

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
EL PARQUE CONDOMINIUMS

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THIS DECLARATION of Covenants, Conditions and Restrictions, hereinafter referred to as "Declaration," is made this 15th day of March, 1991, by PRIMERO, INC., a Nevada corporation, the "Declarant," with reference to the following:

RECITALS:

A. Declarant is the owner of certain real property in Clark County, State of Nevada, more particularly described as the Plat of EL PARQUE CONDOMINIUMS, recorded on the 20th day of December, 1990, in Book 48 of Plats, Page 36, Clark County, Nevada Recorder, hereinafter called the "Condominium Project."

B. Declarant has or intends to ultimately develop 128 Condominium Units and to that end establish a Condominium Project under the provisions of the Nevada Condominium Act providing for separate title to the Living Units (as hereinafter defined) appurtenant to which will be an undivided fractional interest in the Condominium Property other than the Living Units.

C. The development of the Condominium Property is the first phase of a planned three (3) phase Condominium Project, described as follows:

SUMMARY OF PHASES

<u>Phase No.</u>	<u>Property Within Phase</u>	<u>Number of Living Units</u>	<u>Fractional Interest in Common Area</u>
1	Bldgs. A, B, C and H	38	1/38th interest in Common Area Lots 2, 3, 4, and 5 in Phase 1
2	Bldgs. D, E, F and G	40	1/40th interest in Common Area Lots 2, 3 and 5 in Phase 2
3	Bldgs. I, J, K, L and M	50	1/50th interest in Common Area Lots 4 and 5 in Phase 3

The Association Common Areas to be included in of each phase are as follows:

Phase No.            ASSOCIATION PROPERTY

- 1            Private Drives (CA-2) within Phase 1 and Recreational Area (CA-1) (Association Property). Easements to maintain landscape/green areas, Perimeter Fence on the non-Association Common Area within Phase 1.
- 2            Private Drives (CA-2) within Phase 2 (Association Property). Easement to maintain the Perimeter Fence, landscape/green on the non-Association Common Areas within Phase 2.
- 3            Private Drives (CA-2) within Phase 3 (Association Property). Easement to maintain the landscape/green areas, Perimeter Fence on the non-Association Common Area within Phase 3.

Phase No. 1. Shall consist of three (3) ten-plex buildings and one (1) eight-plex building, as shown on Sheets 3-5 of the Plat, together with Common Areas, except Association Property, as shown on Sheet 2 of the Plat, in which each owner will have an undivided one-thirtieth (1/38th) interest.

Phase No. 2. Shall consist of four (4) ten-plex buildings, each containing ten (10) Living Units, as shown on Sheets 3-5 of the Plat, together with Common Areas, except Association Property, as shown on Sheet 2 of the Plat, in which each owner shall have an undivided one-fourtieth (1/40th) interest.

Phase No. 3. Shall consist of five (5) ten-plex buildings, each containing ten (10) Living Units as shown on Sheets 3-5 of the Plat, together with Common Areas, except Association Property, as shown on Sheet 2 of the Plat, in which each owner shall have an undivided one-fiftieth (1/50th) interest.

D. Each unit shall be assigned certain Exclusive Use Areas consisting of open courts, stairs/landings, and assigned garages.

E. The Pool Area designated as Common Area Lot CA-1 on Sheet 2 of the plat contains the pool, bathhouse, and other amenities. Other Association Common Areas consist of the Private Streets, Easements to maintain Perimeter Fence, landscaped and green areas. Upon the sale of the first Living Unit in Phase 1, title to the Association Common Areas, including the Pool Area in Phase 1, will be transferred to the Homeowners' Association; however, each Owner, his tenant and/or guests, shall have an easement for access to, over, upon, and use of the Private Streets, Pool Area, and any other Association Common Areas, subject to the provisions of this Declaration, the Articles, By-Laws, and Regulations that may be from time to time promulgated by the Association.

There is no guarantee that all Phases will be completed or

that the number of Condominiums or recreational facilities and amenities in each Phase will be developed as described above. The Project will be consistent with the overall development plan submitted to the Secretary, United States Department of Veterans Affairs and Federal Housing Administration.

E. Each Condominium shall have appurtenant to it a membership in the El Parque Homeowners' Association, a Nevada Non-Profit Corporation ("Association"), which will be the management body for the overall Condominium Project.

F. Before selling or conveying any interests in the Condominium Property, Declarant desires to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future Owners of the Condominium Project.

NOW, THEREFORE, Declarant hereby declares that all of the properties described as Phase 1 (the initial phase) above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE I

#### DEFINITIONS

Section 1.1 Articles shall mean and refer to the Articles of Incorporation of the Association and any amendments to said Articles.



Section 1.2 Association shall mean and refer to EL PARQUE HOMEOWNERS' ASSOCIATION, a Nevada Non-Profit Corporation, its successors and assigns.

Section 1.3 Association Property, sometimes Association Common Area shall mean and refer to the Private Drives in each Phase (CA-1 on the Plat), and Recreational Area in Phase 1 (CA-2 on the Plat), and Easements to maintain the Perimeter Fence and landscaped/green areas, and the non-Association Common Areas, all as shown on Sheet 2 of the Plat.

