Section 10.21 Exterior Lighting. Any exterior electrical, gas or other artificial lighting installed on any Residential Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Residential Unit(s). The exterior lighting initially installed on the Residential Units shall not be modified or altered by the Owner and shall be maintained, repaired and replaced by the Owners as necessary, to provide lighting of the same character and quality (including light bulb wattage) as was initially installed in the Properties. Further rules regarding exterior lighting may be promulgated by the Board.

Section 10.22 Exterior Painting. All exterior painting of a Residential Unit shall be subject to the approval of the Board, unless the painting is of the same color as the then current color of the exterior of the Residential Unit. In no event shall any Owner be permitted to paint the exterior of his or her Residential Unit in any manner which is not harmonious with the colors of the other two attached Residential Units.

Section 10.23 Post Tension Slabs. The concrete slab for certain Residential Units in the Properties are or may be reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Unit and/or personal injury. By accepting a deed to a Unit in the Properties, each Owner specifically covenants and agrees that: (a) such Owner shall not cut into or otherwise tamper with any Post Tension Slab; (b) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Residence; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Unit; and (d) such Owner shall indemnify and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including attorneys' fees) arising from any breach of this Section.

Section 10.24 Sight Visibility Restriction Areas. The maximum height of any and all Improvements (including, but not necessarily limited to, landscaping), on all Sight Visibility Restriction Areas, shall be restricted to a maximum height not to exceed such height set forth in the Plat ("Maximum Permitted Height").

Section 10.25 Prohibited Direct Vehicle Access. Any other provision herein notwithstanding, as and to the extent indicated on the Plat, and/or prohibited by the County, there shall be no direct vehicular access from any abutting Unit to a dedicated thoroughfare (other than over Private Streets and Common Element entry ways, which shall be permitted in a normal manner, subject to the provisions set forth in this Declaration, and/or over public streets).

Section 10.26 Abatement of Violations. The violation of any of the Rules and Regulations, or the breach of this Declaration, shall give the Board the right, in addition to any other right or remedy elsewhere available to it:

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

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

All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate set forth in Section 7.1, above, until paid, shall be charged to and assessed against such defaulting Owner, and the Board shall have the right to lien for all of the same upon the Unit of such defaulting Owner. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

Section 10.27 Yard Components. Without limiting any other provision herein, no spa, jetted tub or hot tub (whether in-ground or above-ground), and no shed, gazebo, or storage structure, shall be permitted or located in any Yard Component.

Section 10.28 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Manager of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

Section 10.29 Declarant Exemption. Each Unit owned by Declarant shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Unit to a Purchaser, and activities of Declarant reasonably related to Declarant's development, construction, advertising, marketing and sales efforts, shall be exempt from the provisions of this Article 10. This Article 10 may not be amended without Declarant's prior written consent.

Section 10.30 LMA Declaration; Master Declaration. The foregoing use restrictions and provisions shall be in addition to, and cumulative with, any and all expressly applicable use restrictions and provisions of the LMA Declaration and/or Master Declaration. In the event of any irreconcilable conflict, the provisions of the LMA Declaration and/or Master Declaration shall prevail.

ARTICLE 11
DAMAGE OR CONDEMNATION OF COMMON ELEMENTS

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

(a) Repair of Damage. Any portion of this Community for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Common-Interest Community is terminated, in which case the provisions of NRS §§ 116.2118, 116.21183 and 116.21185 shall apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, 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 Community, (A) the proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units; and (B) the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the liabilities of all the Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations.

(b) Damage by Owner. To the full extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Elements not fully reimbursed to the Association by insurance proceeds, provided the damage is sustained as a result of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any Improvement by said Owner or the Persons deriving their right and easement of use and enjoyment of the Common Elements from said Owner, or by his or her respective Family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to: (1) determine whether any claim shall be made upon the insurance maintained by the Association; and (2) levy against such Owner a Special Assessment equal to any deductible paid and the increase, if any, in the insurance premiums directly attributable to the damage caused by such Owner or the Person for whom such Owner may be responsible as described above. In the case of joint ownership of a Unit, the liability of the co-owners thereof shall be joint and several, except to any extent that the Association has previously contracted in writing with such co-owners to the contrary. After Notice and Hearing, the Association may levy a Special Assessment in the amount of the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, against any Unit owned by such Owner, and such Special Assessment may be enforced as provided herein.

Section 11.2 Condemnation. If at any time, all or any portion of the 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. Any such award payable to the Association shall be deposited in the operating fund. 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. Immediately upon having knowledge of any taking by eminent domain of Common Elements, or any portion thereof, or any threat thereof, the Board shall promptly notify all Owners and all Eligible Holders.

Section 11.3 Condemnation Involving a Unit. For purposes of NRS § 116.1107.2(a), if part of a Unit is required by eminent domain, the award shall compensate the Unit's Owner for the reduction in value of the Unit's interest in the Common Elements. The basis for such reduction shall be the extent to which the occupants of the Unit are impaired from enjoying the Common Elements. In cases where the Unit may still be used as a Dwelling, it shall be presumed that such reduction is zero (0).

ARTICLE 12
INSURANCE

Section 12.1 Casualty Insurance. The Board shall cause to be obtained and maintained a master policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements of the Association on the Common Elements, for the full insurable value replacement cost thereof without deduction for depreciation or coinsurance, and, in the Board's business judgment, shall obtain insurance against such other hazards and casualties, as the Board deems reasonable and prudent. The Board, in its reasonable judgment, may also insure any other property, whether real or

personal, owned by the Association or located within the Properties, against loss or damage by fire and such other hazards as the Board may deem reasonable and prudent, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Elements shall be maintained for the benefit of the Association, the Owners, and the Eligible Holders, as their interests may appear as named insured, subject however to the loss payment requirements as set forth herein. Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments levied by the Association.

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

Section 12.2 Liability and Other Insurance. The Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem prudent (but in no event less than $1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests and invitees, against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available and reasonably necessary, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Worker's Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

Section 12.3 Fidelity Insurance. The Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance coverage (in an amount at least equal to 100% of the Association Funds from time to time handled by such Persons) and such other insurance as it deems prudent, insuring the Board, the Directors, and Officers, and any Manager against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof, if reasonably feasible, in the amount of not less than $1,000,000.00. Said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period, if reasonably available. The Association shall require that the Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From and after the end of the Declarant Control Period, blanket fidelity insurance coverage which names the Association as an obligee shall be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such

Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (¼) of the Annual Assessments on all Units, plus Reserve Funds) (or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable).

Section 12.4 Other Insurance Provisions. The Board shall also obtain such other insurances customarily required with respect to projects similar in construction, location, and use, or as the Board may deem reasonable and prudent from time to time, including, but not necessarily limited to, Worker's Compensation insurance (which shall be required if the Association has any employees). All premiums for insurances obtained and maintained by the Association are a Common Expense included in the Annual Assessment levied upon the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its sound business judgment. In addition, the Association shall continuously maintain in effect such casualty and liability insurance and fidelity insurance coverage necessary to meet the requirements for similar developments, as set forth or modified from time to time by any governmental body with jurisdiction, except to the extent such coverage is not reasonably available or has been waived by the applicable agency.

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his Unit, at his sole expense to have obtained, and to have furnished his Mortgagee and the Board (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and shall provide the Board with duplicate copies of such insurance policy at Close of Escrow, and periodically thereafter prior to expiration from time to time of such policy, and upon the Board's request. In the event any Owner has not furnished such copies of insurance policies to the Board at any time within fifteen (15) days when due from time to time, then the Board shall have the right, but not the obligation, to purchase such insurance coverage for the Unit, and to assess the Unit Owner, as a Special Assessment (enforceable pursuant to Article 7 above), the cost of such insurance, plus an administrative fee of One Hundred Dollars ($100.00) for each month, or portion thereof, during which such Owner has not provided the Board with copies of such policies upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability, damage to person or property occurring inside his Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein, each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance.

Section 12.6 Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on coinsurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason

of other insurance not carried by the Association; (3) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (4) any rights of the insurer to repair, rebuild or replace, and, in the event any improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured; or (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Unit. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, and Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss; provided, however, that such waiver shall not be effective as to any loss covered by a policy of insurance which would be voided or impaired thereby.

Section 12.7 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and each Eligible Holder who has filed a written request with the carrier for such notice, and every other Person in interest who requests in writing such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 12, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his interest in the Common Elements or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his Family; (c) no act or omission by any Owner or member of his Family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

ARTICLE 13
MORTGAGEE PROTECTION

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

(a) Each Eligible Holder, upon its specific written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Unit, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

(c) Except as provided in NRS § 116.3116.2, each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title

to such Unit free and clear of any claims of unpaid Assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee.

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

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

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

(iii) by act or omission change, totally waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other Improvements on the Units, the maintenance of Exterior Walls/Fences or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(iv) fail to maintain Fire and Extended Coverage on any insurable Improvements on Common Elements on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost);

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

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

(e) Eligible Holders, upon express written request in each instance therefor, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

(f) Eligible Holders, who have filed a written request for such notice with the Board shall be given thirty (30) days' written notice prior to: (1) any abandonment or termination of the Association; and/or (2) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties. Such first Mortgagees shall be given immediate notice: (i) following any damage to the Common Elements whenever the cost of reconstruction exceeds Ten Thousand Dollars ($10,000.00); and (ii) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

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

(h) The Reserve Fund described in Article 6 above must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large extraordinary Assessments.

(i) The Board shall require that any Manager, and any employee or agent thereof, maintain at all times fidelity bond coverage which names the Association as an obligee; and, at all times from and after the end of the Declarant Control Period, the Board shall secure and cause to be maintained in force at all times fidelity bond coverage which names the Association as an obligee for any Person handling funds of the Association.

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

(k) So long as VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, then, pursuant to applicable VA requirement, for so long as Declarant shall control the Association Board, Declarant shall obtain prior written approval of the VA for any material proposed: action which may affect the basic organization, subject to Nevada nonprofit corporation law, of the Association (i.e., merger, consolidation, or dissolution of the Association); dedication, conveyance, or mortgage of the Common Elements; or amendment of the provisions of this Declaration, the Articles of Incorporation, Bylaws, or other document which may have been previously approved by the VA; provided that no such approval shall be required in the event that the VA no longer regularly requires or issues such approvals at such time.

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to reasonably satisfy the applicable express requirements of Mortgagees, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the Membership, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Unit.

ARTICLE 14
DECLARANT'S RESERVED RIGHTS

Section 14.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, pursuant to NRS § 116.2105.1(h), Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

(a) Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of the Recordation of this

Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements on the Properties and an easement over the Properties for such purpose; provided, however, that if Declarant still owns any property in the Properties on such fifteenth (15th) anniversary date, then such rights and reservations shall continue, for one additional successive period of ten (10) years thereafter.

(b) Exercise of Developmental Rights. Pursuant to NRS Chapter 116, Declarant reserves the right to annex all or portions of the Annexable Area to the Community, pursuant to the provisions of Article 15 hereof, for as long as Declarant owns any portion of the Annexable Area. No assurances are made by Declarant with regard to the boundaries of those portions of the Properties which may be annexed, or the order in which such portions may be annexed. Declarant also reserves the right to withdraw real property from the Community.

(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, and models in any Unit owned or leased by Declarant in the Properties, and signs anywhere on the Common Elements, for the period set forth in Section 14.1(a) above, and Declarant further expressly reserves the right during such period to use said signs, offices and models, in connection with marketing and sales of other projects of Declarant in Clark County.

(d) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.7 hereof, during the Declarant Control Period.

(e) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Article 18 below, and any other provision of this Declaration, during the time periods set forth therein.

(f) Appointment and Removal of ARC. Declarant reserves the right to appoint and remove the ARC, for the time period set forth in Section 8.1 hereof.

(g) Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration.

(h) Certain Other Rights. Notwithstanding any other provision of this Declaration, Declarant additionally reserves the right (but not the obligation), in its sole and absolute discretion, at any time and from time to time, to unilaterally: (1) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (2) modify, expand, or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community (i.e., the Units That May Be Created).

(i) Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116.

(j) Control of Entry Gates. Declarant reserves the right, until the Close of Escrow of the last Unit in the Master Community, to unilaterally control all entry gates, and to keep all entry gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

(k) Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Master Community, to unilaterally control, restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(l) Control of Parking Spaces. Declarant reserves the right to control parking spaces near the model complex during Declarant's regular business or marketing hours, and to tow unauthorized vehicles at the Owner's expense, for as long as Declarant is conducting marketing or sales activities in the Master Community or any portion thereof.

(m) Marketing Names. Declarant reserves the right, for so long as Declarant owns or has any interest in any of the Annexable Area, to market and/or advertise different portions of the Properties under different marketing names.

(n) Certain Property Line Adjustments. Declarant reserves the right to adjust the boundary lines between certain Yard Components and Common Elements shown on the Plat.

(o) Additional Reserved Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, including, but not limited to, those set forth in Article 15, 16, and/or 17 below, and, to the maximum extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not limited to, all Developmental Rights and all Special Declarant Rights as set forth or referenced therein).

(p) Article 15 Rights. Declarant reserves the annexation and other rights set forth in Article 15, below.

Section 14.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties, for so long as any Unit owned by Declarant remains unsold.

(b) This Declaration shall in no way limit the right of Declarant to 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 from time to time may be reasonably necessary to the proper development and disposal of Units; provided, however, that if FHA or VA approval is sought by Declarant, then the FHA and/or the VA shall have the right to approve any such grants as provided herein.

(c) Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant and for placement of Declarant's signs.

(d) Without limiting Section 14.1(c) above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales

or management offices, for this Community or for any other project of Declarant and/or its affiliates, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

(e) 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.

(f) The prior written approval of Declarant, as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 14) can be effective.

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the date set forth in Section 14.1(a) above.

Section 14.3 Limitations on Amendments. In recognition of the fact that the provisions of this Article 14 operate in part to benefit the Declarant, no amendment to this Article 14, and no amendment in derogation of any other provision of this Declaration benefitting the Declarant, may be made without the written approval of the Declarant, and any purported amendment of Article 14, or any portion thereof, or the effect respectively thereof, without such express prior written approval, shall be void; provided that the foregoing shall not apply to amendments made by Declarant.

Section 14.4 LMA Declaration; Master Declaration. The foregoing developmental rights and special Declarant's rights shall be in addition to, and cumulative with, any applicable developmental rights and special declarant's rights reserved by the LMA Declarant under the LMA Declaration and/or reserved by the Master Declarant under the Master Declaration. In the event of any irreconcilable conflict, the provisions of the LMA Declaration and/or Master Declaration shall prevail.

ARTICLE 15
ANNEXATION

Section 15.1 Annexation. Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portions of the Annexable Area then owned by Declarant, by Recording an annexation amendment ("Annexation Amendment") with respect to the real property to be annexed ("Annexed Property"). Upon the recording of an Annexation Amendment covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if the Annexed Property were originally covered in this Declaration and originally constituted a portion of the Original 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 Original Property and the rights, obligations, privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area, in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter (and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns) to

unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15.

Section 15.2 Annexation Amendment. Each Annexation Amendment shall conform to the requirements of NRS § 116.211, and shall include:

(a) the written and acknowledged consent of Declarant;

(b) a reference to this Declaration, which reference shall state the date of Recordation hereof and the County, book and instrument number and any other relevant Recording data;

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

(d) a sufficient description of the Annexed Property; and

(e) assignment of an Identifying Number to each new Unit created;

(f) a reallocation of the allocated interests among all Units; and

(g) a description of any Common Elements created by the annexation of the Annexed Property.

Section 15.3 FHA/VA Approval. In the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) on any portion of the Annexable Area with respect to the initial sale by Declarant to a Purchaser of any Unit, then a condition precedent to any annexation of any property other than the Annexable Area shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA; provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

Section 15.4 Disclaimers Regarding Annexation. Portions of the Annexable Area may or may not be annexed, and, if annexed, may be annexed at any time by Declarant, and no assurances are made with respect to the boundaries or sequence of annexation of such portions. Annexation of a portion of the Annexable Area shall not necessitate annexation of any other portion of the remainder of the Annexable Area. Declarant has no obligation to annex the Annexable Area or any portion thereof.

Section 15.5 Expansion of Annexable Area. In addition to the provisions for annexation specified in Section 15.2 above, the Annexable Area may, from time to time, be expanded to include additional real property, not as yet identified. Such property may be annexed to the Annexable Area upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners of such property and containing thereon the approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written approvals.

