is prohibited on any Lot, with the exception of up to five (5) gallons of fuel stored for emergency purposes and operation of lawn mowers or similar tools or equipment. All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from the streets or adjacent property. No such items shall be allowed to remain on Lots so as to be visible from adjacent property when not in use. Reflective window coverings are prohibited.

Section 11.7. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 11.8. Party Walls and Fences. The rights and duties of Owners with respect to party walls or party fences, which are constructed as part of initial construction, shall be as follows:

- (a) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment by the other Owner.
- (b) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, or any of its agents or guests, or members of its Family (whether or not such

act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Owner or Owners.

- (c) In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining Owner, its agents, guests or Family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.
- (d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
- (e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the ARC, the decision of which shall be binding.
- (f) Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter its Lot for the purpose of repairing or maintaining a party wall or party fence or for the purpose of performing installation, alterations or repairs to the property of such adjoining Owners, provided that requests for entry are at a time reasonably convenient to the Owner. In case of an emergency, such right to entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this Section 11.8(f) shall not be deemed guilty of trespass by reason of such entry.
- (g) Surfaces of party walls or party fences on property which is generally accessible or viewable from only the adjoining property may be planted against, painted, maintained and used by the adjoining Owners with the prior written consent of the ARC.
- (h) In the event that any of the Project perimeter fencing on a Lot is damaged or destroyed, it shall be the obligation of the Owner of such Lot to rebuild and/or repair such perimeter fence so that the exterior surface will match in material and color the surface of the perimeter fence of the Project. The right to and obligation for contribution for costs among Owners shall run with the land.
- (i) All rear-yard fences shall be wrought iron with bars no closer than four (4) inches apart. Notwithstanding the foregoing, an Owner of any of Lots 1-7, inclusive, may replace wrought iron fencing with block walls of a standard height at such Owner's expense, subject to approval by the ARC.

Section 11.9. Drainage Easement. There is hereby created a blanket easement for drainage of ground water on, over and across the Project. No Owner shall obstruct, divert, alter or interfere in any way with the drainage of water upon, across or over any portion of the Project. Each Owner shall, at its own expense, maintain the drainage ways and channels on his Lot in proper condition free from obstruction. Each Owner shall maintain the drainage patterns on such Owner's Lot so as not to cause erosion on the down slopes of adjacent Lots. No Owner shall permit the obstruction or rechanneling of drainage flows after the location and installation of drainage swales, storm sewers or storm drains, except that the Declarant and the Association shall have such right; provided that the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the consent of the Lot's Owner.

Section 11.10. Easement for Subsequent Construction. There is hereby created an easement running in favor of Declarant and its agents, employees or independent contractors, to enter upon any portion of the Project for the purpose of constructing or installing Improvements.

Section 11.11. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of Improvements or signs necessary or convenient to the development or sale of Lots.

Section 11.12. Antennas. Antennas located within the Project shall be limited and restricted as set forth in the ARC Rules.

Section 11.13. Variances. The ARC shall have the authority to grant variances from the restrictions in this Article XI as are reasonably necessary for the health, safety, and welfare of the Owners.

Section 11.14. Maintenance and Landscaping. Each Owner shall, at such Owner's expense, keep his Lot and its landscaping, Improvements and appurtenances in good, clean, attractive and sanitary order and condition, except for any Common Elements which are to be maintained by Declarant and/or the Association pursuant hereto. Each Owner shall be solely responsible for maintaining all slopes on such Owner's Lot.

Section 11.15. Easements for Public Services. There is hereby created an easement upon and across the Common Elements for ingress and egress by the public services departments of Clark County, Nevada, and any applicable political subdivision thereof, to perform reasonable and necessary public services including, without limitation, police and fire department services.

Section 11.16. No Further Subdivision. No Single Family Residential Lot or Common Element may be further subdivided (including, without limitation, boundary line adjustments) without the prior written approval of the Board of Directors; provided, however, that nothing in this Section 11.16 shall be deemed to prevent (a) the Declarant, its successor and assigns, to subdivide, change the boundary line of, replat or subdivide any Lot or Lots owned by Declarant and its respective successors and assigns and (b) an Owner from (i) selling a Lot; (ii) transferring or selling any Lot to more than one (1) Person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property; or (iii) leasing or renting of all of his Lot; provided that (1) any such lease or rental shall be subject to the Restrictions, (2) the Owner-lessor shall provide a copy of the lease to the Association upon request by the Association or when required by the Restrictions; (3) the Owner shall provide the lessee a copy of the Restrictions and (4) the Owner shall be liable for any violation of the Restrictions by the lessee.

Section 11.17. Signs. No sign, poster, billboard, advertising device or other display of any kind shall be displayed on a Lot so as to be visible from outside any Lot without the approval of the ARC, except such signs of customary and reasonable color, appearance, content and dimensions (as determined by the ARC) as may be displayed on each Lot advertising the Lot for sale or lease.