Section 1.4 Board or Board of Directors shall mean and refer to the governing body of said Association.

Section 1.5 Boundaries shall mean that in interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

Section 1.6 Buildings shall mean the lettered structures A through M as shown on Sheet 2 of the Plat. There are two types as follows:

a. Eight-Plex shall mean the two-story Building consisting of eight (8) Units as appears on Sheet 5 of the Plat.

b. Ten-Plex shall mean the two-story Building consisting of ten (10) Units as appears on Sheets 3 and 4 of the Plat.

Section 1.7 By-Laws shall mean and refer to the By-Laws of the Association and any amendments to said By-Laws.

Section 1.8 Common Area sometimes Common Elements shall mean and refer to all portions of the Project, not located within a Living Unit or Association Common Area.

Section 1.9 Common Expenses shall mean and include the actual and estimated expenses of operating the Condominium Project, including the Common Areas and Association Common Areas and Easements, and any reasonable reserve for such purposes.

Section 1.10 Condominium shall mean and refer to a fee simple estate in the Condominium Project as defined in 117.010-020 or successor Act and shall consist of

- (a) a separate interest in the Living Unit;
- (b) Exclusive Use Common Areas, i.e., stairways and landings, open courts, and garage assigned to the Unit within the Common Areas;
- (c) undivided fractional interest as tenants in common in the Common Areas;
- (d) easements and right to use of Association Common Areas.

Section 1.11 Initial Condominium Project shall mean and refer to Phase 1.

Section 1.12 Declarant shall mean and refer to PRIMERO, INC., a Nevada corporation, its successors and assigns.

Section 1.13 Declaration shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions.

Section 1.14 Eligible Insurer or Guarantor shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is

entitled to notice of by reason of this Declaration or By-Laws of the Association.

Section 1.15 Eligible Mortgage Holder shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice or by reason of this Declaration or the By-Laws of the Association.

Section 1.16 Exclusive Use Common Area sometimes Limited Common Elements, which are designated "EUCA" on the Plat shall mean and refer to the open courts, stairways/landings, and assigned garages.

Section 1.17 First Mortgage shall mean and refer to the holder of a mortgage or deed of trust on a Unit/Units which is senior in priority to all other encumbrances.

Section 1.18 FHA shall mean and refer to the Federal Housing Administration.

Section 1.19 Garage shall mean and refer to the EUCA as shown on the Condominium Plat as "G," with a number, for example, G-1 would mean the Assigned Garage for the first-floor Units and G-2, the Assigned Garage for the second-floor Unit, as shown on Sheet 3 of the Plat.

Section 1.20 Living Unit, sometimes Unit shall mean and refer to the portions of the Condominium Project shown and described as Units; i.e., B-1 means Unit 1, Building B, the Living Unit located on the first floor of Building B as shown on Sheet 2 of the Plat; provided, however, the following are not part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the

Living Unit.

Section 1.21 Manager shall mean the person or entity designated by the Board to manage the affairs of the Project and to perform various other duties assigned to it by the Board by the provisions of this Declaration and By-Laws.

Section 1.22 Member of Association shall mean and refer to an Owner as defined in Section 1.26 of this Article I.

Section 1.23 Mortgage sometimes Security Interest shall mean and refer to a deed of trust as well as a mortgage.

Section 1.24 Mortgagee shall mean and refer to a beneficiary under or holder of a Deed or Trust given for value which encumbers any Condominium.

Section 1.25 Open Court shall mean and refer to the EUCA designated as OC on the Plat adjacent to the first floor of each Unit as appears on Sheets 3-5 of the Plat.

Section 1.26 Owner shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium which is part of the Condominium Project.

Section 1.27 P.S. shall mean the overflow parking as shown on Sheet 2 of the Plat.

Section 1.28 Perimeter Fence shall mean and refer to the fence constructed by the Declarant along the perimeter of the Project.

Section 1.29 Phased Annexation shall mean and refer to Phases 2 and 3, and further described in Recital C, and on Sheet 2 of the Plat which Declarant may annex in accordance with Article XI, Section 11.8, without consent of the Owners or Eligible Mortgage Holders.

Section 1.30 Plat, Condominium shall mean and refer to the Condominium Plat recorded on the 20th day of December, 1990, in Book 48 of Plats, Page 36, Clark County, Nevada, Records, covering the Condominium Project, including such amendments thereto as may from time to time be recorded.

Section 1.31 Private Drives shall mean and refer to Common Area CA-2 in Phase 1 on Sheet 2 of the Plat and all Private Drives as designated in subsequent phases.

Section 1.32 Project shall mean and refer to the entire real property above described, including all structures and improvements erected or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

Section 1.33 Recreational Area shall mean and refer to the Pool Area east of Building H designated CA-1 on Sheet 4 of the Plat which contains the pool, bathhouse, and other amenities.

Section 1.34 Stairway and Landing shall mean and refer to the EUCA for second-floor Units as shown on Sheets 3, 4 and 5 of the Plat.

Section 1.35 VA shall mean and refer to the United States Department of Veterans Affairs.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 2.1 Membership. Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated to comply with the Articles, By-Laws, and the Rules and Regulations adopted by the Board of Directors of the Association.