Section 15.6 Contraction of Annexable Area; Withdrawal of Real Property. So long as real property has not been annexed to the Properties subject to this Declaration, the Annexable Area may be contracted to delete such real property effective upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners, if any, of such real property,

and declaring 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 other Person, except as provided herein.

ARTICLE 16
ADDITIONAL DISCLOSURES, DISCLAIMERS AND RELEASES

Section 16.1 Additional Disclosures, Disclaimers, and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit, or by possession of a Unit, each Owner (for purposes of this Article 16, and all of the Sections hereof, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), and by residing within the Properties, each Resident (for purposes of this Article 16, the term "Resident" shall include each Resident, and their guests) shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) There are presently, and may in the future be other, major electrical power system components (high voltage transmission or distribution lines, transformers, etc.) from time to time located within or nearby the Properties, which generate certain electric and magnetic fields ("EMF") around them; and Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF.

(b) The Unit and other portions of the Properties from time to time are or may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise; and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to airplane flight patterns, and/or airplane noise.

(c) The Unit and other portions of the Properties are or may be located adjacent to or nearby Blue Diamond Highway and other major roads, all of which may, but need not necessarily, be constructed, reconstructed, or expanded in the future (all collectively, "roadways"), and subject to high levels of traffic, noise, construction, maintenance, repair, dust, and other nuisance from such roadways; and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to roadways and/or noise, dust, and other nuisance related thereto.

(d) The Unit and other portions of the Properties are or may be located adjacent to or nearby major water and drainage facilities, channel(s) and/or washes (all, collectively, "Facilities"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not necessarily within Declarant's control, and over which Declarant does not necessarily have jurisdiction or authority, and, in connection therewith: (1) the Facilities may be an attractive nuisance to children; (2) maintenance and use of the Facilities may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by Facilities maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours; and (3) the possibility of damage to Improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Facilities, as the result of nonfunction, malfunction, or overtaxing of the Facilities or any other reason; and (4) any or all of the foregoing may cause inconvenience and disturbance to Owner and other persons in or near the Unit and/or Common Elements, and possible injury to person and/or damage to property.

(e) Construction or installation of Improvements by Declarant, other Owners, or third parties, or installation or growth of trees or other plants, may impair or eliminate the view, if any, of or from any Unit and/or Common Elements.

(f) Residential subdivision and home construction is an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects.

(g) The finished construction of the Unit and the Common Elements, while within the standards of the industry in the Las Vegas Valley, Clark County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to variations and imperfections and expected minor flaws. Issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards.

(h) Indoor air quality of the Unit may be affected, in a manner and to a degree found in new construction within industry standards, including, without limitation, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on.

(i) Installation and maintenance of a gated community and/or any security or traffic access device, operation, or method, shall not create any presumption or duty whatsoever of Declarant or Association (or their respective officers, directors, managers, employees, agents, and/or contractors) with regard to security or protection of person or property within or adjacent to the Properties; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Properties had been located within public areas and not gated. Gated entrances may restrict or delay entry into the Properties by law enforcement, fire protection, and/or emergency medical care personnel and vehicles, and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have voluntarily assumed the risk of such restricted or delayed entry.

(j) The Las Vegas Valley contains a number of earthquake faults, and that the Properties or portions thereof may be located on or nearby an identified or yet to be identified seismic fault line; and that Declarant specifically disclaims any and all representations or warranties, express or implied, with regard to or pertaining to earthquakes or seismic activities; and that Owner hereby releases Declarant from any and all claims arising from or relating to earthquakes or seismic activities.

(k) The Unit and other portions of the Properties from time to time may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, pigeons, snakes, rats, and/or other insect or pest problems (collectively, "pests"); and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own independent determination regarding the existence or non-existence of any pest(s) which may be associated with the Unit or other portions of the Properties.

(l) There is a high degree of alkalinity in soils and/or water in the Las Vegas Valley; that such alkalinity tends to produce, by natural chemical reaction, discoloration, leaching and erosion or deterioration of concrete walls and other Improvements ("alkaline effect"); that the Unit and other

portions of the Properties may be subject to such alkaline effect, which may cause inconvenience, nuisance, and/or damage to property; and the Governing Documents require Owners other than Declarant to not change the established grading and/or drainage, and to not permit any sprinkler or irrigation water to strike upon any wall or similar Improvement.

(m) There are and/or will be various molds present within the Unit and other portions of the Properties. Molds occur naturally in the environment, and can be found virtually everywhere life can be supported. Dwellings are not and cannot be designed or constructed to exclude mold spores. Not all molds are necessarily harmful, but certain strains of mold may result in adverse health effects in susceptible persons.

(n) The Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes and foxes), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard.

(o) The Properties, or portions thereof, are or may be located adjacent to or within the vicinity of certain other property zoned to permit the owners of such other property to keep and maintain thereon horses or other "farm" animals, which may give rise to matters such as resultant noise, odors, insects, and other "nuisance"; additionally, certain other property located or nearby the Properties may be zoned to permit commercial uses, and/or shall or may be developed for commercial uses. Declarant makes no other representation or warranty, express or implied, with regard or pertaining to the future development or present or future use of property adjacent to or within the vicinity of the Properties.

(p) Certain portions of land ("Neighboring Developments") outside, abutting and/or near the Perimeter Wall have not yet been developed, and in the future may or will be developed by third parties over whom Declarant has no control and over whom the Association has no jurisdiction, and accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments; and such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Community or Owners, and may result in portions of Perimeter Wall/Fence and/or Exterior Wall/Fence being utilized by third persons who are not subject to this Declaration or the Governing Documents; and Declarant and Association specifically disclaim any and all responsibility liability thereof.

(q) Each Purchaser acknowledges having received from Declarant information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, together with a copy of the most recent gaming enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to any gaming uses or issues. Each Purchaser is hereby advised that the master plan and zoning ordinances, and gaming enterprise districts, are subject to change from time to time. If additional or more current information concerning such matters is desired, Purchaser should contact the appropriate governmental planning department. Each Purchaser acknowledges and agrees that its decision to purchase a Unit is based solely upon Purchaser's own investigation, and not upon any information provided by any sales agent.

(r) Although the Plat may show Unit 1 as owning portions of the ground floor of the Triplex Building immediately adjacent to and/or surrounding the Garage Components of Units 2 and 3 respectively, the Owners of Units 2 and 3 shall have an easement over such portions, including exterior

wall, below the upstairs level, and shall be responsible, pursuant and subject to the Declaration, for painting maintenance, and repair such areas.

(s) Sewer cleanouts for all three Units within a Triplex Building are or may all be located within the Garage Component of one Unit, and the Owners of the other Units in the Triplex Building shall have an easement over and across said Garage Component, for purposes of reasonably inspecting and cleaning their respective sewer cleanouts.

(t) Water (and/or sewage) for this Project shall or may be master metered and from time to time initially paid by the Master Association, subject to monthly or other periodic assessment of allocated amounts to the Owners of Units in this Project. Each Owner shall be required to promptly pay such allocated water assessments, regardless of actual levels or periods of use of such water (i.e., regardless of occupancy or vacancy of the Unit, and regardless of family size, regardless of whether or not the Unit has an appurtenant Yard Component).

(u) The House Panel meter electricity charges for each Triplex Building shall from time to time be initially paid by the Association, subject to monthly or other periodic assessment of allocated amounts to the Owners of Residential Units for each applicable Triplex Building. Each Owner shall be required to promptly pay such allocated electrical assessments, regardless of actual levels or periods of use of such electricity (i.e., regardless of occupancy or vacancy of the Unit, and regardless of family size, regardless of whether or not the Unit has an appurtenant Yard Component).

(v) No Owner shall be permitted to add concrete or to alter, modify, expand, or eliminate any improvements (including ground cover) installed by Declarant as part of its initial construction. No patio covers shall be permitted.

(w) Owners are prohibited from changing the external appearance of any portion of a Triplex Building, and subject to the foregoing, are required to coordinate with the other Owners in their Triplex Building for painting, maintenance and repair from time to time of the roof and exterior walls of their Triplex Building, as set forth in further detail in the Declaration.

(x) The Garage Components of Units 2 and 3 are located directly below the Living Component of Unit 1 within each Triplex Building. The Owners of Units 2 and 3 are subject to "quiet hours", and the noise, vibration, and other nuisance provisions set forth in the Declaration with respect to use of and activities within their respective Garage Components. Additionally, the "quiet" door opener mechanism of a Garage Component must be maintained by its Owner in its original "quiet" condition, and, in the event such door opening mechanism should require replacement, the Owner shall replace it with a new door opening mechanism which is at least as quiet as the one as originally installed by Declarant.

(y) Certain "bare-floor" limitations and restrictions are set forth in this Declaration with respect to upstairs areas of Living Components.

(z) Other matters, limitations, and restrictions, uniquely applicable to this semi-attached triplex townhome residential Community, are set forth in the Declaration, and may be supplemented from time to time by Rules and Regulations. Each Owner in this Community is expected to behave in a reasonable and cooperative "good neighbor" manner at all times, particularly with respect to the other Owners of Units in the same Triplex Building.

(aa) Declarant presently plans to develop only those Units which have already been released for construction and sale, and that Declarant has no obligation with respect to future phases,

plans, zoning, or development of other real property contiguous to or nearby the Unit; (1) that proposed or contemplated residential and other developments may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or Purchaser may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or others, Declarant is under no obligation to construct such future or planned developments or units, and such developments or units may not be built in the event that Declarant, for any reason whatsoever, decides not to build the same; (2) Purchaser is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and (3) no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the provisions set forth in the foregoing or any provision of the written purchase agreement.

(ab) The Unit is one of three Units in a Triplex Building, located in close proximity to other Units and Triplex Buildings, and private street and parking areas in the Properties, and, accordingly, is and will be subject to substantial levels of sound and noise.

(ac) Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new homes and/or Units.

(ad) Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded flooring, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to Purchaser unless an authorized officer of Declarant has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement.

(ae) Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "nuisances". Each Owner acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out, and thereafter, in connection with repairs or any new construction.

(af) Declarant shall have the right (but not the obligation), at any time and from time to time, in its sole and absolute discretion, to: (a) design and/or to build different or varying product types or designs for new homes in the Community; (b) establish and/or adjust sales prices or price levels for homes and/or Units; (c) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (d) unilaterally modify and/or limit, by Recorded instrument, the maximum total number of Units which may be constructed in the Community; and that the Annexable Area may, but need not necessarily, from time to time be annexed hereto.

(ag) Master Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control the entry gate(s), and to keep all such entry gate(s) open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

(ah) Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally enter upon, and/or to control, restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(ai) Declarant reserves the right to correct or repair any Improvement, as set forth in Section 17.13 below.

(aj) Certain mandatory arbitration provisions are set forth in this Declaration, including, but not necessarily limited to, Section 17.14 below.

(ak) Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration. Declarant also reserves, to the extent not expressly prohibited by NRS Chapter 116, all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.089).

(al) Each Purchaser understands, acknowledges, and agrees that Declarant has reserved certain rights, powers, authority and easements in the Declaration, and LMA Declarant has reserved certain rights, powers, authority and easements in the LMA Declaration, and Master Declarant has reserved certain rights, powers, authority and easements in the Master Declaration, all or any of which may limit certain rights of the Association and Owners other than Declarant, LMA Declarant and/or Master Declarant, respectively.

Section 16.2 Releases. By acceptance of a deed to a Unit, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have understood, acknowledged and agreed to all of the disclosures and disclaimers set forth herein, and to release Declarant and the Association and all of their respective officers, managers, agents, employees, suppliers, and contractors from any and all claims, causes of action, loss, damage or liability (including, but not limited to, any claim for nuisance or health hazard, property damage, bodily injury, and/or death) arising from or related to all and/or any one or more of the conditions, activities, occurrences, reserved rights, or other matters described in the foregoing Section 16.1.

ARTICLE 17
GENERAL PROVISIONS

Section 17.1 Enforcement. Subject to Sections 5.2 and/or 5.3 above, and Section 17.14 below, the Governing Documents may be enforced by the Association, as follows:

(a) Enforcement shall be subject to the overall "good neighbor" policy underlying and controlling this Declaration and this Community (in which the Owners seek to enjoy a quality lifestyle), and the fundamental governing policy of courtesy and reasonability.

(b) Breach of any of the provisions contained in this Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal or equitable proceedings instituted, in compliance with applicable Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit, by the Association, or by the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party,

as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each Owner shall have a right of action against the Association for any material, unreasonable and continuing failure by the Association to comply with material and substantial provisions of this Declaration, or of the Bylaws or Articles.

(c) The Association shall have the right to enforce the obligations of any Owner under any material provision of this Declaration, by assessing a reasonable fine as a Special Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use Common Elements, (other than ingress and egress over Private Streets, by the most reasonably direct route, to the Unit), subject to the following:

(i) the person alleged to have violated the material provision of the Declaration must have had written notice (either actual or constructive, by inclusion in a Recorded document) of the provision for at least thirty (30) days before the alleged violation; and

(ii) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after actual notice of such violation has been given to such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;

(iii) notwithstanding the foregoing, each Owner shall have an unrestricted right of ingress and egress to his Unit by the most reasonably direct route over and across the relevant streets;

(iv) no fine imposed under this Section may exceed the maximum amount(s) permitted from time to time by applicable provision of Nevada law for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2 and/or 5.3 above);

(v) if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid or reasonably disputed in writing delivered to the Board by such Owner or Resident (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then such Special Assessment shall be enforceable pursuant to Articles 6 and 7 above; and

(vi) subject to Section 5.3 above and Section 17.14 below, and to applicable Nevada law (which may first require mediation or arbitration), the Association may also take judicial action against any Owner or Resident to enforce compliance with provisions of the Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(d) Responsibility for Violations. Should any Resident violate any material provision of the Declaration, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a

violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident. Reasonable efforts first shall be made to resolve any alleged material violation, or any dispute, by friendly discussion in a "good neighbor" manner, followed (if the dispute continues) by informal mediation by the ARC or Board (and/or mutually agreeable or statutorily authorized third party mediator). Fines or suspension of voting privileges shall be utilized only as a "last resort", after all reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed.

(e) The result of every act or omission whereby any of the provisions contained in this Declaration or the Bylaws are materially violated in whole or in part is hereby declared to be and shall constitute 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 Owner, by the Association or its successors-in-interest.

(f) The remedies herein provided for breach of the provisions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(g) The failure of the Association to enforce any of the provisions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(h) If any Owner, his or her Family, guest, licensee, lessee or invitee violates any such provisions, the Board may impose a reasonable Special Assessment upon such Owner for each violation and, if any such Special Assessment is not paid or reasonably disputed in writing to the Board (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then the Board may suspend the voting privileges of such Owner. Such Special Assessment shall be collectible in the manner provided hereunder, but the Board shall give such Owner appropriate Notice and Hearing before invoking any such Special Assessment or suspension.

Section 17.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 17.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, 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, heirs, successive Owners and assigns, until terminated in accordance with NRS § 116.2118.

Section 17.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 17.5 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 17.6 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 17.7 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days 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.

Section 17.8 Priorities and Inconsistencies. Subject to Section 5.8 above, and Section 17.9 below: (a) the Governing Documents shall be construed to be consistent with one another to the extent reasonably possible; (b) if there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term or provision of this Declaration fails to comply with provision of NRS Chapter 116 applicable hereto; (c) in the event of any inconsistency between the Articles and Bylaws, the Articles shall prevail; and (d) in the event of any inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail.

Section 17.9 LMA Declaration; Master Declaration. The provisions of this Declaration shall supplement, but shall not supersede, any and all applicable provisions of the LMA Declaration and/or Master Declaration, respectively. Applicable provisions of the LMA Declaration and/or Master Declaration shall control in the event of any irreconcilable conflict with the provisions of this Declaration, although such documents shall be construed to be consistent with one another to the maximum extent possible. The inclusion in this Declaration of covenants, conditions, restrictions, land uses, and limitations which are more restrictive or more inclusive than the restrictions contained in the LMA Declaration and/or Master Declaration shall not be deemed to constitute a conflict with the provisions of the LMA Declaration and/or Master Declaration. Nothing herein shall be construed as relieving any Owner or Unit within the Properties therefrom, or as limiting or preventing any and all applicable rights of enforcement granted or available to the LMA Association and/or Master Association by virtue thereof.