Section 11.18. Animals. No animals, fowls, reptiles, poultry, fish or insects of any kind ("Animals") shall be raised, bred or kept, on any Lot within the Project, except that a reasonable number of dogs, cats or other similar household pets may be kept; provided that they are not kept, bred or maintained (a) for any commercial purpose, (b) in unreasonable quantities and (c) in violation of any applicable local ordinance or any other provision of the Restrictions. As used in this Declaration "unreasonable quantities" shall ordinarily mean more than four (4) pets per household; provided, however, that the Board of Directors may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to cause to be

removed from the Project and take or require the Owner to take such other remedial action as is reasonably necessary with respect to any Animal maintained in any Lot which constitutes, in the opinion of the Board of Directors, a nuisance or danger to Owners or other Persons in the Project. Animals kept on the Project must be either kept within an enclosure or an enclosed yard on or in a Lot. When not in or on a Lot, all animals must be kept on a leash or other restraint being held by a person capable of controlling the animal and only in such areas as may be designated by the Board of Directors. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, 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 Project by an Owner or by members of his Family, his tenants or his guests; 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 Common Elements or other area within the Project.

Section 11.19. Water and Sewer Systems. So long as a Lot is served by a sanitary sewer system and water system, no Owner (other than Declarant and/or the Association) shall be entitled to construct, use or maintain any such system on such Owner's Lot. In the event a water or sewer system is not available to serve a Lot, the Owner may only install a water or sewer system that is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the applicable water or sewer district and any applicable governmental health authority having jurisdiction and that is approved by the ARC.

Section 11.20. No Temporary Structures. Unless approved in writing by the ARC in connection with the construction of authorized Improvements, no tent, shack, skateboard ramp or other temporary building, Improvement or structure shall be placed upon any portion of the Project.

Section 11.21. No Mining and Drilling. The Project shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, geothermal heat, minerals, rocks, stones, gravel or earth, nor shall oil, water or other wells, tanks, tunnels or mineral-excavations or shafts be permitted upon the surface of any portion of the Project or within five hundred (500) feet below the surface of the Project.

Section 11.22. Parking and Vehicular Restrictions. The Board of Directors shall be entitled to preclude or limit parking of vehicles of any kind in the Common Elements or other areas of the Project to allow for unimpeded access and use by emergency vehicles, garbage or other services, the free flow and circulation of traffic and other purposes the Board of Directors deems appropriate. No Owner shall park, store or keep on the Common Elements or any street (public or private) within the Project any vehicle of any type, including, but not limited to, passenger or commercial vehicles, trucks, recreational vehicles, campers, buses, trailers, trailer coaches, camp trailers, boats, aircraft, mobile buses, or any other operable or inoperable vehicle. In addition, no Owner shall park, store, or keep anywhere within the Project any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Directors. All boats, trailers, campers, motor homes, golf cars and similar recreational vehicles shall be parked only in enclosed garages or screened from view behind a fence on the side 30 feet from front of home or rear yard on the Owner's Lot. Garages shall be kept closed at all times, except as reasonably required for (a) ingress to and egress from the interiors of the garages and (b) maintenance of the Lot or Residence. No Owner of a Lot shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or elsewhere within the Project, except wholly within the Owner's garage; provided, however, that such activity shall at no time be permitted if it is determined by the Board of Directors 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 local ordinance.

Section 11.23. Other Easement Rights of Declarant. Declarant reserves unto itself, its agents, employees, designees, successors and assigns, a perpetual, non-exclusive right, privilege and easement over, upon, across, under and through the Project (or any portion thereof), at any time, without the need

for any joinder, ratification or consent by the Association, any Owner, or any insurer, guarantor or holder of a Mortgage, for (a) constructing, installing, using, operating, maintaining, repairing, inspecting, extending and/or replacing (i) all Improvements and systems related to the Project (ii) facilities reasonably necessary to service or market the Project, (iii) facilities for monitoring wells, electric, gas, water, sewer, security, drainage, irrigation, Common Elements, landscaping, pedestrian access, loading operations and (iv) facilities for all other service systems and utility systems, (b) constructing, improving, selling or leasing property within the Project whether or not such property is owned by Declarant, (c) posting signs and maintaining offices for sales, resales and leasing, (d) conducting sales, resales and leasing activities within the Project and activities reasonably related to sales, resales and leasing within the Project, and (e) storm, irrigation, effluent and other water runoff within the Project; provided, however, that said easements so reserved shall not materially interfere with the use for which the Project or any portion thereof is intended. If requested, the Association, all Owners, and all insurers, guarantors and holders of Mortgages shall join in documents specifically describing the easements reserved hereunder for purposes of evidencing same. It is understood that such easements may be used by Declarant, or its designees, successors or assigns.

Section 11.24. Common Elements. Nothing shall be altered or constructed and/or removed in any manner whatsoever from the Common Elements without the prior written consent of the Board of Directors.