Membership in the Association shall not be transferred, pledged

or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books, and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 2.2 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. Class B member(s) shall be Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) two (2) years from the date of the recording of the Declaration of Annexation for the last phase with the Clark County, Nevada, Recorder, or

(c) five (5) years from the date of the filing of the original Condominium Plat with the Clark County, Nevada, Recorder's Office.

### ARTICLE III

#### COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

##### Section 3.1 Creation of Lien and Personal Obligation

of Assessments. The Declarant, for each Condominium owned within the project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to the Association:

- (a) annual assessments, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area and Association Area, and
- (b) special capital assessments for capital improvements, such assessments to be established and collected as hereinafter provided.
- (c) special unit assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of notice of assessment. Each such assessment together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the

time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 3.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project and for the improvement and maintenance of the Common Area and Association Common Area for the common good of the Project.

Section 3.3 Maximum Annual Assessment. Until January first of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment shall be Seven Hundred Eighty Dollars (\$780.00) for all Units payable, except in the event of default, in installments of Sixty-five Dollars (\$65.00) per month.

(a) From and after January first of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased each year not more than fifteen (15%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January first of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased above fifteen (15%) percent by the vote or written assent of fifty-one (51%) percent of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, any such increase shall



have the vote or written assent of:

(i) fifty-one (51%) percent of the total voting power of the Association and

(ii) fifty-one (51%) percent of the total voting power of Members other than the Declarant.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 3.4 Capital Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, an assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and Association Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one (51%) percent of each class of Members; provided, however, after the conversion of the Class B membership to Class A membership any such assessment shall have the vote or written assent of:

(a) fifty-one (51%) percent of the total voting power of the Association, and

(b) fifty-one (51%) percent of the total voting power of the Members other than Declarant.

Section 3.4A Special Unit Assessment. The Association may also levy a special assessment against any Member and Member's Condominium Unit to reimburse the Association for costs incurred in bringing a Member and his Condominium into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and

the Association Rules and Regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing.

Section 3.5      Membership Approval/Quorum. Any action authorized under Section 3.3 or 3.4 above shall be taken at a meeting called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting; provided, however, if notice is given by mail, and the notice is not mailed by first-class, registered or certified mail, then notice shall be given not less than twenty (20) days before the meeting. A quorum for such meeting shall be a majority of the voting power of the membership of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five (25%) percent of the voting power of the membership of the Association, provided, however, if

- (a) the meeting so adjourned is an annual meeting, and
- (b) the adjourned annual meeting is actually attended, in person or by proxy, by less than thirty-three and one-third (33 1/3%) percent of the voting power of the membership of the Association,

then the only matters which may be voted upon thereat, are matters, written notice of which was duly given. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one (51%) percent, Members who were not present in person or by proxy may give their assent in writing provided the same is obtained by the appropriate officers of the

Association not later than thirty (30) days from the date of such meeting.

Section 3.6      Uniform Rate of Assessment. Except as otherwise provided herein, both annual and special assessments shall be fixed at a uniform rate for all Condominiums. Said rate for all Condominiums may be collected on a monthly basis or as otherwise determined by the Board.

A special assessment against Members to raise funds for the rebuilding or major repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed.

A special assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his Condominium into compliance with the provisions of the Condominium documents shall be assessed only against that Member and his Condominium.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall bear interest at the rate of twelve (12%) percent per annum from the due date until paid.

If an Owner shall be in default in the payment of an installment upon an assessment, the Board may accelerate the remaining installments of the assessment upon notice thereof to the Owner, and thereupon the unpaid balance of the assessment shall come due on the date stated in the notice.

Section 3.7      Date of Commencement of Annual Assessments;  
Due Dates. The annual assessments provided for herein shall commence

as to all Condominiums in the First Phase on the first day of the month following the conveyance of the first Condominium to an Owner in the First Phase or on the first day of the month following the conveyance of the Association Common Area in Phase One to the Association, whichever shall first occur. The annual assessments for each subsequent Phase added by the Declaration shall commence on the 1st day of the month following the conveyance of the first Condominium to an Owner of each Phase or on the first day of the month following the conveyance of the Association Common Area in each Phase to the Association, whichever shall first occur. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each annual assessment period. Written notice of the annual assessment shall be established by the Board.

Section 3.8 Effect on Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium has become delinquent, the Board may file record in the Office of the Clark County Recorder a "Notice of Delinquent Assessment and Claim of Lien" as to such Condominium in the form substantially as follows:

NOTICE OF DELINQUENT ASSESSMENTS  
AND CLAIM OF LIEN  
EL PARQUE HOMEOWNERS' ASSOCIATION

TO:

\_\_\_\_\_  
(Owner)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Las Vegas, Nevada



Immediately upon recording of any notice of delinquency, pursuant to the foregoing provisions of this section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees) and interest accruing thereon, shall be and become a lien upon the Condominium described therein. Liens shall also secure all other payments and/or assessments, together with interest, costs, and attorneys' fees with respect to said Condominium following such recording. Said lien shall continue for a period of one (1) year unless extended for a period of an additional year by the recording of a written extension by the Association. When a notice of assessment has been recorded, such assessment shall constitute a lien on the Condominium prior and superior to all other liens, except

(a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and

(b) the lien or charge of any first mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed as and in the

same manner as the foreclosure of a mortgage upon real property under the laws of the State of Nevada, or the lien may be enforced by sale pursuant to Section 117.075 of Nevada Revised Statutes, as from time to time amended, or any successor statute, and to that end a power of sale is hereby conferred upon the Association. The Association acting on behalf of the Condominium Owners shall have the power to bid for the Condominium at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 3.9 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first mortgage or any conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first mortgage of record or other purchaser of a Condominium obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Condominium which became due prior

to the acquisition of title to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Condominiums including such acquirer, his successors and assigns.