Section 17.10 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, none of Declarant, Association, ARC, LMA Declarant, LMA Association, Master Declarant, and/or Master Association, and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former Association committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.11 Business of Declarant. Except to the extent expressly provided herein or as required by applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's improvement and/or development of the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 17.12 Declarant's Right to Repair. Whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall conclusively be deemed to have agreed: (a) to promptly provide Declarant with specific written notice from time to time of any Improvement requiring correction or repair(s) for which Declarant is or may be responsible, and (b) following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant Improvement, and to take reasonable steps, if necessary or appropriate, to undertake and to perform corrective or repair work, and (c) to reasonably permit entry by Declarant (and Declarant's contractors and agents) upon the Unit or Common Element (as applicable) from time to time in connection therewith and/or to undertake and to perform such inspection and such work; and (d) that Declarant shall unequivocally be entitled (i) to specific prior written notice of any such corrective or repair work requested (and shall not be held responsible for any corrective or repair work in the absence of such written notice), (ii) to inspect the relevant Improvement, and (iii) to take reasonable steps, in Declarant's reasonable judgment, to undertake and to perform any and all necessary or appropriate corrective or repair work. The foregoing portion of this Section 17.13 shall not be deemed to modify or toll any applicable statute of limitation or repose, or any contractual or other limitation pertaining to such work.

Section 17.13 Arbitration. Any dispute that may arise between the Association, subject to the procedural requirements set forth in Section 5.3, above, and/or Owner of a Unit, and Declarant or any person or entity who was involved in the construction of any Common Element or any Unit shall be resolved by submitting such dispute to arbitration before a mutually acceptable arbitrator who will render a decision binding on the parties which can be entered as a judgment in court pursuant to NRS 38.000 et. seq. The arbitration shall be conducted according to the provisions of the Construction Industry Arbitration Rules of the American Arbitration Association. If the parties to the dispute fail to agree upon an arbitrator within forty-five (45) days after an arbitrator is first proposed by the party initiating arbitration, either party may petition the American Arbitration Association for the appointment of an arbitrator. Declarant has the right to assert claims against any contractor, subcontractor, person or entity, who may be responsible for any matter raised in the arbitration and to name said contractor, subcontractor, person, or entity as an additional party to the arbitration. Upon selection or appointment of the arbitrator, the parties shall confer with the arbitrator who shall establish a discovery schedule which shall not extend beyond ninety (90) days from the date the arbitrator is selected or appointed unless for good cause shown such period is extended by the arbitrator or such period is extended by the consent of the parties. If Declarant asserts a claim against a contractor, subcontractor, person, or entity, the discovery period may be extended, at the discretion of the arbitrator, for a period not to exceed one hundred twenty (120) days. The arbitration of a dispute between the Declarant, the Association, or any Owner of a Unit shall not be consolidated with any other proceeding unless Declarant chooses to consolidate the same with another similar proceeding brought by the Association or any Owner of a Unit. The arbitrator shall convene the arbitration hearing within one hundred twenty days (120) from the time the arbitrator is selected or appointed. Upon completion of the arbitration hearing, the arbitrator shall render a decision within ten (10) days. The date for convening the hearing may be adjusted by the arbitrator to accommodate extensions of discovery and the addition of parties or by consent of the parties. However, unless extraordinary circumstances exist, the hearing shall be convened no later than one hundred eighty (180) days from the date the arbitrator is appointed. To the extent practicable, any hearing convened pursuant to this provision shall continue, until completed, on a daily basis. The prevailing party shall be entitled to recover its attorney's fees and costs. The costs of the arbitration shall be borne equally by the parties thereto.

ARTICLE 18
AMENDMENT

Section 18.1 Amendment By Declarant. Until the first Close of Escrow for the sale of a Unit, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification. Any amendment to this Declaration pursuant to the exercise of any Developmental Rights reserved herein may be made by Recordation of a written instrument executed and acknowledged by Declarant, setting forth such amendment, in conformity with NRS § 116.211. Notwithstanding any other provision herein, for so long as Declarant owns a Unit, Declarant shall have the power from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify any ambiguous or potentially inconsistent or contradictory provision, to modify or supplement Exhibit "B" hereto, and otherwise to ensure that the Declaration is consistent and conforms with the requirements of applicable law. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B" hereto), in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, adding said real property to the Community, in the manner provided for in NRS § 116.211 and in Article 15 above.

Section 18.2 Amendment of Plat. By acceptance of a deed conveying a Unit encumbered by this Declaration, whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record from time to time amendment(s) to the Plat, provided that any such amendment shall relate only to such property which at such time have not yet been annexed to the Properties by Recorded Annexation Amendment.

Section 18.3 Amendment By Members. Except as otherwise may be provided by the Master Association Documents or by this Declaration (including, but not limited to Sections 18.1 or 18.2 above), the provisions of this Declaration may be amended only by Recordation of a certificate, signed and acknowledged by the President or Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by both: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, and (b) the consent of a majority of the Board of Directors; and, in the case of those amendments which this Declaration requires to be approved by Eligible Mortgagees, (c) the requisite percentage of Eligible Mortgagees and Eligible Insurers. Such amendment shall be effective upon Recordation. Except as permitted by the Act, no amendment may change the boundaries of any Unit, change the uses to which any Unit is restricted or change the allocated interests of a Unit, without the unanimous consent of all Owners whose Units are so affected. Notwithstanding the preceding portion of this Section 18.3 or any other provision of this Declaration, the provisions of Section 5.3 ("Proceedings"), Section 17.13 ("Declarant's Right to Repair"), Section 17.14 ("Arbitration") above, and/or this Section 18.3, may not be amended unless such amendment has been approved by both: (i) Members representing not less than seventy-five percent (75%) of the total voting power of the Association, and (ii) the consent of not less than seventy-five percent (75%) of the Board of Directors.

Section 18.4 Approval of Eligible Mortgagees. Anything to the contrary herein notwithstanding, any of the following amendments, to be effective, must be approved by sixty-seven percent (67%) of all Eligible Mortgagees and Eligible Insurers at the time of such amendment, based upon one (1) vote for each first Mortgage owned or insured:

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

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

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

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

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

(f) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; (vii) Declarant's right and power to annex or de-annex property to or from the Properties; and (viii) assessments, assessment liens, or the subordination of such liens.

Any approval by an Eligible Holder required under this Article 18, or required pursuant to any other provisions of this Declaration, shall be given in writing: provided that prior to any such proposed action, the Association or Declarant, as applicable, may give written notice of such proposed action to any or all Eligible Holders, and for thirty (30) days following the receipt of such notice, such Eligible Holders shall have the power to disapprove such action by giving written notice to the Association or Declarant, as applicable. If no written notice of disapproval is received by the Association or Declarant, as applicable, within such thirty (30) day period, then the approval of such Eligible Holder shall be deemed given to the proposed action, and the Association or Declarant, as applicable, may proceed as if such approval was obtained with respect to the request contained in such notice.

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

Section 18.5 Notice of Change. If any change is made to the Governing Documents, the Secretary (or other designated Officer) shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the change made.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first written above.

DECLARANT:

D. R. HORTON, INC.,
a Delaware corporation

By: _____
James Frasure, Vice President

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on this 23 day of March, 2004, by James Frasure, as Vice President of D. R. HORTON, INC., a Delaware corporation.

_____
NOTARY PUBLIC
(Seal)

(wmr\1422.127\1.CCRS.02.wpd)

JULIA GREEN
Notary Public, State of Nevada
Appointment No. 93-23691
My Appt. Expires Nov. 18, 2004

EXHIBIT "A"

ORIGINAL PROPERTY

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

1. MODULE Two (2), and UNITS 1 - 3, inclusive, in said Module, including all GARAGE COMPONENTS and any and all YARD COMPONENTS appurtenant respectively thereto, and (b) Common Elements lying within the boundaries of said Module 2; all as shown by final map of HIGH NOON AT ARLINGTON RANCH on file in Book 115 of Plats, Page 21, Official Records, Clark County, Nevada (hereinafter, "Plat");

2. Any Exclusive Use Areas appurtenant to the foregoing Units, as shown by the Plat and as set forth in the foregoing Declaration;

3. TOGETHER WITH a non-exclusive easement appurtenant respectively thereto for use and enjoyment over, across and of, all Private Streets and other Common Elements, pursuant and subject to the foregoing Declaration.

EXHIBIT "B"

ANNEXABLE AREA

[ALL, OR ANY PORTIONS, FROM TIME TO TIME MAY, BUT NEED NOT NECESSARILY, BE ANNEXED BY DECLARANT TO THE PROPERTIES]

All of the real property in HIGH NOON AT ARLINGTON RANCH, as shown by final map thereof, on file in Book 115 of Plats, Page 21, in the Office of the County Recorder, Clark County, Nevada; EXCEPTING THEREFROM: the Original Property, as described in the foregoing Exhibit "A".

[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY ADD TO OR MODIFY OF RECORD ALL OR ANY PART(S) OF THE FOREGOING DESCRIPTIONS]

When Recorded, Return To:

WILBUR M. ROADHOUSE, ESQ.
Goold Patterson Ales Roadhouse & Day
4496 South Pecos Road
Las Vegas, Nevada 89121
(702) 436-2600

exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS §116.31163. Notice of time and place of sale shall be provided as required by NRS §116.311635.

Section 7.5 Limitation on Foreclosure. Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a Special Assessment or for a fine for violation of the Governing Documents, unless the violation is of a type that substantially and imminently threatens the health, safety, and welfare of the Owners and Residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for an Annual Assessment, or Capital Assessment, or any portion respectively thereof, pursuant to this Article 7.

Section 7.6 Cure of Default. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Manager, stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 7.7 Cumulative Remedies. The Assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid Assessments, as provided above.

Section 7.8 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit 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 lien of the Assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit. 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 or her personal obligation for the payment of such unpaid Assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for Assessments. A lien for Assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the Assessment sought to be enforced, and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS § 116.3116. The sale or transfer of any Unit shall not affect an Assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any Assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial

or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and his or her successors and assigns shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses and Assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his or her successors and assigns.

ARTICLE 8
ARCHITECTURAL AND LANDSCAPING CONTROL

Section 8.1 ARC. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC," shall consist of three (3) committee members; provided, however, that such number may be increased or decreased from time to time by resolution of the Board. Notwithstanding the foregoing, Declarant shall have the sole right and power to appoint and/or remove all of the members to the ARC until such time as Declarant no longer owns any property in, or has any power to annex, the Annexable Area or any portion thereof; provided that Declarant, in its sole discretion, by written instrument, may at any earlier time turn over to the Board the power to appoint the members to the ARC; thereafter, the Board shall appoint all members of the ARC. A member of the ARC may be removed at any time, without cause, by the Person who appointed such member. Unless changed by resolution of the Board, the address of the ARC for all purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board.

Section 8.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 8, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including the inspection of construction in progress to assure conformance with plans and specifications approved by the ARC.

(a) With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, repair or reconstruction of an Improvement, including Dwelling and landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval. The Owner submitting such plans and specifications ("Applicant") shall obtain a written receipt therefor from an authorized agent of the ARC. The ARC shall approve plans and specifications submitted for its approval only if it deems that: (1) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole; (2) the appearance of any structure affected thereby will be in harmony with other structures in the vicinity; (3) the construction will not detract from the beauty, wholesomeness and attractiveness of the Common Elements or the enjoyment thereof by the Members; (4) the construction will not unreasonably interfere with existing views from other Units; and (5) the upkeep and maintenance will not become a burden on the Association.

(b) The ARC may condition its review and/or approval of plans and specifications for any Improvement upon any one or more or all of the following conditions: (1) such changes therein as the ARC deems appropriate; (2) agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the Improvement; (3) agreement of the Applicant to reimburse the Association for the costs of maintenance; (4) agreement of the applicant to submit "as-built" record

drawings certified by a licensed architect or engineer which describe the Improvements in detail as actually constructed upon completion of the Improvement; (5) payment or reimbursement, by Applicant, of the ARC and/or its members for their actual costs incurred in considering the plans and specifications; and/or (6) agreement by the Applicant to furnish to the ARC a cash deposit or other security acceptable to the ARC in an amount reasonably sufficient to (A) assure the completion of such Improvement or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (B) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Common Elements as a result of such work; (7) payment, by Applicant, of the professional fees of a licensed architect or engineer to review the plans and specifications on behalf of the ARC, if such review is deemed by the ARC to be necessary or desirable; and/or (8) such other conditions as the ARC may reasonably determine to be prudent and in the best interests of the Association. The ARC may further require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans and specifications, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that the fee may be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alteration or addition contemplated or the cost of architectural or other professional fees incurred by the ARC in reviewing plans and specifications. Also, with respect to plans and specification which may involve or which may have a direct impact on one or more neighbors of the applicant, the ARC in its sole discretion may require a Neighbor Impact Statement (in such form as may be required from time to time by the ARC), with written approval signed by all such involved neighbors, to be submitted by applicant to the ARC together with the relevant plans and specifications.

(c) The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans and specifications submitted for approval. **Any application submitted pursuant to this Section 8.2 shall be deemed disapproved, unless written approval by the ARC shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the ARC of all required materials.** The ARC will or may condition any approval required in this Article 8 upon, among other things, compliance with Declarant's (a) design criteria, (b) Improvement standards and (c) development standards, as amended from time to time, all of which are incorporated herein by this reference.

(d) Any Owner aggrieved by a decision of the ARC may appeal the decision to the ARC in accordance with procedures to be established by the ARC. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the ARC's opinion warrant reconsideration. If the ARC fails to allow an appeal or if the ARC, after appeal, again rules in a manner aggrieving the appellant, the decision of the ARC is final. The foregoing notwithstanding, after such time as the Board appoints all members of the ARC, all appeals from ARC decisions shall be made to the Board, which shall consider and decide such appeals.

(e) Notwithstanding the foregoing or any other provision herein, the ARC's jurisdiction shall extend only to the external appearance or "aesthetics" of any Improvement, and shall not extend to structural matters, method of construction, or compliance with a building code or other applicable legal requirement. ARC approval shall be subject to all applicable requirements of applicable

government authority, drainage, and other similar matters, and shall not be deemed to encompass or extend to possible impact on neighboring Units.

Section 8.3 Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 8.8 below. In the absence of such designation, the vote of a majority of the ARC, or the written consent of a majority of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 8.4 No Waiver of Future Approvals. The approval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 8.5 Compensation of Members. Subject to the provisions of Section 8.2(b) above, members of the ARC shall not receive compensation from the Association for services rendered as members of the ARC.

Section 8.6 Correction by Owner of Nonconforming Items. Subject to all applicable requirements of governmental authority, ARC inspection (which shall be limited to inspection of the visible appearance of the size, color, location and materials of work), and Owner correction of visible nonconformance therein, shall proceed as follows:

(a) The ARC or its duly appointed representative shall have the right to inspect any Improvement ("Right of Inspection") whether or not the ARC's approval has been requested or given, provided that such inspection shall be limited to the visible appearance of the size, color, location, and materials comprising such Improvement (and shall not constitute an inspection of any structural item, method of construction, or compliance with any applicable requirement of governmental authority). Such Right of Inspection shall, however, terminate sixty (60) days after receipt by the ARC of written notice from the Owner of the Unit that the work of Improvement has been completed. If, as a result of such inspection, the ARC finds that such Improvement was done without obtaining approval of the plans and specifications therefor or was not done in substantial compliance with the plans and specifications approved by the ARC, it shall, within sixty (60) days from the inspection, notify the Owner in writing of the Owner's failure to comply with this Article 8 specifying the particulars of noncompliance. If work has been performed without approval of plans and specifications therefor, the ARC may require the Owner of the Unit in which the Improvement is located, to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvement in detail as actually constructed. The ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance (with the visible appearance of the size, color, location, and/or materials thereof) and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a notice of noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance, and, in addition,

may peacefully remedy the noncompliance. The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise to remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration.

(c) If for any reason the ARC fails to notify the Owner of any noncompliance with previously submitted and approved plans and specifications within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in compliance with ARC requirements (but of course shall remain subject to all requirements of applicable governmental authority).

(d) All construction, alteration or other work shall be performed as promptly and as diligently as possible and shall be completed within one hundred eighty (180) days of the date on which the work commenced.