Section 11.25. Landscaping. Because several of the Lots will initially have views of the surrounding city, this Declaration restricts the type and size of trees and other landscaping permitted on Lots so that the views will not be obstructed by foliage. Those restrictions include, without limitation, the following:

- (a) Front, side and rear yard landscaping must be completed on each Lot within 6 months after the initial Owner (other than Declarant) acquires possession of the Lot in accordance with plans approved by the ARC. Such plans for landscaping must satisfy the requirements set forth by the ARC.
- (b) No Owner shall plant or place, or permit to be planted or placed, any of the following plant species on his Lot or anywhere in the Project: (a) *nerium oleander*; (b) *olea europa* (common olive tree); (c) *morus alba* (common mulberry); (d) *populus deltoides* or any other species of cottonwood tree; and/or (e) any tree of the family *ulmaceae* (elm tree).
- (c) No tree or other foliage shall be permitted in excess of fifteen feet (15') in height on Lots 1-15, inclusive, provided, however, that palm trees in excess of fifteen feet (15') in height may be permitted on such Lots with the prior written approval of the ARC.
- (d) On Lots with a lower elevation than the Lot or Lots immediately to the rear, no foliage may exceed the elevation of the pad on the Lot or Lots to the rear, or the Lots immediately adjacent to the Lot or Lots to the rear.

Section 11.26. No Warranty of Enforceability. While Declarant has no reason to believe that the Restrictions are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any of the Restrictions. Any Owner acquiring any Lot in the Project in reliance on one or more of such Restrictions shall assume all risks of the validity and enforceability thereof, and, by acquiring the Lot, agrees to hold Declarant harmless from any injury or damage therefrom.

Section 11.27. No Dumping or Burning. No burning of trash, leaves, debris or other materials shall occur in the Project. No grass clippings, leaves or other debris, petroleum products, fertilizers or

other potentially hazardous or toxic substances shall be dumped in the Project, including in any drainage ditch, stream or pond on the Project or on any portion of any Lot, except that fertilizers may be applied to landscaping on Lots provided all reasonable care is taken to prevent runoff.

Section 11.28. Time Shares. No Residence shall be used for the operation of a time sharing, fraction sharing or similar program whereby the right to exclusive use of a Residence rotates among participants in the program on a fixed or floating time schedule over any period of time.

ARTICLE XII MISCELLANEOUS

Section 12.1. Term. The provisions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be enforceable by the Association or the owner of any land subject to this Declaration, their respective legal representatives, successors and assigns, for a term of fifty (50) years from the date of Recordation of this Declaration, after which time such provisions shall be automatically extended for successive periods of ten (10) years unless a declaration of termination meeting the requirements of an amendment to this Declaration as set forth in Section 12.2 has been Recorded.

Section 12.2. Amendments.

(a) By Declarant. Prior to the transfer of a Lot to an Owner other than Declarant, the provisions of this Declaration may be amended or terminated unilaterally by Declarant by Recordation of a written instrument signed by Declarant setting forth such amendment or termination.

(b) By Members. After the transfer of a Lot to an Owner other than Declarant, the provisions of this Declaration, with the written consent of Declarant so long as Declarant owns any property in the Project, may be amended by the Recordation of a certificate, signed and acknowledged by the Declarant (if Declarant's consent is required) and the president and secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by sixty-seven percent (67%) of the voting power of the Association and the requisite percentage of holders and insurers of First Mortgages required hereunder, if any.

(c) Approval of First Mortgages. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by the record holders and insurers of First Mortgages requesting in writing notice of amendments, based upon one (1) vote for each First Mortgage owned or insured:

(i) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to holders, insurers and guarantors of First Mortgages as provided herein;

(ii) Any amendment which would necessitate an encumbrancer, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure;

(iii) Any amendment which would or could result in an encumbrance being canceled by forfeiture or in the individual Lot not being separately assessed for tax purposes;

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

(v) Any amendment which would or could result in partition or subdivision of a Lot in any manner inconsistent with the provisions of this Declaration;

(vi) Any amendment concerning voting rights, the method of allocation of interests in Common Elements, rights to use the Common Elements, responsibility for maintenance, repair, and replacement of the Common Elements, the right of annexation to the Project, boundaries of any Lot, the conversion of Lots into Common Elements or Common Elements into Lots, and the establishment of self-management by the Association where professional management has been required by any institutional holder or insurer of a First Mortgage;

(vii) Any amendment resulting in an increase of more than twenty-five percent (25%) of the Common Assessment over the prior Assessment Year and any amendment affecting assessment liens or the priority thereof; and

(viii) Any amendment imposing restrictions on the leasing of or right to sell or transfer Lots.

(d) Other Amendments.

(i) Anything in this Article XII to the contrary notwithstanding, Declarant reserves the right at any time to amend all or any part of this Declaration to such an extent and with such language (1) as may be requested by the FHA or the VA and (2) requested by any other federal, state or local governmental or public agencies which request such amendments as a condition precedent to such agency's approval of this Declaration or of the development of the Project or the Improvements constructed or to be constructed thereon and (3) to bring any provision hereof into compliance with applicable law. Any such amendment shall be effectuated by the Recordation, by Declarant, of a certificate of amendment duly signed by an authorized agent or authorized officer of Declarant, as applicable, with the signatures acknowledged, specifying the reason for such amendment and setting forth the amendment. Recordation of such a certificate shall be binding upon all of the Project and all Persons having an interest therein.

(ii) It is the desire of Declarant to retain certain controls over the Association and its activities during the anticipated period of planning and development of the Project. If any amendment requested pursuant to the provisions of this Section 12.2(d) deletes, diminishes or alters such controls, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions.