Section 3.10     Estoppel Certificate.     The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

Section 3.11     Personal Liability of Owner.     No Owner may exempt himself from personal liability for assessments levied by the Association nor release the Condominium owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Condominium.

Section 3.12     Taxation of Association.     In the event that any taxes are assessed against the Common Area, Association Property or the personal property of the Association, rather than against the individual Condominiums, said taxes shall be added to the annual assessments and, if necessary, a special assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in four (4) installments, thirty (30) days prior to the due date of each tax installment.

Section 3.13     Working Capital Fund.     Upon acquisition of record title to a Condominium from Declarant, each Owner in Phase One only shall contribute to the working capital fund of



the Association an amount equal to one-sixth (1/6) the amount of the then annual assessment for that Condominium as determined by the Board. The working capital shall not be considered prepayment of the annual assessment. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. After close of the first sales escrow of a Condominium by Declarant, as seller, Declarant shall deposit into an escrow an amount equal to one-sixth (1/6) of the then annual assessment for any and all Condominiums not yet sold. Escrow shall remit these funds to the Association. Upon the close of escrow of any Condominium for which the capital contribution was prepaid by Declarant, escrow shall remit to the Declarant the capital contribution collected from the Owner.

#### ARTICLE IV

##### RESPONSIBILITIES OF MAINTENANCE

Section 4.1 Owner Maintenance of Living Unit. Each Owner of a Condominium shall be responsible for the maintenance and repair of the Open Court, Stairway and Landing, and glass doors and windows enclosing his Living Unit, the interior of his Living Unit, and all appliances whether "built-in" or freestanding within the Living Unit or garage the interior surfaces of the Living Unit. The Owner shall also be responsible for the maintenance and repair (and damage as a result of any repair) of the plumbing, electrical and air conditioning and heating units serving the Living Unit, including television cable equipment and connections and all appliances and equipment located in said Living Unit.

Section 4.2      Owner's Grant of Easements.      Each Owner hereby grants easements to other Owners to enter into each Condominium and to have utility companies enter into Condominiums to repair the plumbing, heating, and electrical systems located thereon, subject to the following limitations: Entry into a Living Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner, and any damage caused thereby shall be repaired by the entering party. Entry into a Living Unit for other than emergency repairs shall be made only after three (3) days' notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner, and any damage caused thereby shall be repaired by the entering party.

Section 4.3      Association Maintenance of Common Area. Except as otherwise provided herein, the Association acting through the Board and its officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area and Association Property, and any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration of Restrictions, the Articles and the By-Laws. The Association shall maintain and repair all parking areas; provided, however, should said maintenance or repair result from the negligence of an Owner, or his guests or licensees, the Owner shall reimburse the Association for the costs of such maintenance or repair.

Section 4.4      Association Right of Entry.      For the

purpose of performing the maintenance of the Common Area, Association Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Living Unit or upon any portion of the Common Area to effect emergency repairs. For other than emergency repairs, the Association's agents or employees shall have the right to enter any Living Unit or any portion of the Common Area to effect repairs, improvements, replacements or maintenance which the Association, after approval by two-thirds (2/3) vote of the Board, reasonably deems necessary. Such entry shall be made with as little inconvenience to the Owner as possible, and any damage caused thereby shall be repaired by the Association. Further, such entry for other than emergency repairs shall be made only after not less than three (3) days' notice has been given to the Owner.

Section 4.5 Association Right to Adopt Rules. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration and to amend the same from time to time relating to the use of the Association Property, Common Area and Exclusive Use Areas and facilities situated thereon by Owners and by their tenants or guest, and the conduct of such persons with respect to the Association Property, automobile parking, outside storage of boats, motor homes, campers, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might

detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the Owner of a Condominium whose occupant leaves property on the Common Area or Association Common Area in violation of the rules may be assessed to cover the expenses incurred by the Association in removing such property and storing or disposing thereof, after appropriate notice and an opportunity for a hearing before the Board and a two-thirds (2/3) vote of approval by the Board. The Board may suspend the voting rights and right to use the recreational facilities located on the Association Common Area of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published Rules and Regulations, after reasonable written notice and an opportunity for a hearing before the Board.