Section 8.7 Scope of Review. The ARC shall review and approve, conditionally approve, or disapprove, all proposals, plans and specifications submitted to it for any proposed Improvement, alteration, or addition, solely on the basis of the considerations set forth in Section 8.2 above, and solely with regard to the visible appearance of the size, color, location, and materials thereof. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. **Each Owner shall be responsible for obtaining all necessary permits and for complying with all governmental (including, but not necessarily limited to County) requirements.**

Section 8.8 Variances. When circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may require, the ARC may authorize limited variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions on size (including height and/or floor area) or placement of structures, or similar restrictions. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. **The granting of any such variance by the ARC shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, regulations, and requirements affecting the use of his or her Unit, including but not limited to zoning ordinances and Unit set-back lines or requirements imposed by the County, or other public authority with jurisdiction.** The granting of a variance by the ARC shall not be deemed to be a variance or approval from the standpoint of compliance with such laws or regulations, nor from the standpoint of structural safety, and the ARC, provided it acts in good faith, shall not be liable for any damage to an Owner as a result of its granting or denying of a variance.

Section 8.9 Non-Liability for Approval of Plans. The ARC's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the ARC, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in the structure

constructed from such proposals or plans or specifications. Neither the ARC, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings.

Section 8.10 Architectural Guidelines. The ARC, in its sole discretion, from time to time, may, but is not obligated to, promulgate Architectural and Landscape Standards and Guidelines for the Community.

Section 8.11 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 8 shall not apply to Improvements built by Declarant, or, until such time as Declarant conveys title to the Unit to a Purchaser, to Units owned by Declarant. This Article 8 shall not be amended without Declarant's written consent set forth on the amendment.

Section 8.12 LMA Declaration; Master Declaration. The foregoing architectural and landscaping control provisions shall be in addition to, and cumulative with, any and all expressly applicable architectural and landscaping control provisions of the LMA Declaration and/or Master Declaration respectively. In the event of any irreconcilable conflict, the provisions of the LMA Declaration and/or Master Declaration shall prevail.

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

Section 9.1 Maintenance and Repair Responsibilities of Association. No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than initially by Declarant, or by the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to this Declaration (including, but not limited to the provisions of Sections 9.3 and 11.1(b) hereof), upon the Assessment Commencement Date, the Association shall provide for the periodic maintenance, repair, and replacement of the Common Elements. The Common Elements shall be maintained in a safe, sanitary and attractive condition, and in good order and repair. The Association shall also provide for any utilities serving the Common Elements, and shall ensure that any landscaping on the Common Elements is regularly and periodically maintained in good order and in a neat and attractive condition. The Association shall not be responsible for the maintenance of any portions of the Common Elements which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its business judgment to be appropriate. Without limiting the foregoing, the Association's obligations hereunder shall include, but not necessarily be limited to, the following:

(a) Painting. The Board and/or Manager shall cause all Improvements in the Common Elements to be repaired and/or repainted as necessary to maintain the original appearance thereof (normal wear and fading excepted).

(b) Utilities. The Board and/or Manager shall cause to be maintained properly and in good condition and repair all utilities and utility systems in the Common Elements. The Board and/or Manager shall cause all water and/or sewer infrastructure, as set forth herein, to be inspected at least

quarterly, and at least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such water/sewer infrastructure, who shall provide a written report to the Board and/or Manager. Common Element sewer lines may be cleaned annually (or on such other periodic frequency as deemed reasonably prudent by the Board), from each Triplex Building to the street. Common Element water lines may be "exercised" once each year (or on such other periodic frequency as deemed reasonably prudent by the Board), by turning each valve off and on several times in succession. The Board and/or Manager shall cause any and all necessary or prudent repairs to be undertaken and completed without delay in a manner and to the extent necessary to prevent avoidable deterioration or property damage.

(c) Drainage; Landscaping; Irrigation. The Board and/or Manager shall cause all drainage systems, landscape installations, and irrigation systems within the Common Elements to be inspected at least monthly. In particular, the Board and/or Manager shall inspect for any misaligned, malfunctioning or nonfunctional sprinklers, or blocked drainage grates, basins, lines, and systems, which could cause damage to Improvements on the Properties. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such drainage and landscape installations, who shall be required to promptly provide a written report to the Board. The written reports shall identify any items of maintenance or repair which either require current action by the Association, or will need further review and analysis, and shall specifically include a review of all irrigation and drainage systems on the Properties. The Board and/or Manager shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the following, all landscaping shall be maintained as per the following minimum maintenance standards:

(1) lawn and ground cover shall be kept mowed and/or trimmed regularly;

(2) plantings shall be kept in a healthy and growing condition; fertilization, cultivation, spraying and tree pruning shall be performed as part of a regular landscaping program;

(3) stakes, guys and ties on trees shall be checked regularly, to ensure the correct function of each; ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem;

(4) damage to plantings shall be ameliorated within thirty (30) days of occurrence; and

(5) irrigations systems shall be kept in sound working condition; adjustment, replacement of malfunctioning parts, and cleaning of systems, shall be an integral part of the regular landscaping program.

(d) Hardscape; Private Streets. The Board and/or Manager shall cause all Common Elements hardscape, paved areas, and Private Streets within the Properties to be inspected at least quarterly. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such hardscape and paved areas, who shall be required to promptly provide a written report to the Board. The written reports shall identify any items of maintenance or repair which either require current action by the Association, or will need further review and analysis. The Board and/or Manager shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the foregoing, the Board and/or Manager shall cause all Common Element asphalt to be sealed and re-striped at least as frequently as may be required per County standards, or more frequently, if so required, using two coats of a guard top or walk top type sealer.

(e) Inspections. After the end of the Declarant Control Period, the Board and Manager shall conduct inspections of the Common Elements as set forth above, and shall provide Declarant with at least ten days' prior written notice of each such inspection. Declarant shall have the option, in its sole discretion, without obligation, to attend each such inspection.

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

(g) Other Responsibilities. Without limiting the generality of any of the foregoing, the Association shall also be responsible for:

(1) replacement of burned-out light bulbs and broken fixtures on "coach lights" located at or near the front door of the Unit, pursuant to Section 9.3, below, in the event that the Owner of the affected Unit does not immediately make such replacement, and to assess such Owner the sum of not less than Fifty Dollars ($50.00) for each such replacement, as a Special Assessment.

(2) removing any trash, garbage, or debris from Common Elements; and

(3) cleaning and making necessary repairs and replacement to and of the perimeter walls and/or fencing.

(h) Failure to Maintain. The Association shall be responsible for accomplishing its maintenance and repair obligations fully and timely from time to time, as set forth in this Declaration. Failure of the Association to fully and timely accomplish such maintenance and repair responsibilities may result in deterioration and/or damage to Improvements, and such damage and/or deterioration shall in no event be deemed to constitute a constructional defect.

Section 9.2 Inspection Responsibilities of Association. Within thirty (30) days after the date which is one (1) year after the first Close of Escrow of a Unit, and annually thereafter, the Board (and, so long as Declarant owns any portion of the Properties, a representative of Declarant) shall conduct a thorough walk-through inspection of the Common Elements. If, at the time of such inspection, there are no Directors other than those appointed by Declarant, up to two (2) Owners, other than Declarant, shall be permitted to accompany such inspection. At the Board's option, the inspection may be videotaped. Following the inspection, the Board shall prepare a detailed written description of the then-existing condition of all such areas, facilities and buildings, including a checklist of all items requiring repairs or special attention. A similar checklist shall be prepared and signed by the Board and/or Manager within thirty (30) days after the election of the first Board elected following the end of the Declarant Control Period. It shall at all times be an express obligation of the Association to properly inspect (as aforesaid), repair, maintain, and/or replace such items, facilities, structures, landscaping and areas as are required to maintain the Common Elements in as good condition thereof as originally constructed by Declarant (reasonable wear and tear, settling and deterioration excepted). The Board shall report the contents of such written reports to the Members, at the next meeting of the Members following receipt of such written report, or as soon thereafter as reasonably practicable, and shall include such written reports in the minutes of the meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices, and the recommendations of the inspectors. If requested by Declarant, copies of such reports shall also be delivered to Declarant. The foregoing notwithstanding, neither Declarant nor the Board shall be liable for any failure or omission under this Section 9.2, so long as

Declarant and/or the Board (as may be applicable) has acted in good faith and with reasonable due diligence in carrying out its responsibilities hereunder.

Section 9.3 Maintenance and Repair Obligations of Owners. It shall be the duty of each Owner, at his or her sole cost and expense, subject to the provisions of this Declaration requiring ARC approval, to maintain, repair, replace and restore all Improvements located on his or her Unit, the Unit itself, and any Exclusive Use Area pertaining to his or her Unit, in a neat, sanitary and attractive condition, except for any areas expressly required to be maintained by the Association under this Declaration. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, or unsightly, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Unit and/or Exclusive Use Area to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment, enforceable as set forth in this Declaration. Without limiting the foregoing, each Owner shall be responsible for the following:

(a) maintenance, repair, and/or replacement of all exterior walls, and all roof area of the Triplex Building (including the exteriors of exterior walls of Yard Components) in which the Owner's Unit is located, respectively appurtenant to said Unit, (provided that the portions of ground floor exterior wall immediately above and adjacent to the Garage Components of Units 2 and 3 shall be the responsibility of the Owners of Units 2 and 3 respectively, who shall have an easement to maintain, repair, and paint such portions) in conformity with the original construction thereof; without limiting the foregoing, exterior painting of Triplex Buildings shall be the responsibility of the Owners of the Units in each Triplex Building, and if two (2) of the three (3) such Owners agree that such exterior painting is required, they shall have the right, following reasonable notice to the third such Owners, to proceed with such painting and to require such third Owner to equally or equitably share the cost of such painting. All such painting shall match as closely as possible the original color of the Triplex Building (subject to variation only if approved in advance in writing by the Board in its sole and absolute discretion), and shall be accomplished by a duly licensed contractor.

(b) periodic painting, maintenance, repair, and/or replacement of the front doors to the Owner's Units, and Garage sectional roll-up doors;

(c) annual inspection and repair or replacement of heat sensors, as originally installed in certain (but not necessarily all) of the Owner's Unit;

(d) cleaning, maintenance, repair, and/or replacement of any and all plumbing fixtures, electrical fixtures, and/or appliances (whether "built-in" or free-standing, including, by way of example and not of limitation: water heaters (and associated pans), furnaces, plumbing fixtures, lighting fixtures, refrigerators, dishwashers, garbage disposals, microwave ovens, washers, dryers, and ranges), within the Owner's Unit;

(e) cleaning, maintenance, painting and repair of the interior of the front door of the Owner's Unit; cleaning and maintenance of the exterior of said front door, subject to the requirement that the exterior appearance of such door shall not deviate from its external appearance as originally installed by Declarant;

(f) cleaning, maintenance, repair, and/or replacement of all windows and window glass within or exclusively associated with, the Owner's Unit, including the metal frames, tracks, and

exterior screens thereof, subject to the requirement that the exterior appearance of such items shall not deviate from its external appearance as originally installed by Declarant;

(g) cleaning, and immediate, like-kind replacement of burned-out light bulbs, and broken light fixtures, with respect to the "coach lights" at or near the front door of the Owner's Unit; in the event that the Owner does not immediately accomplish his or her duties under this subsection (g), the Association shall have the rights set forth in Section 9.1(h), above.

(h) cleaning, maintenance, repair, and replacement of the HVAC, located on an easement within the Common Elements, serving such Owner's Unit exclusively (but not the concrete pad underneath such HVAC), subject to the requirement that the appearance of such items shall not deviate from their appearance as originally installed by Declarant:

(i) maintenance, repair, and replacement of Garage remote openers, subject to the requirement that any replacement therefor be purchased by the Owner from the Association; and

(j) without limiting any of the foregoing: cleaning, maintenance, repair, and replacement of the door opener and opening mechanism located in the Owner's Garage (provided that any replacement door opener shall be a "quiet drive" unit, at least as quiet as the unit originally installed by Declarant), so as to reasonably minimize noise related to or caused by an unserviced or improperly functioning Garage door opener and/or opening mechanism.

Section 9.4 Restrictions on Alterations.

(a) No Owner shall make any alterations or additions to any portion of the exterior of the Triplex Building in which such Owner's Unit (including Garage) is located, or to the Yard Component. Without limiting the foregoing, no Owner shall add concrete to a Yard Component, or install a patio or cover on the Yard Component. Notwithstanding the foregoing, flower pots and/or "planters" (in which the roots of plants does not extend past the planter into the ground or below ground level) may be permitted in Yard Components, subject to prior approval by the ARC, provided that no automated irrigation or sprinkler system shall be permitted in connection with such flower pots and/or planters, which must be watered by hand.

(b) Nothing shall be done in or to any part of the Properties which will impair the structural integrity of any part of the Properties except in connection with the alterations or repairs specifically permitted or required hereunder.

(c) Anything to the contrary herein notwithstanding, there shall be no alteration or impairment of, the structural integrity of, or any plumbing or electrical work within, any common wall without the prior written consent of the Board and all Owners of affected Units, which consent shall not be unreasonably withheld. Each Owner shall have the right to paint, wallpaper, or otherwise furnish the interior surfaces of his Unit as he sees fit.

(d) No improvement or alteration of any portion of the Common Elements shall be permitted without the prior written consent of the Board.

(e) No Owner shall change or modify the condition or appearance of any exterior window or door or any portion thereof, as viewed from any portion of the Properties, without the prior written consent of the Board.

(f) Notwithstanding any other provision herein, the Board, in compliance with applicable law, shall give prompt consideration to, and shall reasonably accommodate, the request of any Resident who suffers from visual or hearing impairment, or is otherwise physically handicapped, to reasonably modify his or her Unit (including, but not necessarily limited to, the entrance thereto through Common Elements, the front door thereof, and/or appropriate features of a Garage), at the expense of such handicapped Resident, to facilitate access to the Unit, or which are otherwise necessary to afford such handicapped Resident an equal opportunity to use and enjoy his or her Dwelling.

(g) The foregoing provisions shall not apply to the initial construction activities of Declarant.

Section 9.5 Reporting Responsibilities of Owners. Each Owner shall promptly report in writing to the Board any and all visually discernible items or other conditions, with respect to his Unit (including Garage), Triplex Building and areas adjacent to his Unit, which reasonably appear to require repair. Delay or failure to fulfill such reporting duty may result in further damage to Improvements, requiring costly repair or replacement.

Section 9.6 Disrepair; Damage by Owners. If any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, and after affording such Owner reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.11 above, and, if not paid timely when due, shall constitute unpaid or delinquent assessments for all purposes of Article 7, above. The Owner of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor. Any other provision herein notwithstanding, the cost of any cleaning, maintenance, repairs, and/or replacements by the Association within the Common Elements or any other Unit, arising out of or caused by the willful or negligent act of an Owner, his or her tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner pursuant to Section 6.11, above, and, if not paid timely when due, shall constitute unpaid or delinquent assessments pursuant to Article 7, above.

Section 9.7 Damage by Owners to Common Elements. The cost of any maintenance, repairs or replacements by the Association within the Common Elements arising out of or caused by the willful or negligent act of an Owner, his or her tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided pursuant to Section 6.11, above, and if not paid timely when due, shall constitute unpaid or delinquent assessments pursuant to Article 7 above.

Section 9.8 Pest Control Program. If the Board adopts an inspection, prevention and/or eradication program ("pest control program") for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, upon reasonable notice (which shall be given no less than fifteen (15) days nor more than thirty (30) days before the date of temporary relocation) to each Owner and the Residents of the Unit, may require such Owner and Residents to temporarily relocate from the Unit in order to accommodate the pest control program. The notice shall state the reason for the temporary relocation, the anticipated dates and times of the beginning and end of the pest control program, and that the Owner and Residents will be responsible, at their own expense, for their own accommodations during the temporary relocation. Any damage caused to a Unit or Common Elements

by the pest control program shall be promptly repaired by the Association. All costs involved in maintaining the pest control program, as well as in repairing any Unit or Common Elements shall be a Common Expense, subject to a Special Assessment therefor, and the Association shall have an easement over the Units for the purpose of effecting the foregoing pest control program.

Section 9.9 Damage and Destruction Affecting Dwellings and Duty to Rebuild. If all or any portion of any Unit or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore the Unit substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the ARC. The Owner of any damaged Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within six (6) months after the damage occurs, unless prevented by causes beyond his or her reasonable control. A transferee of title to the Unit which is damaged shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner at the time of the damage still held title to the Unit.