(iii) In the event this Declaration is Recorded or used for any purpose prior to having been approved by the FHA, the VA or any governmental or public agency with jurisdiction, Declarant shall have the absolute right to amend the provisions hereof without the approval of any agency or any percentage of the Membership whatsoever until such approval is first obtained. Such amendment shall be effective when signed by the Declarant and duly Recorded.

(e) Any action to challenge the validity of any amendment of the Declaration must be brought or filed within one (1) year after the date of Recordation of such amendment or such amendment shall be conclusively presumed to have been validly made.

Section 12.3. Mortgagee Protection. Notwithstanding any other provision of this Declaration, except for the Priority Lien provided in Section 6.17 hereof, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any First Mortgage upon a Lot made in good faith and for value, and Recorded prior to the Recordation of such amendment,

provided that after the foreclosure of any such First Mortgage such Lot shall remain subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce the FHA and the VA to participate in the financing of the sale of Single Family Residential Lots within the Project, the following provisions shall apply (and to the extent the provisions of this Section 12.3 shall conflict with any other provisions of this Declaration or any other of the Restrictions, the provisions of this Section 12.3 shall control):

(a) Each holder, insurer and guarantor of a First Mortgage encumbering any Lot, upon filing a written request for notification with the Board of Directors, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles or Bylaws, if such default is not cured within thirty (30) days after the Association learns of such defaults.

(b) Except for the Priority Lien described in Section 6.17, each First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to either judicial foreclosure or the powers provided in such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges pursuant to this Declaration against such Lot which accrued prior to the acquisition of title by the First Mortgagee to such Lot.

(c) When professional management has been previously required by a holder, insurer or guarantor of a First Mortgage, any decision to undertake self-management by the Association shall require the prior approval of a majority of votes cast at a meeting of Members at which a Quorum is present and the holders of fifty-one percent (51%) of the First Mortgages on Lots that have filed a written request for notice with the Board of Directors.

(d) Unless at least fifty-one percent (51%) of the First Mortgagees that have filed a written request for notice with the Board of Directors have given their prior written approval, neither the Association nor the Owners shall:

(i) Subject to any provisions of the Nevada non-profit corporation law to the contrary, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or the Improvements thereon which are owned, directly or indirectly, by the Association (the granting of rights-of-way, easements, or licenses to a governmental entity, public utility or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause);

(ii) Change the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) Fail to maintain fire and extended coverage insurance on insurable Common Elements in the amount set forth in Section 10.1;

(iv) Terminate the Project as a common-interest community (as such term is defined in the Act) for any reason; or

(v) Amend this Declaration or the Articles or Bylaws in such a manner that the rights of any First Mortgagee will be adversely affected.

(f) All holders, insurers and guarantors of First Mortgages on Lots, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours, (ii) require from the Association the submission of an annual financial statement within one hundred twenty (120) days after the end of each fiscal year (without expense to the holder, insurer or

guarantor requesting such statement) and other financial data concerning the Association, (iii) receive written notice of all meetings of the Members, and (iv) designate in writing a non-voting representative to attend all such meetings.

(g) All holders, insurers and guarantors of First Mortgages of Lots who have a written request on file with the Association shall be given (i) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Project following a decision of the Owners to assume self-management of the Project; and (ii) immediate written notice as soon as the Board of Directors receives notice or otherwise learns of any damage to the Common Elements where the cost of reconstruction exceeds Seventy-Five Thousand Dollars (\$75,000), and as soon as the Board of Directors receives notice or otherwise learns of any condemnation or eminent domain proceedings for acquisition of any portion of the Project.

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

(i) Any agreement between the Association and its professional Manager, or any agreement providing for services by Declarant to the Association, shall provide that the contract may be terminated for cause on not more than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon ninety (90) days written notice, and the term of any such contract shall not exceed one (1) year.

(j) If required by any holder, insurer or guarantor of a First Mortgage on a Lot, the Board of Directors shall secure and cause to be maintained in force at all times a fidelity bond for any Person or entity handling funds of the Association, including but not limited to, employees of any professional Manager.

(k) Any agreement for the leasing or rental of a Lot shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of this Declaration, the Articles and Bylaws shall be a default under the agreement.

(l) In addition to the foregoing, the Board of Directors may, in its sole discretion, enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of FHA, VA, FHLMC, FNMA, 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 with Residences thereon. 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 respective Lots if such agencies approve the Project as a qualifying community under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board of Directors concerning the status of any Mortgage encumbering a Lot.

(m) Any termination of the Project as a common-interest community (as such term is defined in the Act) shall require the approval of (i) Declarant, so long as Declarant owns any portion of the Project or, and (ii) sixty-seven percent (67%) of the total voting power of the Association.

Section 12.4. Mortgage Approval. Notwithstanding anything to the contrary herein, any approval of any Mortgagee or any other holder, insurer or guarantor of any Mortgage required under this

Declaration (excluding approval by the FHA or VA) shall be deemed given if no written notice of disapproval is received by the Association within thirty (30) days following written request for approval by the Association to such Mortgagee or other holder, insurer or guarantor of a Mortgage, which request shall be sent by certified mail.