Section 4.6 Nuisance: No Living Unit, Garage or Exclusive Use Common Area shall be used in such manner as to interfere with the enjoyment of other Owners or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Living Unit, Garage or on the Recreational or Common Areas.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

No building, fence, wall, structure or improvement shall be commenced, erected, placed or altered upon the Association Property and the Common Area, including the Exclusive

Use Areas, until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors of the Association or by an architectural committee appointed by the Board of Directors and composed of three (3) or more, not to exceed five (5) members. In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered conforms to all of the conditions and restrictions herein contained and is in harmony with similar structures erected within the project. Failure to approve or to disapprove a submission shall not constitute a waiver of subsequent compliance with this Article by an Owner.

The grade, level or drainage characteristics of the Condominium Project or any portion thereof shall not be altered without the prior written consent of the Board or its designated committee.

The provisions of this Article shall not apply to the initial construction by Declarant of Condominiums or other improvements to the Condominium Project, and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove the initial construction by Declarant of Condominiums or other improvements to the Condominium Project.

ARTICLE VI

PROHIBITION OF PARTITION OR SEPARATION OF INTEREST

Section 6.1 Separation of Interest. No Owner may sell, assign, lease or convey:

(a) his interest in the Common Area separate and apart from his Living Unit, nor

(b) his Living Unit separate and apart from the Exclusive Use Areas and Exclusive Use Areas assigned to his Unit, nor

(c) his interest in any Exclusive Use Area, separate and apart from his interest in the Common Area and his Living Unit, nor

(d) any rights to the use of the Association Common Area, other than as permitted by this Declaration, the By-Laws or the Rules and Regulations as established from time to time by the Association.

Section 6.2 Prohibition of Partition. Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that:

(a) more than three (3) years before the filing of the action the Project was damaged or destroyed so that a material part thereof was unfit for its use, and the Project has not been rebuilt or repaired substantially to its state prior to its

damage or destruction, or

(b) that three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, and that Owners holding in aggregate more than a fifty (50%) percent interest in the Common Area are opposed to repair or restoration of the Project, or

(c) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty (50%) percent interest in the Common Area are opposed to repair or restoration of the Project;

provided, however, that if any Condominium shall be owned by two (2) or more co-tenants as tenants-in-common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants. No Condominium may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first mortgage on that Condominium.

Section 6.3 Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Condominium Project for the benefit of all the Owners thereof when the partition of the Owners' interests in said Condominium Project may be had pursuant to Section 6.2 above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any two (2) Members

of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder, Clark County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Secretary, U.S. Department of Veterans Affairs.

## ARTICLE VII

### RIGHT OF MORTGAGEES

Section 7.1 Mortgagee's Consent. Provided that the mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless at least sixty-seven (67%) percent of the first mortgagees of mortgages encumbering Condominiums (based upon one (1) vote for each mortgage) have given their prior written approval:

(a) seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plat or this Declaration, or change, waive or abandon any scheme or regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Living Units or the Common Area;

(b) change the pro-rata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for



determining the pro-rata share of the Common Area appurtenant to each Living Unit.

(c) partition or subdivide any Condominium;

(d) seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area or Association Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of said Areas shall not be deemed a transfer within the meaning of this provision;

(e) use hazard insurance proceeds for losses to any portion of the Condominium Project for other than the repair, replacement or reconstruction of the Condominium Project, except as may be provided by statute upon substantial loss to the Living Unit, Common Area or Association Common Area;

(f) fail to maintain fire and extended coverage insurance on said Areas and the improvements thereto on a current replacement cost basis in an amount less than one hundred (100%) percent of the insurable value, based on current replacement cost.

Section 7.2 NOTICE TO MORTGAGEE: Upon written request to the Association, identifying the name and address of the Holder, Insurer or Guarantor and the Condominium number of address, any Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days).

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in this Declaration or the By-Laws for the Owners' Association.

#### ARTICLE VIII

#### DESTRUCTION OF COMMON AREA,

#### ASSOCIATION COMMON AREA OR LIVING UNITS

Section 8.1 Casualty Destruction of Common Area or Recreational Area. If any portion of the Common Area or Association Property is damaged or destroyed by fire or other casualty, then:

(a) if the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five (5%) percent of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding are necessitated, the Board shall contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

(b) if the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five (5%) percent of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding are necessitated, and if the Owners holding in aggregate more than fifty (50%) percent interest in the Common Area agree to the repair or restoration of the project, then the Board shall contract as provided in subparagraph (a) above.

(c) If the Owners do not so agree to the repair or rebuilding of the Common Areas provided in subparagraph (d) above, then each owner (and his mortgagee(s)) as their respective interest shall then appear, shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his Condominium as compared to the aggregate

decrease in the fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a Member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(e) Notwithstanding Section 8.1(c) the Board shall contract for such repair or rebuilding of the Common Area which consists of Condominium Building(s) containing Living Units (or portions thereof and/or improvements thereto) and garages, if fifty (50%) percent or more of the Owners owning Living Units in said Building(s) agree to the repair or restoration of said Building(s).

(f) if a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium in the proportion the Condominiums are assessed, pursuant to Section 3.4 of Article III of this Declaration, for purposes of raising funds for the rebuilding or major repair of a portion of the structural Common Area, to make up any deficiency between the total insurance proceeds and the contract price for such repair

and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 8.2 Taking of Common Area. If any portion of the Common Area or Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award therefor is not apportioned among the Owners and their mortgagees as their respective interests then appear by court judgment or by agreement between the condemning authority and each of the effected Owners, then the Owners of the Common Area, and their mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds will be distributed pursuant to subsection (c) of Section 1 above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area or Association Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Section 1 of this Article VIII for repairing damaged or destroyed portions of the Common Area.