Section 9.10 Yard Walls/Fences. Each wall which is built as a part of the original construction by Declarant and placed approximately between a Yard Component and Common Elements shall constitute a "Yard Wall/Fence". The cost of repair and maintenance of a Yard Wall/Fence shall be borne by the Owner ("Wall Owner") of the Unit whose Yard Component abuts the Yard Wall/Fence. The cost of reasonable repair and maintenance of Yard Walls/Fences shall be shared by the Owners who use such Yard Wall/Fence in proportion to such use (e.g., if the Yard Wall/Fence is the boundary between two Owners, then each such Owner shall bear half of such cost). Notwithstanding any other provision in this Declaration, in the event that any Yard Wall/Fence as originally constructed by Declarant, is not constructed exactly on the property line or as shown on the Plat, the Owners (and/or Association) affected shall accept the Yard Wall/Fence as the property boundary, and shall have no claim whatsoever against Declarant, the Association, or any other Owner as a result thereof or in connection therewith. If a Yard Wall/Fence is destroyed or damaged by fire or other casualty, the Yard Wall/Fence shall be promptly restored, to its condition and appearance before such damage or destruction, by the Wall Owner. Subject to the foregoing, in the event the Wall Owner does not fulfill his obligations, the Association shall have the right, but not the obligation, and an easement, to restore Yard Wall/Fence to its condition and appearance before such destruction or damage, and may assess the costs thereof a Special Assessment against the Wall Owner pursuant to Section 6.11 above, and may enforce the same pursuant to Article 7, above. Any other provision herein notwithstanding, no Owner shall alter, add to, or remove any Yard Wall/Fence constructed by Declarant, or portion of such wall or fence, without the prior written consent of the Declarant (during the Declarant Control Period), and prior written approval of the ARC. In the event of any dispute arising concerning a Yard Wall/Fence under the provisions of this Section 9.10, each party shall choose one arbitrator, each such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

Section 9.11 Additional Wall/Fence Provisions. Units initially may be developed by Declarant and conveyed to Purchasers with or without Yard Components and/or Yard Walls/Fences. In the event one or more Units is or are initially developed and conveyed without such walls or fences (i.e., "open landscaping"), Declarant reserves the right (but not the obligation) thereafter at any time, in its discretion, following notice to the Owners thereof, to enter upon such Units and Common Elements and to construct thereon Yard Walls/Fences (and Declarant expressly reserves an easement upon all Units and Common Elements for itself, and its agents, employees, and contractors, for such purpose). Construction by Declarant of a Yard Wall/Fence on any Yard Component shall raise absolutely no presumption or obligation to construct a similar or any wall or fence on any other Yard Component. Walls or fences initially installed by Declarant shall not be added to, removed, modified, changed, or

obstructed by any Owner absent prior written approval of the ARC, and shall not in any manner or degree relieve any Owner of his or her obligation to maintain the entire Unit, regardless of the location of such wall or fence, as well as such wall or fence.

Section 9.12 Installed Landscaping.

(a) Declarant shall or may install certain landscaping in Yard Components ("Installed Landscaping"). Each Owner shall be responsible, at his sole expense, for: (1) maintenance, repair, replacement, and watering of all Installed Landscaping on his Yard Component in a neat and attractive condition; and (2) maintenance, repair, and/or replacement of any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping, as initially installed by Declarant, subject to Subsection 9.12(b) below. An Owner shall not be entitled to change, alter, delete, or add to, the Installed Landscaping in such Owner's Yard Component in the absence of prior written consent of the ARC, in its sole and absolute discretion.

(b) To help prevent and/or control water damage to foundations and/or walls, each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not cause or permit spray irrigation water or sprinkler water or drainage on his Yard Component to seep or flow onto, or to strike upon, any foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, Triplex Building wall and/or Yard Wall/Fence), and/or any other Improvement. Without limiting the generality of the foregoing or any other provision in this Declaration, each Owner shall at all times ensure that: (1) there are no unapproved grade changes (including, but not necessarily limited to, mounding) within three (3) feet of any such foundation or wall located on or immediately adjacent to the Owner's Unit; and (2) only non-irrigated desert landscaping or drip (and not spray or sprinkler) irrigated landscaping is located on the Owner's Unit or Yard Component within three feet of any foundation, slab, side or other portion of Dwelling or Yard Wall/Fence and/or any other Improvement.

(c) Each Owner covenants to pay promptly when due all water bills for his or her Unit, and (subject to bona-fide force majeure events) to not initiate or continue any act or omission which would have the effect of water being shut off to the Unit. In the event that all or any portion of landscaping and/or related systems is or are damaged because of any Owner's act or omission, then such Owner shall be solely liable for the costs of repairing such damage, and any and all costs reasonably related thereto, and the Association may, in its discretion, perform or cause to be performed such repair, and to assess all related costs against such Owner as a Special Assessment, and the Association, and its employees, agents and contractors, shall have an easement over Units to perform such function.

Section 9.13 Modification of Improvements. Maintenance and repair of Common Elements shall be the responsibility of the Association, and the costs of such maintenance and repair shall be Common Expenses; provided that, in the event that any Improvement located on Common Elements is damaged because of any Owner's act or omission, such Owner shall be solely liable for the costs of repairing such damage and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Without limiting Section 9.14, below, each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not: add to, remove, modify, change, obstruct, or landscape, all or any portion of: (a) the Common Elements; (b) Yard Component; (c) Installed Landscaping; (d) Yard Wall(s)/Fence(s); (e) Triplex Building; and/or (f) any other Improvement; without prior written approval of the ARC.

Section 9.14 Certain Other Improvements. Notwithstanding Section 9.13 or any other provision of this Declaration: (a) only Declarant, in its sole and absolute discretion, and no other Owner

or other Person, shall have the right to construct, or shall construct, a Patio or Balcony (and Declarant discloses that, as of the date of Recordation hereof, Declarant does not presently intend to construct any Patios or Balconies); and (b) only Declarant, in its discretion, and no other Owner or other Person, may add additional concrete in or to a Yard Component.

Section 9.15 Graffiti Removal. The Association may, at its discretion, remove or paint over any graffiti from or on Exterior Walls/Fences (the costs of which shall be a Common Expense).

Section 9.16 Maintenance of Coach Lights. Each Owner shall at all times maintain in good and operating condition any and all coach lights ("Coach Lights") installed by Declarant on the exterior of the Owner's Dwelling or Garage. Such Owner maintenance shall include, but not be limited to, immediate replacement of burnt-out light bulbs and broken coach light fixtures, and prompt periodic replacement of photoelectric cells in the Coach Lights, when and as needed. Absent prior written approval of the ARC, in its sole discretion, no Owner may delete, modify, or change any Coach Light or part thereof as initially installed by Declarant. If any Owner shall fail to so maintain such Coach Lights, or permit such lighting to fall into disrepair, or delete or modify such lighting without prior approval of the ARC, the Association shall have the right to correct such condition, and the Owner shall be solely liable for the costs thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Without limiting the foregoing, in the event that an Owner does not immediately replace a burnt-out Coach Light bulb, the Association shall have the right to enter upon the Unit and to replace such light bulb, and to assess the Owner the sum of not less than Fifty Dollars ($50.00) for each such replacement, as a Special Assessment. Nothing in this Section 9.16 shall be construed as requiring or mandating initial installation by Declarant of Coach Lights.

ARTICLE 10
USE RESTRICTIONS

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying and controlling the Community and this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 10 may be modified or waived in whole or in part by the ARC in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the ARC. Furthermore, violation of, or noncompliance with, a provision set forth in this Article 10 (unless it substantially threatens the health and welfare of the Owners and Community), shall not be enforced absent written complaint from one or more of the immediate neighbors of the alleged offending Owner (provided that Declarant, in its sole discretion, shall conclusively be deemed an "immediate neighbor" of all Units for so long as Declarant owns any Unit in the Properties). Any other provision herein notwithstanding, neither Declarant, the Association, the ARC, nor their respective directors, officers, members, agents or employees shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

Section 10.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering", destructive construction testing, or any other nonresidential purpose; provided that Declarant may

exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-Family children, when added to the number of Family children being cared for at the Unit, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 10.5 below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his or her entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than six (6) consecutive months.

Section 10.2 No Further Subdivision. Except as may be expressly authorized by Declarant, no Unit or Common Element may be further subdivided (including, without limitation, any division into time-share estates or time-share uses) without the prior written approval of the Board; provided, however, that this provision shall not be construed to limit the right of an Owner: (1) to rent or lease his or her entire Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his or her Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be made expressly subject to the Governing Documents. Any failure by the lessee of such Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement. No two or more Units in the Properties may be combined in any manner whether to create a larger Unit or otherwise, and no Owner, without the approval of the ARC, in the ARC's discretion, may remove any wall or other intervening partition between Units.

Section 10.3 Insurance Rates. Without the prior written approval of the ARC and the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any law. Any other provision herein notwithstanding, neither the ARC nor the Board shall have any power whatsoever to waive or modify this restriction.

Section 10.4 Animal Restrictions. All Owners shall comply fully in all respects with all applicable Ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties. Without limiting the foregoing, an Owner or Resident shall be permitted to keep in his or her Unit a reasonable number (normally not to exceed an aggregate total of two) of dogs, cats, and/or other animals, not more than forty (40) pounds in weight each, and generally considered to be "indoor" household animals; provided that the keeping of such household animals may be prohibited or restricted by the ARC if it reasonably determines that such household animals constitute a nuisance. Each person bringing or keeping a pet within the Properties shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Properties by such person or by members of his or her family, his or her guests or Invitees and it shall be the duty and responsibility of each such Owner to immediately clean up after such animals which have deposited droppings or otherwise used any portion of the Properties or public street abutting or visible from the Property. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal.

Section 10.5 Nuisances. No rubbish, debris, or animal feces of any kind shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. No

noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other similar or unusually loud sound devices (other than security devices used exclusively for safety, security, or fire protection purposes), noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers, edgers, and other equipment normally utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle or other item which may unreasonably disturb other Owners or Residents, or any equipment or item which unreasonably interferes with regular television or radio reception within any Unit, or the Common Elements, shall be located, used or placed on any portion of the Properties without the prior written approval of the ARC. No unusually loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Common Elements without the prior written approval of the ARC, in its sole discretion. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce frequently occurring false alarms in a manner annoying to neighbors. The Board shall have the right to determine if any noise, odor, or activity or circumstance reasonably constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his or her Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

Section 10.6 Exterior Maintenance and Repair; Owner's Obligations. No Improvement anywhere within the Properties shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. If any Owner or Resident shall permit any Improvement, the maintenance of which is the responsibility of such Owner or Resident, to fall into disrepair so as to create a dangerous, unsafe, or unsightly condition, the Board, after consulting with the ARC, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.11 above, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment for all purposes of Articles 6 and 7, above. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

Section 10.7 Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements or LMA Property or Master Association Property, unless adequate alternative provision is made for properly engineered drainage and approved in advance and in writing by the ARC, and any request therefor shall be subject to Article 8 above, including, but not necessarily limited to, any condition imposed by the ARC pursuant to Section 8.2(b) above, and further shall be subject to the Owner obtaining all necessary governmental approvals pursuant to Section 8.7, above. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to a Purchaser from Declarant, or later grading changes which are shown on plans and specifications approved by the ARC.

Section 10.8 Water Supply and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, or exterior water softener system, shall be permitted on any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water or sewer district serving the Properties, and any applicable governmental health authorities having jurisdiction, and has been approved in advance and in writing by the ARC.

Section 10.9 No Hazardous Activities. No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, or Common Elements or LMA Property or Master Association Property.

Section 10.10 No Unsightly Articles. No unsightly articles, shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, or Common Elements. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time (not to exceed twenty-four (24) hours before and after scheduled trash collection hours). There shall be no exterior fires whatsoever, except barbecue fires, and except as specifically authorized in writing by the ARC (and subject to applicable ordinances and fire regulations).

Section 10.11 No Temporary Structures; No Stucco Block Walls. Unless required by Declarant during the construction of Dwellings and other Improvements, or unless approved in writing by the ARC in connection with the construction of authorized Improvements: (a) no outbuilding, shed, tent, shack, or other temporary or portable structure or Improvement of any kind shall be placed upon any portion of the Properties; and (b) no stucco block walls shall be permitted anywhere in the Properties.

Section 10.12 No Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon, in, or below any Unit or the Common Elements, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon or below the surface of any portion of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat, natural gas, or other mineral or depleting asset shall be erected.

Section 10.13 Alterations. There shall be no excavation, construction, alteration or erection of any projection which in any way alters the exterior appearance of any Improvement from any street, or from any other portion of the Properties (other than minor repairs or rebuilding pursuant to Section 10.6 above) without the prior approval of the ARC pursuant to Article 8 hereof. There shall be no violation of the setback, or other requirements of local governmental authorities, notwithstanding any approval of the ARC. This Section 10.13 shall not be deemed to prohibit minor repairs or rebuilding which may be necessary for the purpose of maintaining or restoring a Unit to its original condition.

Section 10.14 Signs. Subject to the reserved rights of Declarant contained in Article 14 hereof, no sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view from any Unit or any other portion of the Properties, except for permitted signs of permitted dimensions in such areas of the Common Elements as shall be specifically designated by the Board for sign display purposes, subject to Rules and Regulations. **Notwithstanding the foregoing, or any other provision in this Declaration, subject to applicable law, there shall be no "for rent" sign(s) shall be posted or displayed on or from any Unit or anywhere else in the Properties.** The foregoing restriction shall not limit traffic and other signs installed by Declarant as part of the original construction of the Properties, and the replacement thereof (if necessary) in a professional and uniform manner.

Section 10.15 Antennas and Satellite Dishes. No exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained anywhere in the Properties. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (a) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (b) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is located within the Unit, so as not to be visible from outside the Unit, or, if such location is not reasonably practicable, then attached to or mounted on the least conspicuous alternative location in a Yard Component, where an acceptable quality signal can be obtained; provided that Permitted Devices shall be reasonably screened from view from any other portion of the Properties, so long as such screening does not unreasonably increase the cost of installation, or use of the Permitted Device.

Section 10.16 Installation. No exterior addition, change or alteration to the exterior of any Residential Unit, other than as may be constructed by Declarant as part of the initial construction of the Properties, shall be commenced without the prior written approvals required under Article 8 of this Declaration; provided, however, that Owners shall be permitted to install screen doors in the exterior doors of such Owner's Residential Unit which conforms to any design, style, and quality standards for screen doors which may be adopted by the Board from time to time. No deck covers, wiring, or installation of air conditioning, water softeners, or other machines shall be installed on the exterior or within any other portion of the Residential Unit or be allowed to protrude through the walls or roofs of the Triplex Building (with the exception of those items installed during the original construction of the Properties), unless the prior written approvals required under Article 8 of this Declaration have been obtained. Nothing shall be done in or to any Unit or Triplex Building which will or may tend to impair the structural integrity of any other attached Unit or other Improvement in the Properties or which would structurally alter any such Triplex Building, except as otherwise expressly provided herein. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Properties for labor or materials alleged to have been furnished or delivered to the Properties or any for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

Section 10.17 Other Restrictions.

(a) No Owner or Resident shall keep or store any item in the Common Elements (subject to the right of such Person reasonably to store items in any private storage area exclusively allocated to such Person's Unit, subject to the Rules and Regulations), and nothing shall be altered, or constructed or planted in, or removed from, the Common Elements, without the written consent of the Board. No article shall be kept or stored in Yard Components, except reasonable quantities (in reasonable sizes) of patio furniture and house plants, subject to the "nuisance" provisions of Section 10.5, above. Any such patio furniture and/or house plants must be maintained in an attractive condition, and the care and watering of such plants must not damage or soil any other Unit, or any portion of the Common Elements.

(b) No item whatsoever shall or may be kept or stored on a Balcony.

(c) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and other neighboring properties. Subject to the foregoing, no clothes,

clothesline, sheets, blankets, laundry of any kind or any other article shall be hung out or exposed on any external part of the Units or Common Elements.

(d) No Owner shall cause or permit anything to be placed on the outside walls of his Unit (including Garage and Yard Component), and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to any part thereof.

(e) Any treatment of windows or glass doors (including, but not limited to, interior shutters), other than draperies, curtains or blinds, if any, of the type and color originally installed by Declarant, shall be subject to the prior written approval of the Board. Aluminum foil and similar material shall not be permitted in any exterior window or glass door. Screens on doors and windows, other than any which may be installed by Declarant in its sole discretion, are permitted only if approved in advance by the Board.