Section 12.5. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally, by mail or by telegraph, telex, telecopy or cable. For the purposes of this provision, personal delivery shall include service by a reputable overnight carrier which provides a receipt indicating date and time of delivery, location of delivery and person to whom transmitted. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. If delivery is made by telegraph or cable, it shall be deemed to have been delivered when delivered to the telegraph company with charges prepaid, and, if made by telex or telecopy, it shall be deemed to have been delivered when sent. Any notice sent by cable, telex or telecopy must be confirmed within forty-eight (48) hours by letter mailed or personally delivered in accordance with the foregoing. Notwithstanding anything to the contrary herein, each Person entitled to notice under this Declaration shall be entitled to specify only one address, telex number, telecopy number or combination thereof at which to receive notice, which address and number shall be located in the United States.

Section 12.6. Enforcement and Non-Waiver.

(a) Right of Enforcement. Except as otherwise expressly provided herein, the Association, any Owner and Declarant (so long as Declarant shall own any portion of the Project), shall have the right to enforce any or all of the provisions of the Restrictions against any property within the Project and the owners thereof. Such right shall include an action for damages, as well as an action to enjoin any violation of the Restrictions. Each Owner and Declarant (so long as Declarant shall own any portion of the Project) shall have a right of action against the Association for its failure to comply with the Restrictions.

(b) Violations and Nuisance. Every act or omission whereby any provision of the Restrictions is violated in whole or in part is hereby declared to be a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Person entitled to enforce the Restrictions.

(c) Violation of Law. Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

(d) Remedies Cumulative. Each remedy provided herein and by the Restrictions is cumulative and not exclusive. The Association may, at its option, without waiving the right to enforce its lien, bring a suit at law to enforce each assessment obligation.

(e) Non-Waiver. The failure of the Association to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of the Restrictions.

(f) Attorneys' Fees. Any judgment rendered in any action, arbitration or proceeding in connection with this Declaration shall include a sum for attorneys' fees in such amount as the court or

arbitrator may deem reasonable, in favor of the prevailing party, as well as the amount of delinquent payment (if applicable), interest thereon, late charges (if any) and court or arbitration costs.

Section 12.7. Mandatory Dispute Resolution. Notwithstanding anything to the contrary herein and after giving effect to any notice and cure periods in the Restrictions and after exhausting all administrative procedures specified in any of the Restrictions, prior to bringing any action or proceeding relating to this Declaration or the Association relating to (a) the interpretation, application or enforcement of any of the Restrictions; or (b) the procedures used for increasing, decreasing or imposing additional Capital Improvement Assessments, Common Assessments or Special Assessments, the Association and all Owners shall submit the action or proceeding to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive. Any action must be submitted for mediation or arbitration by filing a written claim with the Agency. The claim must include:

- (a) The complete names, addresses and telephone numbers of all parties to the claim;
- (b) A specific statement of the nature of the claim;
- (c) A statement of whether the person wishes to have the claim submitted to a mediator or to an arbitrator. If the person wishes to have the claim submitted to an arbitrator, whether he or she agrees to binding arbitration; and
- (d) Such other information as the Agency may require.

The written claim must be accompanied by a reasonable fee as determined by the Agency. Upon filing of the written claim, the claimant shall serve a copy of the claim in the manner prescribed in Rule 4 of the Nevada Rules of Civil Procedure for a service of a summons and complaint. The claim so served must be accompanied by a statement explaining the procedures for mediation and arbitration set forth in NRS 38.300 to 38.360, inclusive. Upon being served with written claim, the person upon whom a copy of the written claim was served shall, within thirty days after the date of service, file a written answer with the Agency. The answer must be accompanied by a reasonable fee as determined by the Agency. The mediation or arbitration shall thereafter proceed according to the procedures set forth in NRS 38.300 to 38.360, inclusive.

Section 12.8. Interpretation.

(a) Restrictions Construed Together. All of the provisions of this Declaration shall be independent and several and shall be liberally construed with the other provisions herein to promote and effectuate the fundamental concepts of the Project as set forth in this Declaration. This Declaration shall be construed and governed by the laws of the State of Nevada.

(b) Singular Includes Plural; Gender Specification. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(c) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

Section 12.9. No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project to the public, or for any public use.

Section 12.10. 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 Project does 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 this Declaration is contained in the instrument by which such Person acquired an interest in the Project, or any portion thereof.

Section 12.11. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Project or any portion of the Project, 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 or taxes, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Agency or with any other governmental or public authority having jurisdiction thereof. Nothing in this Declaration shall obligate the Declarant to develop any portion of the Project as currently planned.

Section 12.12. Non-liability and Indemnification. Except as specifically provided in the Restrictions or provided by law, no right, power, or responsibility conferred on the Board of Directors or the ARC by this Declaration, the Articles or Bylaws shall be construed as a duty, obligation or disability charged upon the Board of Directors, the ARC, any member of the Board of Directors or of the ARC, or any other officer, employee, consultant or agent of the Association. No such person shall be liable to any party for injuries or damage resulting from such Person's acts or omissions, either within what such Person reasonably believes to be the scope of his Association duties, or actually within the scope of such duties, except to the extent that such injuries or damage result from such Person's willful or wanton misfeasance or gross negligence.