Any decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Section 1 of this Article VIII for determining whether to rebuild or repair following damage or destruction.

Section 8.3 Casualty Destruction of Living Unit. In the event of damage or destruction of any Living Unit, the Owner

thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof, they shall be deemed to have been approved.

Section 8.4    Taking of Living Unit.    In the event of any taking of a Living Unit, the Owner (and his mortgagees as their interests may appear) of the Living Unit shall be entitled to receive the award for such taking, and after acceptance thereof, he and his mortgagee shall be divested of any further interests in the Condominium Project if such Owner shall vacate his Living Unit as the result of such taking. In such event said Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 8.5    Association Insurance.    The Association shall obtain and continue in effect the following insurance:

- (a) A master fire insurance policy with glass coverage and extended coverage endorsement for the full insurable value of all of the improvements within the project. "Improvements" means and refers to the Association Common Area and Common

Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and does not include items not provided by Declarant. The form and content of such policy must be satisfactory to all institutional first mortgage lenders and shall meet the maximum standards of the various institutional first mortgage lenders whose loan(s) encumber any of the Condominiums.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Area or Association Common Area. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such policies must provide that they may not be cancelled or substantially modified by any party without at least thirty (30) days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

(c) A fidelity bond covering members of the

Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as insured and written in an amount equal to at least the estimated maximum funds, including reserves in the custody of the Association or a management agent at any given time during the term of the bond. However, the bond shall not be less than a sum equal to three (3) months' aggregate assessments on all Condominiums plus reserve funds.

(d) Workman's Compensation Insurance covering any employees of the Association.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association. Each owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his Condominium. No Owner shall insure his Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision he shall be responsible to the Association for any such diminution.

Section 8.6 Mortgagee Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other



action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one (51%) percent of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

ARTICLE IX

USE OF LIVING UNITS AND COMMON

AREA AS DESCRIBED IN CONDOMINIUM PLAN

Section 9.1 Residential Purposes (Declarant's Ex-ceptions). Each Living Unit shall be improved, used and occupied for private, single-family dwelling purposes only. No portion of the Common Area shall be used for any commercial purposes whatsoever; provided, however, Declarant may use any of the Living Units and Exclusive Use Areas owned or leased by Declarant as model homes and sales offices during that period of time commencing when the Condominiums are first offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners thereof or five (5) years after the date of the sale of the first Condominium in the Project, whichever shall first occur.

Section 9.2 Lease of Condominium. Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the By-Laws and the Rules and Regulations of the Board. Failure to comply with the provisions of these documents shall be a default under the Lease. No Owner shall lease his Condominium for transient or

hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Section 9.3 Interior Surfaces. Each Owner shall have the right, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of his Living Unit, and the surfaces of the bearing walls and partitions located within his Living Unit and garage. Said Owners shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors, walls and doors of said Living Unit:

Section 9.4 Exclusive Use Areas Appurtenant.

Each Exclusive Use Area shall be:

- (a) appurtenant to the Living Unit with which the Exclusive Use Area is conveyed, and
- (b) used only for the purposes set forth in this Declaration.

The right to so use an Exclusive Use Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s) and shall be terminated upon conveyance. No Exclusive Use Area or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which they are appurtenant. Each Exclusive Use Area shall be deemed to be Common Area for all those purposes set forth in this

Declaration which are not inconsistent with this Article IX or Article IV.

Section 9.5 Use of Exclusive Use Areas and Restricted Common Areas. Each Owner shall have the following rights with regard to the Exclusive Use Areas, Open Court and Landing, which he has the exclusive right to use:

- (a) to place furniture and plants in said area;
- (b) to plant flowers and shrubs which do not unreasonably interfere with the enjoyment of the Owners of adjacent Living Units and Exclusive Use Areas.

Section 9.6 Use of Common Area and Association Property. Except as otherwise provided herein, the Common Areas, and Association Property shall be improved and used only for the following purposes:

- (a) vehicular passage and pedestrian movement within the Condominium Project, including access to the Living Units and Garages;
- (b) recreational use by the Owners and occupants of Living Units in the Condominium Project and their guests, subject to rules as established by the Board;
- (c) beautification of Association Property and Common Areas and to provide privacy to the residents of the Condominium Project through landscaping and such other means as the Board shall deem appropriate;

(d) parking of automotive passenger vehicles in areas provided herein or as may be designated and approved by the Board upon such terms and conditions and for such fees as may from time to time be determined by the Board;

(e) as Exclusive Use Areas to be used in the manner hereinbefore described. Nothing herein shall be deemed to allow persons other than the Owner (or his tenants as lessees) of the Living Unit to which an Exclusive Use Area is appurtenant to enjoy the use thereof.