(f) Holiday decorations which may be viewed from other portions of the Properties may only be installed inside the windows of a Unit, provided that such installment shall be done in such manner as not to compromise or damage the surface or item to which installed or attached. Such decorations must be installed and removed in a reasonably seasonal manner, and, during the appropriate period of display, shall be maintained in a neat and orderly manner.

(g) All Units and Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

(h) No spa, jetted tub, hot tub, water bed, or similar item (except for any bathroom tub installed by Declarant as part of the original construction of a Unit) shall be permitted or located within any Unit (including, but not limited to, Garage Component or Yard Component). The foregoing notwithstanding, upon prior written approval of the Board, an Owner may have such original bathroom tub professionally replaced, if necessary, in a size and capacity not to exceed said original bathroom tub, provided that the Owner shall be solely responsible for any and all damages caused thereby or arising in connection therewith. The Board may require the Owner to produce a reasonable bond or applicable insurance before permitting any replacement bathroom tub to be installed in a Unit.

Section 10.18 Parking and Vehicular Restrictions.

(a) No Person shall park, store or keep anywhere within the Properties any vehicle (which term for purposes herein shall include any vehicle, boat, aircraft, motorcycle, golf cart, jet ski, motor home, recreational vehicle, trailer, camper, other motorized item, vehicular equipment, and/or other item used in connection with or pertaining to any of the foregoing, whether mobile or not), which is deemed by the Board to be a nuisance. Subject to, and without limiting, the foregoing, no Person shall park, store or keep anywhere on 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; provided that any truck up to and including one (1) ton when used normally for everyday-type personal transportation, may be kept by an Owner or Resident.

(b) No maintenance or repair of any vehicle shall be undertaken within the Properties. No vehicle shall be left on blocks or jacks, except within a fully closed two car Garage, subject to Sections 10.5, 10.19, and 10.20, hereof. No washing of any vehicle shall be permitted anywhere within the Properties, except only in specifically designated areas (Hose Bib Spaces pursuant to Section 2.23, above), subject to Rules and Regulations.

(c) Subject to the "nuisance" provisions of Section 10.5, above, no Person shall park, store or keep anywhere in the Properties any unregistered or inoperable vehicle, except only within a fully closed two car Garage.

(d) No parking whatsoever shall be permitted in any designated "no parking" area, any entry gate area of the Properties, or any courtyard within the Properties. No parking of any vehicle shall be permitted along any curb or otherwise on any street within the Properties, except only for temporary guest parking, subject to Rules and Regulations established by the Board, and subject further to all applicable laws and ordinances.

(e) The Association shall have the right to tow vehicles parked in violation of this Declaration and/or the Rules and Regulations.

(f) Parking is prohibited on Arlington Ranch Boulevard and/or Richmar Avenue.

(g) These parking restrictions shall not be interpreted in such a manner as to permit any activity which would be prohibited by applicable Ordinance.

Section 10.19 Garages. Garages shall be used exclusively for the parking of vehicles, and shall not be used solely for items other than vehicles. Ordinary household goods may be stored in addition to vehicles, provided that: (i) no flammable, dangerous, hazardous or toxic materials shall be kept, stored, or used in any Garage, and (ii) doors to Garages shall be kept fully closed at all times except for reasonable periods during the removal or entry of vehicles or other items therefrom or thereto. Owners and Residents of Units 2 and 3 in each Triplex Building understand and acknowledge that their respective Garage Components are located directly below the Living Component of Unit 1, and, by acquisition of title to a Unit, or occupancy of a Unit, shall be deemed to covenant not to violate any "quiet hour" restrictions or rules, or any other noise, nuisance or vibration provisions of the Governing Documents. No Garage may be used for a permanent or temporary Dwelling, and no animal shall be housed or kept in any Garage. The foregoing notwithstanding, Declarant may convert a Garage owned by Declarant into a sales office or related purposes. Garages are to be used for parking of operable vehicles only, with the exception that one space in a two car Garage may be utilized to store an inoperable or unregistered vehicle, subject to Sections 10.5, and 10.18 through 10.20, inclusive, hereof. Any Owner reasonably requiring "emergency" access to or over another Owner's Garage Component, and who cannot reasonably contact such other Owner, shall contact the Board and/or Manager.

Section 10.20 Additional Vibrations and Noise Restrictions. Except for the garage door opener, no Owner shall attach to the walls or ceilings of any Garage Component any fixtures or equipment, which will cause vibrations or noise to the adjacent Residential Units. Any garage door opener which is replaced by an Owner shall be insulated with the same or better quality of sound insulation materials as provided by Declarant at the time of the initial installation or with any improved insulation materials which insulate sound and vibration from such garage door opener. Additionally, "hard surface flooring" (e.g., wood, tile, vinyl, or linoleum, or similar non-carpet flooring) shall not be permitted on more than approximately twenty-one (21%) percent of the interior floor surface of the upstairs floor of a Living Component ("Upstairs Floor"), further subject to any Rules and Regulations governing same, and the remainder of the floor surface of the Upstairs Floor shall be carpeted. Additionally, there shall be no speakers, sound equipment, television sets, or similar items mounted directly to or on or against a wall of a Unit. Such items may be permitted on shelves, provided that such shelves are carpeted so as to provide insulation from sound or vibration. Without limiting the foregoing, each Owner shall fully comply with all applicable County ordinances.

Section 3.9 Election of Directors. Not less than thirty (30) days before the preparation of a ballot for the election of Directors, which shall normally be conducted at an Annual Meeting, the Association Secretary or other designated Officer shall cause notice to be given to each Owner of his eligibility to serve as a Director. Each Owner who is qualified to serve as a Director may have his name placed on the ballot along with the names of the nominees selected by the Board or a nominating committee established by the Board. The Association Secretary or other designated Officer shall cause to be sent prepaid by United States mail to the mailing address of each Unit within the Community or to any other mailing address designated in writing by the Unit Owner, a secret ballot and a return envelope. Election of Directors must be conducted by secret written ballot, for so long as so required by applicable Nevada law, with the vote publicly counted (which counting may be done as the meeting agenda progresses).

Section 3.10 Board Meetings.

(a) A Board meeting must be held at least once every 90 days. Except in an emergency, the Secretary or other designated Officer shall, not less than 10 days before the date of a Board meeting, cause notice of the meeting to be given to the Owners. Such notice must be: (1) sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner; or (2) published in a newsletter or other similar publication circulated to each Owner. In an emergency, the Secretary or other designated Officer shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Unit. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each Unit within the Community or posted in a prominent place or places within the Common Elements.

(b) As used in this Section 3.10, "emergency" means any occurrence or combination of occurrences that: (1) could not have been reasonably foreseen; (2) affects the health, welfare and safety of the Owners; (3) requires the immediate attention of, and possible action by, the Board; and (4) makes it impracticable to comply with regular notice and/or agenda provisions.

(c) The notice of the Board meeting must state the time and place of the meeting and include a copy of the agenda for the meeting (or the date on which and the locations where copies of the agenda may be conveniently obtained by Owners). The notice must include notification of the right of an Owner to: (1) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request (and, if required by the Board, upon payment to the Association of the cost of making the distribution), and (2) speak to the Association or Board, unless the Board is meeting in Executive Session.

(d) The agenda of the Board meeting must comply with the provisions of NRS § 116.3108.3. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the Board may take action on an item which is not listed on the agenda as an item on which action may be taken.

(e) At least once every 90 days, the Board shall review at one of its meetings: (1) a current reconciliation of the Operating Fund (as defined in Section 6.2 below); (2) a current reconciliation of the Reserve Fund (as defined in Section 6.3 below); (3) the actual deposits and withdrawals for the Reserve Fund, compared to the Reserve Budget for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the Operating Fund and Reserve Fund; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

(f) The minutes of a Board meeting must be made available to Owners in accordance with NRS § 116.3108.5.

Section 3.11 Attendance by Owners at Board Meetings; Executive Sessions. Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and reasonable limitations on the time an Owner may speak at such meeting. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. Owners may not attend or speak at an Executive Session, unless the Board specifically so permits. An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

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

(b) discussing Association personnel matters of a sensitive nature; or

(c) discussing any violation ("Alleged Violation") of the Governing Documents (including, without limitation, the failure to pay an Assessment) alleged to have been committed by an Owner ("Involved Owner") (provided that the Involved Owner shall be entitled to request in writing that such hearing be conducted by the Board in open meeting, and provided further that the Involved Owner may attend such hearing and testify concerning the Alleged Violation, but may be excluded by the Board from any other portion of such hearing, including, without limitation, the Board's deliberation).

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

Section 3.12 Election of One District Director to Master Association Board. Subject to Master Declarant's control of the Master Association Board, as set forth in Section 3.7 of the Master Declaration, the Members of High Noon at ARLINGTON RANCH Homeowners Association shall elect one (1) District Director to the Master Association Board, pursuant to Article 4 (including, but not limited to, Section 4.3) of the Master Declaration.

ARTICLE 4
OWNERS' VOTING RIGHTS; MEMBERSHIP MEETINGS

Section 4.1 Owners' Voting Rights. Subject to the following provisions of this Section 4.1, and to Section 4.6 below, each Member shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member, and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. 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 Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The non-voting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit 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. Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent.

Section 4.2 Transfer of Voting Rights. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of fee interest in any Unit to a new Owner shall operate to transfer the appurtenant Membership and voting rights without the requirement of any express reference thereto. Each Owner shall, within ten (10) days of any sale, transfer or conveyance of a fee interest in the Owner's Unit, notify the Association in writing of such sale, transfer or conveyance, with the name and address of the transferee, the nature of the transfer and the Unit involved, and such other information relative to the transfer and the transferee as the Board may reasonably request, and shall deliver to the Association a copy of the Recorded deed therefor.

Section 4.3 Meetings of the Membership. Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting." The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring. If the Members have not held a meeting for one (1) year, a meeting of the Association Membership must be held by not later than the March 1 next following. A special meeting of the Association Membership may be called at any reasonable time and place by written request of: (a) the Association President, (b) a majority of the Directors, or (c) Members representing at least ten percent (10%) of the voting power of the Association, or as otherwise may be required by applicable law. Notice of special meetings shall be given by the Secretary of the Association in the form and manner provided in Section 4.4, below.

Section 4.4 Meeting Notices; Agendas; Minutes. Meetings of the Members shall be held in the Properties or at such other convenient location near the Properties and within Clark County as may be designated in the notice of the meeting.

(a) Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association Secretary shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by any Owner. The meeting notice must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of an Owner to: (i) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request, if the Owner pays the Association the cost of making the distribution; and (ii) speak to the Association or Board (unless the Board is meeting in Executive Session).

(b) The meeting agenda must consist of:

(i) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to any of the Governing Documents, any fees or Assessments to be imposed or increased by the Association, any budgetary changes, and/or any proposal to remove an Officer or Director; and

(ii) a list describing the items on which action may be taken, and clearly denoting that action may be taken on those items ("Agenda Items"); and

(iii) a period devoted to comments by Owners and discussion of such comments; provided that, except in emergencies, no action may be taken upon a matter raised during this comment and discussion period unless the matter is an Agenda Item. If the matter is not an Agenda Item, it shall be tabled at the current meeting, and specifically included as an Agenda Item for discussion and consideration at the next following meeting, at which time, action may be taken thereon.

(c) In an "emergency" (as said term is defined in Section 3.10(b) above), Members may take action on an item which is not listed on the agenda as an item on which action may be taken.

(d) If the Association adopts a policy imposing a fine on an Owner for the violation of a provision of the Governing Documents, the Board shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner thereof, a specific schedule of fines that may be imposed for those particular violations, at least thirty (30) days prior to any attempted enforcement, and otherwise subject to Section 17.1, below.

(e) Not more than thirty (30) days after any meeting, the Board shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or a summary of the minutes must be provided to any Owner who pays the Association the cost of providing the copy.

Section 4.5 Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any Budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for an adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Members is proposed or expected to be taken or to occur.

Section 4.6 Proxies. Every Member entitled to attend, vote at, or exercise consents, with respect to any meeting of the Members, may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting to which the proxy is applicable. A Member may give a proxy only to a member of his immediate Family, a tenant of said Member residing in the Community, or another Member residing in the Community, or as otherwise may be authorized from time to time by applicable Nevada law. No proxy shall be valid after the conclusion of the meeting (including continuation of such meeting) for which the proxy was executed. Such powers of designation and revocation may be exercised by the legal guardian of any Member or by his conservator, or in the case of a minor having no guardian, by the parent legally entitled to permanent custody, or during the administration of any Member's estate where the interest in the Unit is subject to administration in the estate, by such Member's executor or administrator. Any form of proxy or written ballot shall afford an opportunity therein to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy or written ballot is solicited, and shall provide, subject to reasonably specified conditions, that where the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with such specification. Unless applicable Nevada law provides otherwise, a proxy is void if: (a) it is not dated or purports to be revocable without notice; (b) it does not designate the votes that must be cast on behalf of the Member who executed the proxy; or (c) the holder of the proxy does not disclose at the beginning of the meeting (for which the proxy is executed) the number of proxies pursuant to which the proxy holder will be

casting votes and the voting instructions received for each proxy. If and for so long as prohibited by Nevada law, a vote may not be cast pursuant to a proxy for the election of a Director.

Section 4.7 Quorums. The presence at any meeting of Members who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Members present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of the Members required to constitute a quorum, unless a greater vote is required by applicable law or by this Declaration. If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Members entitled to vote at least twenty percent (20%) of the total votes of the Association. Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e.g., 67%) of votes of the total voting Membership as set forth in this Declaration.

Section 4.8 Actions. If a quorum is present, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two (2) candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by applicable law or by this Declaration.

Section 4.9 Adjourned Meetings and Notice Thereof. Any Members' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members present either in person or by proxy thereat, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in this Section 4.9. When any Members' meeting, either regular or special, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any Members' meeting, either regular or special, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Member as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Members may transact any business that might have been transacted at the original meeting.

Section 4.10 Membership in Master Association and LMA Association. Each Member also concurrently shall be a member of the Master Association and LMA Association respectively, and also subject to the Master Declaration and LMA Declaration respectively and other Master Association Documents and LMA Association Documents, as and to the extent set forth therein.

ARTICLE 5
FUNCTIONS OF ASSOCIATION

Section 5.1 Powers and Duties. The Association shall have all of the powers of a Nevada nonprofit corporation, subject only to such limitations, if any, upon the exercise of such powers as are expressly set forth in the Declaration, Articles and Bylaws. 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. The Association's obligations to maintain the Common Elements shall commence on the date Annual Assessments commence on Units; until commencement

of Annual Assessments, the Common Elements shall be maintained by Declarant, at Declarant's expense. Without in any way limiting the generality of the foregoing provisions, the Association may act through the Board, and shall have:

(a) Assessments. The power and duty to levy Assessments against the Owners of Units, and to enforce payment of such Assessments in accordance with the provisions of Article 7 hereof.

(b) Maintenance and Repair of Common Elements. The power and duty to cause the Common Elements to be maintained in a neat and attractive condition and kept in good repair (which shall include the power to enter into one or more maintenance and/or repair contract(s), including contract(s) for materials and/or services, with any Person(s) for the maintenance and/or repair of the Common Elements), pursuant to this Declaration and in accordance with standards adopted by the ARC, and to pay for utilities, gardening, landscaping, and other necessary services for the Common Elements. Notwithstanding the foregoing, the Association shall have no responsibility to provide any of the services referred to in this subsection 5.1(b) with respect to any Improvement which is accepted for maintenance by any state, local or municipal governmental agency or public entity. Such responsibility shall be that of the applicable agency or public entity.

(c) Removal of Graffiti. The power to remove or paint over any graffiti from Exterior Walls/Fences, pursuant and subject to Section 9.15, below.

(d) Insurances. The power and duty to cause to be obtained and maintained the insurance coverages in accordance with the provisions of Article 12 below.

(e) Taxes. The power and duty to pay all taxes and assessments levied upon the Common Elements (except to the extent, if any, that property taxes on Common Elements are assessed pro-rata on the Units), and all taxes and assessments payable by the Association, and to timely file all tax returns required to be filed by the Association.