The Association shall indemnify and hold harmless any such Person for all losses, claims, damages, obligations, fines and penalties, and pay all costs of defense, arising from such Person's acts or omissions either when acting within what such Person reasonably believed to be within the scope of his Association duties, or when actually acting with the scope of such duties, unless and until it is proven in a court of appropriate jurisdiction that such Person acted with willful or wanton misfeasance or with gross negligence. After such proof the Association shall no longer be liable for the cost of defense and may recover from such Person costs previously expended by the Association on such Person's behalf. The Declarant, the Association, the members of the Board of Directors and the members of the ARC and all other officers, employees, consultants and agents of any of them are not liable to the victims of crimes occurring on or about the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons who caused such damages to the extent provided 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.

Section 12.13. FHA/VA Approval. In the event Declarant obtains VA or FHA approval of the Project, for so long as Declarant has effective control of the Association, the following actions will require the prior approval of the FHA and the VA, as applicable: (a) annexation of any real property to the Project that is intended to include lots encumbered by Mortgages insured or guaranteed by the FHA or VA, (b) dedication, conveyance or Mortgage of Common Elements; (c) any amendment of this Declaration materially affecting or impairing the interests of the FHA or VA, and (d) any merger, consolidation or dissolution of the Association.

Section 12.14. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

Section 12.15. Interpretation of Restrictions. All questions or interpretation of the Restrictions, shall be resolved by Declarant, for so long as Declarant owns any property in the Project, and thereafter

by the Board of Directors, and their decision shall be final, binding and conclusive on all the parties affected.

Section 12.16. Severability. Invalidation of any provision in this Declaration by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

Section 12.17. No Representations or Warranties. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT, OR ITS AGENTS OR EMPLOYEES, IN CONNECTION WITH THE PROJECT, OR ANY PORTION THEREOF, 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, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN A WRITING SIGNED BY DECLARANT FOR THE EXPRESS BENEFIT OF AN OWNER.

Declarant has executed this Declaration as of the date and year first above written.

CONCORDIA BELLA VISTA LLC, a Nevada limited liability company

By: Concordia Homes of Nevada, Inc., a Nevada corporation, its manager

By: (signed by Roberta Hogan)

Name: Robyn Hogan

Title: Secretary

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on January 2, 2002, by Robyn Hogan as Secretary of Concordia Homes of Nevada, Inc., a Nevada corporation

stamped - Nancy S. Stoltz
Notary Public, State of Nevada
Appointment # 98-49413-2
My appointment expires 10-30--2002

(signed Nancy S. Stoltz)
NOTARY PUBLIC

Exhibit "A"

Legal Description of the Project

Parcel I:

Lots one thru fifty seven (1-57) in block one (1) of Maryland Hills, as shown by map thereof on file in book 90 of plats, page 82, in the office of the recorder of Clark County, Nevada.

Parcel II:

An easement for ingress and egress over that portion of parcel map on file in file 91 of parcel maps, page 90, shown as private street as the same was recorded in the official records of Clark County, Nevada records.

Exhibit "B"

Definitions

"Act" means only those sections of the Uniform Common Interest Ownership Act codified in NRS Chapter 116 to which the Project is subject.

"Agency" shall mean the Nevada Department of Business and Industry, Real Estate Division, or any other such governmental agency which administers the sale of subdivided lands pursuant to Chapter 119 of the NRS or common interest communities pursuant to the Act or any similar statutes or ordinances hereinafter enacted.

"Annexable Area" shall mean the real property which is or may in the future be owned by Declarant, all or any portion of which property may from time to time be made subject to this Declaration pursuant to the provisions of Article II hereof, including, without limitation, any real property described on the Map.

"Approved Units" shall mean the total number of Single Family Residential Lots in the Project that Declarant is entitled to create pursuant to the Final Map entitled Final Map of Maryland Hills recorded in Book 90 at Page 82 of Plats, Official Records of Clark County, Nevada, as amended by the Amended Plat of a Portion of Maryland Hills recorded in Book 90 at Page 82 of Plats, Official Records of Clark County, Nevada, provided, however, that nothing herein shall be construed to require Declarant to create or develop all the Approved Units.

"Architectural Review Committee" or "ARC" shall mean the Architectural Review Committee created pursuant to Section 7.1 hereof.

"ARC Rules" shall have the meaning ascribed to such term in Section 7.4.

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

"Assessment Unit" shall mean the Assessment Units allocated to each Lot in accordance with Section 6.3(b).

"Assessment Year" shall mean the calendar year or such other twelve (12) consecutive calendar month period selected by the Board of Directors for the levying, determining and assessing of Common Assessments under this Declaration.

"Association" shall mean Bella Vista Homeowners Association, a Nevada non-profit corporation, formed under the laws of the State of Nevada, its successors and assigns.

"Association Property" shall mean all the real and personal property and Improvements, including certain landscaping areas in the Property, which may be conveyed by Declarant, in Declarant's sole discretion, to the Association and which may be owned by the Association in fee simple, held by the Association as a leasehold interest, or over which the Association may have an easement or license for the use, care or maintenance thereof, including without limitation (i) the private streets, curbs, gutters, and the

street lighting systems in the Property; (ii) the median islands and parkway landscaping along the private streets in the Property; (iii) the perimeter wall surrounding any portion of the Property; (iv) fencing which is part of the Association Property and any other fencing which is owned or maintained by the Association at the Association's election, (v) the irrigation system, including without limitation the water lines, meters, valves, and sprinkler heads located throughout the Association Property and in the Front Yards; (vi) Common Sewers; and (vii) all sidewalks and walkways within the Property, excluding the walkway between the front door of each Residence and the street or driveway.