No part of the Common Area or Association Property shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area or Association Property be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or Association Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the Nevada Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

Section 9.7 Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Association Property, Common Area or to any improvements thereto, including, the buildings, recreation facilities and landscaping, caused by such Owner, his licensee(s) or any occupant of such Owner's Living Unit as such liability may be determined under Nevada law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, By-Laws and Rules of the Board by his guests, lessees and all occupants of his Living Unit, and each Owner shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant to the Declaration, the By-Laws or Board Rules for any violation by his guests, lessees and occupants of his Living Unit.

Section 9.8 Pets. A maximum of two (2) household pets (exclusive of caged birds or aquarium fish) may be kept in any Living Unit or Exclusive Use without the prior written consent of the Board. Pets shall not be allowed on other portions of the Common Area or Association Property except as may be permitted by Rules made by the Board. Except as provided hereinabove, no animals, livestock, birds or poultry shall be brought within the Condominium Project or kept in any Living Unit or on any portion of the Association Property or Common Area. No pet shall be permitted to be kept within any portion of the Condominium Project if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners.

Section 9.9 Nuisance. No Living Unit or Restricted

Common Area shall be used in such manner as to interfere with the enjoyment of other Owners or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Living Unit, Garage nor on the Recreational and Common Areas.

Section 9.10 Sign Control. No signs other than one (1) sign of customary and reasonable dimensions advertising a Condominium for sale or rent shall be displayed in any Living Unit so that it is visible from such area without the prior written consent of the Board. No signs shall be displayed on the Common Area except signs approved by the Board. Anything contained in this Declaration, to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth in Section 9.1 above, such signs, poles and advertisements as it deems appropriate in connection with its sales of Condominiums to the public.

Section 9.11 Outside Antennae. There shall be no outside television, radio antennae or satellite dishes, poles or flag poles constructed or maintained on the Condominium Project for any purpose without the prior approval of the Board.

Section 9.12 Use Causing Loss of Insurance. No Living Unit, Garage, Exclusive Use Area or improvements situated therein shall be used in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of an extended coverage endorsement to the Nevada Standard Fire Policy form or cause any such policy or policies representing such insurance to be cancelled or suspended or the company

issuing the same to refuse renewal thereof.

Section 9.13 Parking and Vehicular Restrictions. No Owner shall park, store or keep on any street (public or private) within the Properties any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck); any recreational vehicle (including, but not limited to, any camper unit, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; or any inoperable vehicle or any other similar vehicle. The above excludes camper trucks and similar vehicles up to and designated by the Board including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board. In addition, no Owner shall park, store, or keep anywhere within the Properties any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. All trailers, campers, motor homes and similar recreational vehicles shall be parked in enclosed garages or otherwise adequately screened from view by way of a structure approved by the Architectural Committee. Garages shall be kept closed at all times, except as reasonably required for ingress to and egress from the interior of the garages. No Owner of any Lot or Condominium shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or Condominium or elsewhere within the Properties, 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 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.

## ARTICLE X

### TRANSFER OF ASSOCIATION PROPERTY

Section 10.1 Conveyance of Association Common Area and Streets. The Declarant shall simultaneously with the first conveyance to an Owner of a Condominium in each Phase, convey to the Association fee simple ownership to the Association Property.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.1 Enforcement. The Association and any Owner shall have the right to enforce by any proceedings at law or in equity each covenant, condition, restriction and reservation, now or hereafter imposed by the provisions of this Declaration. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of this Declaration or of the By-Laws or Articles. Failure by the Association or any Owner to enforce any covenant, condition, restriction or reservation contained herein shall not be deemed a waiver of the right to do so thereafter.

Section 11.2 Severability. Should any provision in



this Declaration be void or become unenforceable in law or equity by judgment or court order, the remaining provisions of this Declaration shall remain in full force and effect.

Section 11.3 Amendments. During the period of time prior to conversion of the Class B membership to the Class A membership, this Declaration may be amended by an instrument in writing signed by sixty-seven (67%) percent of the voting power of each class of Members of the Association. The amendment shall become effective upon its recording in the Office of the County Recorder of Clark County, Nevada. After the conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by:

- (a) sixty-seven (67%) percent of the total voting power of the Association, and
- (b) at least sixty-seven (67%) percent of the voting power of Members of the Association other than Declarant.

No amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one (51%) percent or more of the Condominiums within the Condominium Project which are subject to Eligible Mortgage Holder Mortgages. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects shall be deemed "material to a Mortgagee":

- (1) voting;

- (2) assessments, assessment liens or subordination of such liens;
- (3) reserves for maintenance, repair and replacement for the Common Areas and Association Property;
- (4) casualty insurance, liability insurance or fidelity bonds;
- (5) rights to use of the Common Areas and Association Property;
- (6) responsibility for maintenance and repair of the several portions of the Project;
- (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project, except as reserved by the Declarant in accordance with Section 11.8 herein;
- (8) boundaries of any Living Unit;
- (9) the interests in the Exclusive Use Area and other portions of the Common Areas;
- (10) convertibility of Living Units into Common Areas or of Common Areas into Living Units;
- (11) leasing of Condominiums;
- (12) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium;
- (13) any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage

Holders or Eligible Insurers or Guarantors.