(f) Utility Services. The power and duty to obtain, for the benefit of the Common Elements, any commonly metered water, sewage, gas, and/or electric services (or other similar services) and/or refuse collection, and the power, but not the duty, to provide for all cable or master television service, if any, for all or portions of the Properties. The Association, by Recordation of this Declaration, and each Owner, by acquiring title to a Unit and each Resident, by occupying a Unit, acknowledge and agree that water (and/or sewage) for First Light and/or the neighboring community of High Noon shall or may be commonly metered at the Master Community level, paid by the Master Association, and allocated and billed by the Master Association to each Unit within High Noon and First Light, and that such allocated costs shall be deemed to be reasonable and necessary, regardless of the actual levels or periods of use or occupancy (or non-use or vacancy) of or by the Unit. All costs of or related to the House Panel meter for electricity for coach lights and entrance/egress lights on each Triplex Building shall be paid by the Association at time of Close of Escrow of the first Residential Unit in such Triplex Building, subject to the right of the Association to subsequently assess allocated sums to the Purchaser of each Residential Unit in such Triplex Building.

(g) Easements and Rights-of-Way. 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) with the consent of seventy-five percent (75%) of the voting power of the Association, 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: (A) roads, streets, walks (if any), driveways and slope areas; (B) 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; (C) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and, (D) any similar public or quasi-public Improvements or facilities.

(h) Manager. The power, subject to Section 5.5 below, but not the duty, to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association, and the power, but not the duty, to delegate powers to committees, Officers and employees of the Association. Any such management agreement, or any agreement providing for services by Manager 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 less than fifteen (15) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon thirty (30) days written notice.

(i) Rights of Entry and Enforcement. The power, but not the duty, after Notice and Hearing (except in the event of bona-fide emergency which poses an (a) imminent and substantial threat to health, or (b) imminent and substantial threat (as verified by an engineer, architect, or professional building inspector, duly licensed in the State of Nevada) of material property damage; in which event of emergency, Notice and Hearing shall not be required), to peaceably enter upon any area of a Unit, without being liable to any Owner, except for damage caused by the Association 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 area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment pursuant to Article 7 below. 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 Dwelling without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party. Subject to Section 5.3 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(j) 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 to enhance the enjoyment, or to facilitate the use, by the Members, of the Common Elements.

(k) Employees, Agents and Consultants. The power, but not the duty, if deemed appropriate by the Board, 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.

(l) Acquiring Property and Construction on Common Elements. The power, but not the duty, by action of the Board, to acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The power, but not the duty, by action of the Board, to construct new Improvements or additions to the Common Elements, or demolish existing Improvements (other than maintenance or repairs to existing Improvements).

(m) Contracts. The power, but not the duty, to enter into contracts with Owners to provide services or to maintain and repair Improvements within the Properties which the Association is not otherwise required to maintain pursuant to this Declaration, and the power, but not the duty, to contract with third parties for such services. Any such contract or service agreement must, however, provide for payment to the Association of the cost of providing such service or maintenance.

(n) Records and Accounting. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Financial statements for the Association shall be regularly prepared and distributed to all Members as follows:

(i) Pro forma operating statements (Budgets), Reserve Budgets, and Reserve Studies shall be distributed pursuant to Section 6.4, below.

(ii) Reviewed or audited Financial Statements (consisting of a reasonably detailed statement of revenues and expenses of the Association for each Fiscal Year, and a balance sheet showing the assets [including, but not limited to, Association Reserve Funds] and liabilities of the Association as at the end of each Fiscal Year), and a statement of cash flow for the Fiscal Year, shall be distributed within one hundred twenty (120) days after the close of each Fiscal Year.

(o) Maintenance of Other Areas. The power, but not the duty, to maintain and repair slopes, parkways, entry structures, and Community signs identifying the Properties, to the extent deemed to be reasonable and prudent by the Board.

(p) Use Restrictions. The power and the duty to enforce use restrictions pertaining to the Properties.

(q) Licenses and Permits. The power and the duty to obtain from applicable governmental authority any and all licenses and permits reasonably necessary to carry out Association functions hereunder.

Section 5.2 Rules and Regulations. The Board, acting on behalf of the Association, shall be empowered to adopt, amend, repeal and/or enforce reasonable and uniformly applied Rules and Regulations, which shall not discriminate among Members, for the use and occupancy of the Properties, as follows:

(a) General. A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Elements and/or shall be mailed or otherwise delivered to each Member and also kept on file with the Association. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein and shall be binding on all Persons having any interest in, or making any use of any part of, the Properties, whether or not Members; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the other Governing Documents. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, whether or not a Member, as though notice of such Rules and Regulations had been given pursuant to this Section 5.2. The Rules and Regulations may not be used to amend any of the other Governing Documents.

(b) Limitations. The Rules and Regulations must be:

(i) reasonably related to the purpose for which adopted;

(ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;

(iii) adopted without intent to evade any obligation of the Association;

(iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);

(v) uniformly enforced under the same or similar circumstances against all Owners; provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and

(vi) duly adopted and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

Section 5.3 Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). Subject to Section 17.14, below, the Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Elements and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an Assessment, or an Assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, or (iv) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars ($10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding." The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 5.3 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Two Thousand Dollars ($2,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinions of each and every one of: (A) a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); (B) a reputable appraiser and/or real estate consultant regularly conducting business in Clark County, Nevada, expressly opining that the marketability and market value of Units will not be substantially or materially affected by such Non-Operational Controversy ("Appraiser's Opinion"); and (C) a senior executive from a reputable lender in the business of regularly making residential loans in Clark County, Nevada, that financing and refinancing of Units will not be affected by such Non-Operational Controversy, and that such financing and refinancing will be readily available ("Lender's Opinion"). (The Legal Opinion, Appraiser's Opinion, and Lender's Opinion are sometimes collectively referred to herein as the "Opinions). The Board shall be authorized to spend up to an aggregate of Two Thousand Dollars ($2,000.00) to obtain such Opinions, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said $2,000.00 limit, with the express consent of seventy-five percent (75%) or more of all of the Members of the Association, at a special meeting called for such purpose.

(2) The Legal Opinion shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said Legal Opinion shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written Legal Opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(3) Upon receipt and review of the Attorney Letter, the Appraiser's Opinion, and the Lender's Opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation

Costs and any proposed fee agreement, contingent or non-contingent, the Appraiser's Opinion, and the Lender's Opinion, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Appraiser's Opinion, Lender's Opinion, and Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (x) if not more than seventy-five percent (75%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than seventy-five percent (75%) of the total voting power of the Association (i.e., more than seventy-five percent (75%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred ten percent (110%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than monthly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

(4) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association Reserve Fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy). Association Reserve Funds, pursuant to Section 6.3 below, are to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance

of, or intervention in, the Proceeding; and (iii) this Section 5.3 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors; and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void.

Section 5.4 Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year; or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(b) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public or private utility or cable television company, if the rates charged for the materials or services are regulated by the Nevada Public Service Commission (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) prepaid casualty and/or liability insurance policies of no greater than three (3) years duration.

(c) Pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business.

Section 5.5 Manager. The Association shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than fifteen (15) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than thirty (30) days written notice. In the event of any explicit conflict between the Governing Documents and any agreement with a Manager, the Governing Documents shall prevail.

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Nevada Real Estate Division pursuant to the provisions of NRS Chapter 645 and/or NRS §116.700, or duly exempted pursuant to NRS § 116.725.6). Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

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

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

(e) By execution of its agreement with the Association, each and every Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, prompt and full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; (3) to comply fully, at its expense, with all applicable regulations of the Nevada Real Estate Division; (4) to refrain, without specific prior written direction of a majority of the voting power of the Board, from referring or introducing to the Association, or contacting directly or indirectly for or on behalf of the Association, any attorney regarding any matter in any way related to the Community or any portion thereof; (5) prior to time of hire, and from time to time thereafter upon request of the Board: (a) to disclose to the Board, in writing, the identities of any and all other communities, managed by Manager (at such time, and within the three year period preceding such time), and involved in litigation involving any claim of construction defect, and the current status of any and all such litigation, and (b) to certify in writing to the Board that Manager, and its then current and prior employees, have had no relationship to, and have received no benefit or thing of value from, the attorney(s) commencing and/or prosecuting such litigation, and/or any attorney referred to the Association at the specific written direction of the Board (or if there was or is any such relationship or benefit, to disclose and identify the same); and (6) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed).

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

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

Section 5.6 Inspection of Books and Records.

(a) The Board shall, upon the written request of any Owner, make available the books, records and other papers of the Association for review during the regular working hours of the

Association, with the exception of: (1) personnel records of employees (if any) of the Association; and (2) records of the Association relating to another Owner.

(b) The Board shall cause to be maintained and made available for review at the business office of the Association or other suitable location: (1) the financial statements of the Association; (2) the Budgets and Reserve Budgets; and (3) Reserve Studies.

(c) The Board shall cause to be provided a copy of any of the records required to be maintained pursuant to (a) and (b) above, to an Owner or to the Nevada State Ombudsman, as applicable, within 14 days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing such copy, but not to exceed 25 cents per page (or such maximum amount as permitted by applicable Nevada law).

(d) Notwithstanding the foregoing, each Director shall have the unfettered right at any reasonable time, and from time to time, to inspect all such records.

Section 5.7 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties, or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and audited or reviewed annual reports, as required in Section 5.1(n), above. Such notices and information shall be delivered to Declarant at its most recently designated address.

Section 5.8 Compliance with Applicable Laws. The Association and its governance shall comply with all applicable laws (including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person) relating thereto. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or applicable Ordinance. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

ARTICLE 6
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1 Personal Obligation for Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree, to pay to the Association: (a) Annual Assessments, (b) Special Assessments, and (c) any Capital Assessments; such Assessments to be established and collected as provided in this Declaration. All Assessments, together with interest thereon, late charges, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit and shall be a continuing lien upon the Unit against

which such Assessments are made. Each such Assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors-in-title of any Owner unless expressly assumed by such successors. Each Owner's obligation to pay assessments hereunder shall be in addition to the Owner's obligation to pay all required Master Association and LMA Association capital contributions and assessments, as and to the extent, if any, required under the Master Association Documents and LMA Association Documents respectively.

Section 6.2 Association Funds. The Board shall establish at least the following separate accounts (the "Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as accounts, in the name of the Association, at a federally or state insured banking or savings institution and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, and (2) a reserve fund ("Reserve Fund") for capital repairs and replacements, as set forth in Section 6.3, below, and (3) any other funds which the Board may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than Reserve Fund which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate savings or checking account, at any federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Manager shall not be authorized to make withdrawals from the Reserve Fund. Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer (or, in the absence of either the President or Treasurer, the Secretary may sign in place of the absent Officer). The President, Treasurer, and Secretary must all be Directors and (after the Declarant Control Period) must also all be Owners.

Section 6.3 Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements, (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any purpose whatsoever other than as specifically set forth in (ii) above, (and any use of the Reserve Fund in violation of the foregoing provisions shall be unauthorized and ultra vires as to the Association, and shall subject any Director who acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.3(a) to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized use of the Reserve Fund), (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing, (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); and (vi) under no circumstances shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund.

(b) The Board shall periodically retain the services of a qualified reserve study analyst ("Reserve Analyst"), with sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study").

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event **initially within one (1) year** after the Close of Escrow for the first Unit within the Properties, and thereafter at least **once every five (5) years** (or at such other intervals as may be required from time to time by applicable Nevada law). The Board shall review the results of the most current Reserve Study **at least annually** to determine if those reserves are sufficient; and shall make such **adjustments** as the Board deems reasonable and prudent to maintain the required reserves from time to time (i.e., by increasing Assessments). It shall be an obligation of the Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

(d) Each Reserve Study must be conducted by a person qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Manager who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation: (1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore; (2) an identification of the Major Components which have a remaining useful life of less than 30 years; (3) an estimate of the remaining useful life of each Major Component so identified; (4) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life; and (5) an estimate of the total Annual Assessment that may be required to cover the cost of repairing, replacement or restoration the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study). The Reserve Study shall be conducted in accordance with any applicable regulations promulgated from time to time by the Nevada Real Estate Division.

(e) Each Reserve Study shall be prepared in accordance with any legal requirements from time to time as applicable, applied in each instance on a prospective basis. Subject to the foregoing sentence, the Association (upon Recordation of this Declaration) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally agreed that the following, among others, shall be deemed reasonable and prudent for and in connection with preparation of each Reserve Study: (i) utilization, by a Reserve Analyst, of the "pooling" or "cash flow" method, or other generally recognized method, and/or (ii) utilization or reliance, by a Reserve Analyst, of an assumption that there will be future annual increases in amounts from time to time allocated to the Reserve Fund (provided that, subject to and without limiting Sections 6.4 or 6.5 below, no assumption shall be made of such future increases in excess of 10% per year plus a reasonable annual inflationary factor), with corresponding increases in Assessments.

Section 6.4 Budget; Reserve Budget.

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

the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

(b) Notwithstanding the foregoing, except as otherwise provided in subsection (c) below, the Board shall, not less than 30 days or more than 60 days before the beginning of each Fiscal Year, prepare and distribute to each Owner a copy of:

(1) the Budget (which must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the Reserve Fund); and

(2) the Reserve Budget, which must include, without limitation:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each Major Component;

(B) as of the end of the Fiscal Year for which the Reserve Budget is prepared, the current estimate of the 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;

(C) a statement as to whether the Board has determined or anticipates that the levy of one or more Capital Assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves for that purpose; and

(D) a general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (B) above, including, without limitation, the qualifications of the Reserve Analyst.

(c) In lieu of distributing copies of the Budget and Reserve Budget, the Board may distribute to each Owner a summary of those budgets, accompanied by a written notice that the budgets are available for review at the business office of the Association or other suitable location and that copies of the budgets will be provided upon request.

Section 6.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a twenty-five percent (25%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessments levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, for ratification as provided in Section 6.4, above.

Section 6.6 Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant, the Purchaser of such Unit shall be required to pay an initial capital contribution to the Association, in an amount equal to the greater of: (a) One Hundred Dollars ($100.00), or (b) two (2) full monthly installments of the initial or then-applicable Annual Assessment. Such initial capital contribution is in addition to, and is not to be considered as, an advance payment of the Annual

Assessment for such Unit, and shall be deposited at each Close of Escrow into the Association Reserve Fund, and used exclusively to help fund the Association Reserve Fund, and shall not be applied to non-Reserve Fund items. Additionally, at the Close of Escrow for each resale of a Unit by an Owner (other than Declarant), the Purchaser of such Unit shall be required to pay a resale capital contribution to the Association, in an amount equal to the greater of: (a) One Hundred Dollars ($100.00), or (b) two (2) full monthly installments of the then-applicable Annual Assessment. Such resale capital contribution is in addition to the foregoing described initial capital contribution, and is further in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and may be applied to working capital needs and/or the Reserve Fund, in the Board's business judgment.

Section 6.7 Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be: (a) with respect to Units in the Original Property, the first day of the calendar month following the Close of Escrow to a Purchaser of the first Unit in the Original Property; and (b) with respect to each Unit within Annexed Property, the first day of the calendar month following the date on which the Annexation Amendment for such Unit is Recorded; provided that Declarant may establish, in its sole and absolute discretion, a later Assessment Commencement Date, uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. From and after the Assessment Commencement Date, Declarant may, but shall not be obligated to, make loan(s) to the Association, to be used by the Association for the sole purpose of paying Common Expenses, to the extent the budget therefor exceeds the aggregate amount of Annual Assessments for a given period, provided that any such loan shall be repaid by Association to Declarant as soon as reasonably possible. The first Annual Assessment for each Unit shall be pro-rated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the Assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be retained by the Association for use in reducing the following year's Annual Assessment or for deposit in the reserve account. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

Section 6.8 Capital Assessments. The Board may levy, in any Fiscal Year, a Capital Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement or other such addition upon the Common Elements, including fixtures and personal property related thereto; provided that any proposed Capital Assessment shall require the advance consent of a majority of the voting power of the Association.

Section 6.9 Uniform Rate of Assessment. Annual Assessments, and any Capital Assessments shall be assessed at an equal and uniform rate against all Owners and their Units. Each Owner's share of such Assessments shall be a fraction, the numerator of which shall be the number of Units owned by such Owner, and the denominator of which shall be the aggregate number of Units in the Original Property (and, upon annexation, of Units in portions of the Annexed Property).