“Beneficiary” shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust and the assignees of such Mortgagee or beneficiary.

“Board of Directors” shall mean the Board of Directors of the Association, elected in accordance with the Articles and the Bylaws of the Association and this Declaration.

“Budget” shall mean the annual budget for the Association for each Assessment Year, as prepared pursuant to Section 6.4.

“Bylaws” shall mean the Bylaws of the Association as such Bylaws may from time to time be amended.

“Capital Improvement Assessment” shall mean a charge against each Owner and his Lot representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize pursuant to the provisions of this Declaration.

“Common Assessment” shall mean an annual charge to fund Common Expenses, including without limitation, all costs of administering and enforcing this Declaration (excluding Special Assessments assessed against and paid by particular Owners), all costs of maintaining, improving, repairing, replacing, managing and operating the Common Elements and all costs of operating, managing, and administering the Association.

“Common Elements” shall mean all the real and personal property located within the Project, including without limitation, (a) Improvements, (b) sewer utility lines providing sewer service to the Lots and (c) the real property designated as C.E. A and C.E. B, private street and public utility easement, gas lamps, and all other elements shown to be privately maintained or maintained by the Association on the Final Map of Maryland Hills recorded in Book 90 at Page 82 of Plats, Official Records of Clark County, Nevada, as amended by the Amended Plat of a Portion of Maryland Hills recorded in Book 102 at Page 76 of Plats, Official Records of Clark County, Nevada, now or hereafter owned by the Association, or with respect to which the Association has an easement, license or other right or obligation for the use, care or maintenance thereof, held for the common benefit, use and enjoyment of all of the Owners, as further provided in Article II hereof.

“Common Expenses” shall include, without limitation, the actual and estimated costs of:

(a) maintenance, management, operation, repair, reconstruction and replacement of the Common Elements, including all fees associated with sewer service to each Lot (but expressly excluding fees for all other utilities or services to the Lots, such as water, electricity, natural gas,

telephone, trash pick-up and disposal services);

(b) unpaid Special Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment, together with all costs incurred in connection with enforcement hereof;

(c) management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees;

(d) all utilities, water and sewer service, gardening, trash pickup and disposal, and other services benefiting the Common Elements or the Association;

(e) fire, casualty and liability insurance, workers' compensation insurance, and other insurance, including fidelity bonds;

(f) any other insurance obtained by the Association;

(g) bonding the members of the management body, any professional managing agent or any other Person handling the funds of the Association;

(h) taxes paid by the Association;

(i) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements, or portions thereof;

(j) prudent reserves;

(k) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Project, whether or not conveyed to the Association as part of the Common Elements;

(l) subject to applicable law and the Restrictions, judgments against and payable by the Association; and

(m) any other item or items designated by the Association for any reason whatsoever in connection with the Common Elements, the Association or this Declaration.

“Control Termination Date” shall mean the date of termination of the period in which Declarant is entitled to appoint all or a majority of the members of the Board of Directors as provided in Section 4.2(b).

“Declarant” shall mean Concordia Bella Vista LLC, a Nevada limited liability company, its successors or other Person to which it shall have assigned any Declarant rights hereunder by an express written and Recorded assignment as provided herein. Any such assignment may include all or only specific rights of the Declarant hereunder and may be subject to such conditions and limitations as Declarant may impose in its sole and absolute discretion.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Bella Vista Homeowners Association, as amended or supplemented from time to time.

“Developmental Rights” shall mean any right or combination of rights reserved by Declarant under this Declaration to (a) add real property to the Project, (b) create Lots or Common Elements within the Project, (c) subdivide Lots or convert Lots into Common Elements, or (d) withdraw real property from the Project.

“Emergency” means any occurrence or combination of occurrences that cannot have been reasonably foreseen or affects the health, welfare and safety of the Owners of the Association or requires immediate attention of and possible action by the Board of Directors and/or makes it impossible to comply with the standard 10 day notice requirement for a meeting. Emergency items can be discussed first on the Board’s agenda.

“Family” shall mean (a) a group of natural Persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural Persons not all so related, who maintain a common household in a Residence on a Lot.

“FHA” shall mean the Federal Housing Administration.

“FHLMC” shall mean the Federal Home Loan Mortgage Corporation.

“FNMA” shall mean the Federal National Mortgage Association.

“Fines” has the meaning given in Section 5.1(m).

“First Mortgage” shall mean a Mortgage or Deed of Trust with first priority over other Mortgages or Deeds of Trust on a Single Family Residential Lot.

“First Mortgagee” shall mean the holder of a First Mortgage.

“First Security Interest” shall mean a first priority interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation, including a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title as security for an obligation.

“GNMA” shall mean the Government National Mortgage Association.