An addition or amendment to the Declaration or By-Laws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

So long as there is a Class B Membership in the Association, any amendment to this Declaration shall require the prior approval of the Secretary, United States Department of Veterans Affairs. A draft of any amendment should be submitted to the Secretary, United States Department of Veterans Affairs for its approval prior to the recordation of the amendment.

Section 11.4 Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2040, after which date they shall automatically be extended for successive periods of ten (10) years unless sixty-seven (67%) percent of the Owners have executed and recorded at any time within six (6) months prior to December 31, 2040, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2040, or at the end of any such ten (10) year period.

Section 11.5 Encroachment Easement. In the event any portion of the Common Area or Association Property encroaches

upon any Living Unit or any Living Unit encroaches upon the Common Area, Association Property or another Living Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Said valid easement shall apply only to minor encroachments, not exceeding one (1') foot. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement, or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Condominium Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Living Units or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 11.6 Litigation. In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

Section 11.7 Annexation of Additional Property by

Membership Approval. Upon approval in writing of the Association, pursuant to two-thirds (2/3) of the voting power of each class of Members of the Association, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file or record a Declaration of Annexation which shall extend the scheme of this Declaration to such property. After conversion of the Class B Membership to Class A Membership, this action shall require the vote or written consent of:

(a) two-thirds (2/3) of the voting power of Members of the Association, and

(b) two-thirds (2/3) or more of the voting power of Members of the Association other than the Declarant.

Section 11.8 Annexation by Declarant. If, within five (5) years of the date of the recording of this Declaration with the County Recorder of Clark County, Nevada, Declarant should develop additional lands within the property described in Article 1.29 (Phased Annexation) such additional lands or any portion thereof may be added to the Condominium Project, subjected to this Declaration, and included within the jurisdiction of the Association by action of Declarant without the assent of Members of the Association or Eligible Mortgage Holders; provided, however, that the development of the additional land shall be in accordance with the plan of development submitted to the VA.

Said annexation may be accomplished by the recording of a Declaration of Annexation or separate Declaration of

Restrictions which requires Owners of Condominiums therein to be Members of the Association.

The obligation of Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular phase of development.

Prior to any annexation under this subsection 11.8, (1) detailed plans for the development of the additional property must be submitted to the VA, and the VA must determine that such detailed plans are in accordance with the general plan and so advise Declarant, and (2) all improvements in each Phase will be substantially completed.

Subject to annexation of additional property as set forth in subsection 11.8(a):

(a) Declarant hereby reserves for the benefit and appurtenant owners of condominiums in Phases 2 and 3, "Phased Areas of El Parque Condos, non-exclusive easements to use the Association Common Area and Common Areas (other than any Condominium buildings or Exclusive Use Areas) in the Condominium Project, until such time as all of the phases are annexed pursuant to this paragraph, or until expiration of the right to annex.

(b) Declarant hereby grants, until expiration of the right to annex, for the benefit of and appurtenant to each Condominium in the Condominium Project Phase One,

and their Owners, a non-exclusive easement to use the Common Areas or Association Common Area (other than any Condominium buildings or Exclusive Use Areas) in Phased Areas, pursuant to the provisions of and in the manner prescribed by this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in the Condominium Project owned an undivided interest in the Common Area of the property so annexed.

(c) These reciprocal cross-easements shall be effective as to each Phase, and as to the Condominium Project, only until such time as each Phase has been annexed by the recordation of a Declaration of Annexation or a separate Declaration of Covenants, Conditions and Restrictions by Declarant, or expiration of the right to annex.

Section 11.9 De-annexation. Declarant may delete all or any portion of a phase of development "Phase" from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the Owner of all such Phase of development and provided that (a) a Notice of De-annexation is recorded in the same manner as the applicable Declaration of Annexation was recorded; (b) Declarant has not exercised any Association vote with respect to any portion of such Phase; (c) assessments have not yet commenced with respect to any portion of such Phase; (d) no Condominium has been sold in said Phase to a member of the general public; and (e) the Association has not made any

expenditures of any obligation respecting any portion of said Phase.

Section 11.10      Owner Compliance.      Each Owner, tenant, or occupant of a Condominium shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

Section 11.11                      Limitation on Restrictions                      on Declarant.      Declarant is undertaking the work of construction of residential Condominiums and additional improvements upon the Condominium Project. The completion of that work, and the sale, rental or other disposal of said Condominiums is essential to the establishment of the Condominium Project as a residential community. In order that this work may be completed and the Condominium Project established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Condominium Project or in any Living Unit, Garage, Exclusive Use Area, Common Areas or Association Property, whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from constructing and maintaining on any part or parts



of the Condominium Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Condominium Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Condominium Project its business of completing his work, and of establishing a plan of Condominium ownership and of disposing of the Condominium Project in the form of Condominiums by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any portion of the Condominium Project as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any such sign shall, during the sales period set forth in Article IX, Section 9.1 above, not unreasonably interfere with the use by any Owner of his Living Unit or Exclusive Use Area.

The rights of Declarant provided for herein shall commence when the Condominiums are first offered for sale to the public and end when all the Condominiums in the Project are sold and conveyed by the Declarant to separate owners thereof, or five (5) years after the date of the sale of the first Condominium in the Project, whichever shall first occur.