“Improvements” shall mean all original and later changes to buildings, improvements, structures, equipment, fixtures and appurtenances thereto of every type and kind placed in the Project, including but not limited to buildings, outbuildings, walkways, sprinkler pipes, grading, excavation, demolition, garages, swimming pools, spas and other recreational facilities, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment and other

exterior equipment, fixtures and apparatus.

“Lot” shall mean any lot or parcel of land shown upon any Recorded final subdivision map or Recorded parcel map of the Project, together with the Improvements, if any, thereon, including without limitation, a Single Family Residential Lot. If two or more Lots are merged they shall remain as two or more Lots for the purposes of Articles IV and VI hereof.

“Manager” shall mean the Person meeting the requirements of Section 116.31139 of the Act, whether an employee or independent contractor, employed by the Association pursuant to the Bylaws, and delegated the authority to implement the duties, powers or functions of the Association as the same may be limited by the Restrictions.

“Member” shall mean every Person holding a Membership in the Association pursuant to Section 4.3 hereof.

“Membership” shall mean a membership in the Association pursuant to Section 4.3 hereof.

“Mortgage” shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by the Owner of a Single Family Residential Lot, encumbering the Single Family Residential Lot to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term “Deed of Trust” or “Trust Deed” when used shall be synonymous with the term “Mortgage.” “Mortgage” shall also mean any executory land sales contract, whether or not Recorded, in which the FHA, the VA, or the Secretary of the Department of Veterans Affairs is identified as the seller, whether such contract is owned by or has been assigned by the FHA, the VA, or the Secretary of the VA. “Mortgage” shall not include any judgment lien, mechanic's lien, tax lien or other similarly involuntary lien or encumbrance on a Single Family Residential Lot.

“Mortgagee” shall mean a Person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. The term “Beneficiary” shall be synonymous with the term “Mortgagee.”

“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.”

“Notice of Lien” shall mean a notice of lien as described in Article VI hereof.

“Notice and Hearing” shall mean written notice and a hearing before the Board of Directors, a committee appointed by the Board of Directors, the Architectural Review Committee, or a committee appointed by the Architectural Review Committee, as applicable, at which the Owner concerned shall have an opportunity to be heard in person, or, at the expense of the Owner, by counsel, in the manner further provided in the Bylaws.

“NRS” shall mean the Nevada Revised Statutes.

“Owner” shall mean the Person or Persons, including Declarant holding (a) a fee simple interest to a Lot or (b) long-term ground leasehold interest of Record to a Lot which is a part of the Project,

excluding those Persons holding title as security for the performance of an obligation other than sellers under executory contracts of sale. For purposes of this Declaration, a "long-term ground leasehold interest" shall mean a leasehold interest having a term at the time of creation of such interest of twenty (20) or more years.

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

"Plan of Development" shall mean the plan for the development of the Property, as amended from time to time by Declarant in Declarant's sole discretion, a copy of which shall be on file in the office of the Association.

"Priority Lien" shall have the meaning provided in Section 6.17.

"Project" shall have the meaning set forth in Recital A.

"Property" shall mean the Property described in Exhibit A attached hereto and incorporated herein by reference, which is hereby made subject to this Declaration, and shall in the future include such portions of the Annexable Area which are annexed to the Property subject to this Declaration.

"Quorum" shall mean (a) the presence in person or by proxy at the beginning of any meeting of the Members (whether or not such Members remain present throughout the meeting) of Persons entitled to cast at least ten percent (10%) of the total Class A and Class B votes, in person or by proxy or (b) the presence at the beginning of any meeting of the Board of Directors (whether or not such members of the Board of Directors remain present throughout the meeting) of Persons entitled to cast at least fifty percent (50%) of the votes on the Board of Directors.

"Record" "Recorded" "Filed" and "Recordation" shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder of the County of Clark, State of Nevada.

"Residence" shall mean a dwelling on a Single Family Residential Lot, intended for use and occupancy by a single Family.

"Restrictions" shall mean this Declaration, the Articles, the Bylaws, the ARC Rules and any agreement referred to herein or incorporated herein by reference.

"Single Family Residential Lot" shall mean a Lot containing or intended to contain a single Residence together with the Improvements, if any, thereon.

"Special Assessment" shall mean the assessment described in Section 6.10 hereof.

"Special Declarant's Rights" shall mean any right or combination of rights hereby reserved by Declarant under this Declaration to (a) complete Improvements indicated on the Plan of Development or on Plats and Plans or in the Declaration, (b) exercise any Developmental Rights, (c) maintain sales offices, management offices, signs advertising the Property and model homes, (d) use easements through the Association Property for the purpose of making Improvements within the Property or within real

property which may be added to the Property, (e) make the Property subject to a master association, (f) merge or consolidate the Property with another common-interest community of the same form of ownership or (g) appoint or remove any officer of the Association or any member of the Board during any period of Declarant's Control.

“Supplemental Declaration” shall mean any declaration of covenants, conditions and restrictions and reservation of easements or similar document supplementing this Declaration which may be Recorded pursuant to Article II of this Declaration.

“VA” shall mean the U.S. Department of Veterans Affairs of the United States of America and any department or agency of the United States that succeeds to the VA's functions of issuing guaranties of notes secured by Mortgages on residential property.