Section 6.10 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

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

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

Section 6.11 Special Assessments. The Association may, subject to the provisions of Article 7, Section 9.3 and Section 11.1 (b) hereof, levy Special Assessments against specific Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorneys' fees, amounts expended to enforce Assessment liens against Owners as provided for herein, and other charges of similar nature. Special Assessments, if not paid timely when due, shall constitute unpaid or delinquent Assessments, pursuant to Article 7, below.

Section 6.12 Subsidies and/or Advances by Declarant. Declarant shall have the right, in its sole and absolute discretion, from time to time during the Declarant Control Period, to: (a) subsidize the Association, by direct payment of any and all Excess Common Expenses ("Declarant Subsidies"); and/or (b) advance funds and/or make loan(s) to the Association, to be used by the Association for the sole purpose of paying Excess Common Expenses ("Declarant Advances"). "Excess Common Expenses" for purposes of this Section 6.12 shall mean such amount, if any, of Common Expenses in excess of Assessments and non-Reserve funds reasonably available at such time to pay Common Expenses. The aggregate amount of any and all Declarant Subsidies and/or Declarant Advances, or portions from time to time respectively thereof, together with interest thereon at the rate of eighteen percent (18%) per annum, shall be repaid by Association to Declarant as soon as non-Reserve funds are reasonably available therefor (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Assessments and/or contributions to Reserve Funds, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration or under applicable Nevada law). Each Owner, by acceptance of a deed to his or her Unit, shall be conclusively deemed to have acknowledged and agreed to all of the foregoing provisions of this Section 6.12, whether or not so stated in such deed.

Section 6.13 LMA and Master Association Assessments and Capital Contributions. Additionally, each Owner, by acceptance of a deed to a Unit (whether or not so expressed in such deed) shall be deemed to agree to pay all required LMA and Master Association capital contributions and assessments, as and to the extent required under applicable provisions of the LMA Association Documents and Master Association Documents respectively, and that the LMA and Master Association each shall have the same rights and remedies against Owners hereunder as the LMA and Master Association have against the "Owners" (as said term is defined in the LMA Declaration and Master Declaration respectively) with respect to the enforcement of the assessments described above. Notwithstanding any provision of this Declaration to the contrary, the terms of this Section 6.13 may not be amended, altered, suspended, or superseded without the express written consent of Declarant, in its sole discretion, which consent shall be acknowledged in a Recorded document.

ARTICLE 7
EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION

Section 7.1 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Assessment, shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the rate of eighteen percent (18%) per annum (or such lower rate as may be approved from time to time by the Board in its business judgment), but in any event not greater than the maximum rate permitted by applicable Nevada law, as well as a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest on any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Elements or by abandonment of his Unit.

Section 7.2 Notice of Delinquent Installment. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of delinquent Assessment to the Owner and to each first Mortgagee of the Unit. The notice shall specify: (a) the amount of Assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such Assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installment of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such Assessments levied against such Owner and his Unit to be immediately due and payable without further demand, and may enforce the collection of the full Assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 7.3 Notice of Default and Election to Sell. No action shall be brought to enforce any Assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default and election to sell is Recorded; or (b) the date the Recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default and election to sell must recite a good and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid Assessment as described in Section 7.1 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Board to enforce the lien by sale. The notice of default and election to sell shall be signed and acknowledged by an Association Officer, Manager, or other Person designated by the Board for such purpose, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 7.4 Foreclosure Sale. Subject to the limitation set forth in Section 7.5 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS §116.31164 and Covenants Nos. 6, 7 and 8 of NRS §107.030 and §107.090, as amended, insofar as they are consistent with the provisions of NRS §116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the

EXHIBIT "17"

KOELLER | NEBEKER | CARLSON | HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

HIGH NOON AT ARLINGTON RANCH
PUBLIC OFFERING STATEMENT

ATTACHMENT "C"

HIGH NOON AT ARLINGTON RANCH
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RESERVATION OF EASEMENTS

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SUPPLEMENTAL DECLARATION OF

COVENANTS, CONDITIONS & RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

HIGH NOON AT ARLINGTON RANCH

(a Nevada Residential Common-Interest Planned Community)
CLARK COUNTY, NEVADA

TABLE OF CONTENTS

Page

ARTICLE 1 - DEFINITIONS 2

ARTICLE 2 - OWNERS' PROPERTY RIGHTS; EASEMENTS 10
Section 2.1 Ownership of Unit; Owners' Easements of Enjoyment 10
Section 2.2 Easements for Parking 12
Section 2.3 Easements for Vehicular and Pedestrian Traffic 12
Section 2.4 Easement Right of Declarant Incident to Construction, Marketing and/or Sales Activities 12
Section 2.5 Easements for Public Service Use 12
Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes 13
Section 2.7 Additional Reservation of Easements 14
Section 2.8 Encroachments 14
Section 2.9 Easement Data 14
Section 2.10 Owners' Right of Ingress and Egress 14
Section 2.11 No Transfer of Interest in Common Elements 14
Section 2.12 Ownership of Common Elements 15
Section 2.13 Exclusive Use Areas 15
Section 2.14 HVAC 15
Section 2.15 Garages 15
Section 2.16 Driveway Areas 16
Section 2.17 Cable Television 16
Section 2.18 Waiver of Use 16
Section 2.19 Alteration of Units 16
Section 2.20 Taxes 16
Section 2.21 Additional Provisions for Benefit of Handicapped Persons 16
Section 2.22 Avigation Easements 17
Section 2.23 Hose Bib Spaces 17
Section 2.24 Master Metered Water 17
Section 2.25 Prohibition of Ownership of Multiple Units Within a Triplex Building 17

ARTICLE 3 - HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION 18
Section 3.1 Organization of Association 18
Section 3.2 Duties, Powers and Rights 18
Section 3.3 Membership 18
Section 3.4 Transfer of Membership 18
Section 3.5 Articles and Bylaws 19
Section 3.6 Board of Directors 19
Section 3.7 Declarant's Control of Board 20
Section 3.8 Control of Board by Owners 20
Section 3.9 Election of Directors 21
Section 3.10 Board Meetings 21
Section 3.11 Attendance by Owners at Board Meetings; Executive Sessions 22
Section 3.12 Election of One District Director to Master Association Board 22

ARTICLE 4 - OWNERS' VOTING RIGHTS; MEMBERSHIP MEETINGS 22
Section 4.1 Owners' Voting Rights 22
Section 4.2 Transfer of Voting Rights 23

Section 4.3 Meetings of the Membership 23
Section 4.4 Meeting Notices; Agendas; Minutes 23
Section 4.5 Record Date 24
Section 4.6 Proxies 24
Section 4.7 Quorums 25
Section 4.8 Actions 25
Section 4.9 Adjourned Meetings and Notice Thereof 25
Section 4.10 Membership in Master Association and LMA Association 25

ARTICLE 5 - FUNCTIONS OF ASSOCIATION 25
Section 5.1 Powers and Duties 25
Section 5.2 Rules and Regulations 28
Section 5.3 Proceedings 29
Section 5.4 Additional Express Limitations on Powers of Association 32
Section 5.5 Manager 32
Section 5.6 Inspection of Books and Records 33
Section 5.7 Continuing Rights of Declarant 34
Section 5.8 Compliance with Applicable Laws 34

ARTICLE 6 - COVENANT FOR MAINTENANCE ASSESSMENTS 34
Section 6.1 Personal Obligation for Assessments 34
Section 6.2 Association Funds 35
Section 6.3 Reserve Fund; Reserve Studies 35
Section 6.4 Budget; Reserve Budget 36
Section 6.5 Limitations on Annual Assessment Increases 37
Section 6.6 Capital Contributions to Association 37
Section 6.7 Assessment Commencement Date 38
Section 6.8 Capital Assessments 38
Section 6.9 Uniform Rate of Assessment 38
Section 6.10 Exempt Property 39
Section 6.11 Special Assessments 39
Section 6.12 Subsidies and/or Advances by Declarant 39
Section 6.13 LMA and Master Association Assessments and Capital Contributions 39

ARTICLE 7 - EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION 40
Section 7.1 Nonpayment of Assessments 40
Section 7.2 Notice of Delinquent Installment 40
Section 7.3 Notice of Default and Election to Sell 40
Section 7.4 Foreclosure Sale 40
Section 7.5 Limitation on Foreclosure 41
Section 7.6 Cure of Default 41
Section 7.7 Cumulative Remedies 41
Section 7.8 Mortgagee Protection 41
Section 7.9 Priority of Assessment Lien 41

ARTICLE 8 - ARCHITECTURAL AND LANDSCAPING CONTROL 42
Section 8.1 ARC 42
Section 8.2 Review of Plans and Specifications 42
Section 8.3 Meetings of the ARC 44
Section 8.4 No Waiver of Future Approvals 44
Section 8.5 Compensation of Members 44

Section 8.6 Correction by Owner of Nonconforming Items 44
Section 8.7 Scope of Review 45
Section 8.8 Variances 45
Section 8.9 Non-Liability for Approval of Plans 45
Section 8.10 Architectural Guidelines 46
Section 8.11 Declarant Exemption 46
Section 8.12 LMA Declaration; Master Declaration 46

ARTICLE 9 - MAINTENANCE AND REPAIR OBLIGATIONS 46
Section 9.1 Maintenance and Repair Responsibilities of Association 46
Section 9.2 Inspection Responsibilities of Association 48
Section 9.3 Maintenance and Repair Obligations of Owners 49
Section 9.4 Restrictions on Alterations 50
Section 9.5 Reporting Responsibilities of Owners 51
Section 9.6 Disrepair; Damage by Owners 51
Section 9.7 Damage by Owners to Common Elements 51
Section 9.8 Pest Control Program 51
Section 9.9 Damage and Destruction Affecting Dwellings and Duty to Rebuild 52
Section 9.10 Yard Walls/Fences 52
Section 9.11 Additional Wall/Fence Provisions 52
Section 9.12 Installed Landscaping 53
Section 9.13 Modification of Improvements 53
Section 9.14 Certain Other Improvements 53
Section 9.15 Graffiti Removal 54
Section 9.16 Maintenance of Coach Lights 54

ARTICLE 10 - USE RESTRICTIONS 54
Section 10.1 Single Family Residence 54
Section 10.2 No Further Subdivision 55
Section 10.3 Insurance Rates 55
Section 10.4 Animal Restrictions 55
Section 10.5 Nuisances 55
Section 10.6 Exterior Maintenance and Repair; Owner's Obligations 56
Section 10.7 Drainage 56
Section 10.8 Water Supply and Sewer Systems 57
Section 10.9 No Hazardous Activities 57
Section 10.10 No Unsightly Articles 57
Section 10.11 No Temporary Structures; No Stucco Block Walls 57
Section 10.12 No Drilling 57
Section 10.13 Alterations 57
Section 10.14 Signs 57
Section 10.15 Antennas and Satellite Dishes 58
Section 10.16 Installation 58
Section 10.17 Other Restrictions 58
Section 10.18 Parking and Vehicular Restrictions 59
Section 10.19 Garages 60
Section 10.20 Additional Vibrations and Noise Restrictions 60
Section 10.21 Exterior Lighting 61
Section 10.22 Exterior Painting 61
Section 10.23 Post Tension Slabs 61
Section 10.24 Sight Visibility Restriction Areas 61

Section 10.25 Prohibited Direct Vehicle Access 61
Section 10.26 Abatement of Violations 61
Section 10.27 Yard Components 62
Section 10.28 No Waiver 62
Section 10.29 Declarant Exemption 62
Section 10.30 LMA Declaration; Master Declaration 62

ARTICLE 11 - DAMAGE OR CONDEMNATION OF COMMON ELEMENTS 62
Section 11.1 Damage or Destruction 62
Section 11.2 Condemnation 63
Section 11.3 Condemnation Involving a Unit 63

ARTICLE 12 - INSURANCE 63
Section 12.1 Casualty Insurance 63
Section 12.2 Liability and Other Insurance 64
Section 12.3 Fidelity Insurance 64
Section 12.4 Other Insurance Provisions 65
Section 12.5 Insurance Obligations of Owners 65
Section 12.6 Waiver of Subrogation 65
Section 12.7 Notice of Expiration Requirements 66

ARTICLE 13 - MORTGAGEE PROTECTION 66

ARTICLE 14 - DECLARANT'S RESERVED RIGHTS 68
Section 14.1 Declarant's Reserved Rights 68
Section 14.2 Exemption of Declarant 70
Section 14.3 Limitations on Amendments 71
Section 14.4 LMA Declaration; Master Declaration 71

ARTICLE 15 - ANNEXATION 71
Section 15.1 Annexation 71
Section 15.2 Annexation Amendment 72
Section 15.3 FHA/VA Approval 72
Section 15.4 Disclaimers Regarding Annexation 72
Section 15.5 Expansion of Annexable Area 72
Section 15.6 Contraction of Annexable Area; Withdrawal of Real Property 72

ARTICLE 16 - ADDITIONAL DISCLOSURES, DISCLAIMERS AND RELEASES 73
Section 16.1 Additional Disclosures, Disclaimers, and Releases of Certain Matters 73
Section 16.2 Releases 78

ARTICLE 17 - GENERAL PROVISIONS 78
Section 17.1 Enforcement 78
Section 17.2 Severability 80
Section 17.3 Term 80
Section 17.4 Interpretation 80
Section 17.5 No Public Right or Dedication 80
Section 17.6 Constructive Notice and Acceptance 81
Section 17.7 Notices 81
Section 17.8 Priorities and Inconsistencies 81
Section 17.9 LMA Declaration; Master Declaration 81

Section 17.10 Limited Liability 81
Section 17.11 Business of Declarant 81
Section 17.12 Declarant's Right to Repair 82
Section 17.13 Arbitration 82

ARTICLE 18 - AMENDMENT 83
Section 18.1 Amendment By Declarant 83
Section 18.2 Amendment of Plat 83
Section 18.3 Amendment By Members 83
Section 18.4 Approval of Eligible Mortgagees 83
Section 18.5 Notice of Change 84

EXHIBIT "A" ORIGINAL PROPERTY

EXHIBIT "B" ANNEXABLE AREA

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RESERVATION OF EASEMENTS FOR **HIGH NOON AT ARLINGTON RANCH**

THIS SUPPLEMENTAL DECLARATION ("Declaration"), made as of the 23 day of March, 2004, by D. R. HORTON, INC., a Delaware corporation ("Declarant"):

W I T N E S S E T H :

WHEREAS:

A. Declarant owns certain real property located in Clark County, Nevada, on which Declarant intends to subdivide, develop, construct, market and sell a residential triplex townhome common-interest planned community, to be known as "HIGH NOON AT ARLINGTON RANCH" ("High Noon"); and

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

C. Declarant intends that, upon Recordation of this Declaration, the Original Property shall be a Nevada Common-Interest Community, as defined in NRS § 116.021, and a Nevada Planned Community, as defined in NRS § 116.075 ("Community"); and

D. The name of the Community shall be HIGH NOON AT ARLINGTON RANCH, and the name of the Nevada nonprofit corporation organized in connection therewith shall be HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION ("Association"); and

E. Declarant further reserves the right from time to time to add all or any portions of certain other real property, from time to time described more particularly in Exhibit "B" attached hereto ("Annexable Area");

F. The total maximum number of Units that may (but need not) be created in the Community is not to exceed three hundred forty-two (342) aggregate Units ("Units That May Be Created"); and

G. The Original Property and, following annexation from time to time, in Declarant's sole discretion, any and all Annexed Property, shall comprise the "Properties"; and

H. Declarant intends to develop and convey the Properties pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges; and

I. In addition to this Declaration, the Properties are subject to: (i) the Recorded Declaration of Covenants, Conditions & Restrictions and Reservation of Easements ("LMA Declaration") for ARLINGTON RANCH Landscape Maintenance Association ("LMA Association"), and (ii) the Recorded Master Declaration ("Master Declaration") for ARLINGTON RANCH NORTH Master Association ("Master Declaration") as said declarations from time to time respectively may be amended and/or restated; and

J. The Master Declaration provides that Supplemental Declarations may be recorded which affect the Districts within the Project (as such terms are defined in the Master Declaration), and that Sub-Associations may be established for the purpose of managing and administering said Districts; and

K. Declarant desires that the Properties be subject to further covenants, conditions and restrictions and reservations of easements, in addition to those set forth in the Master Declaration (taking into account certain unique aspects of the Properties), and that the Association be established (as a Sub-Association under the Master Declaration) for the purpose of assessing, managing and administering High Noon at ARLINGTON RANCH; and

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

M. This Declaration is intended to set forth a dynamic and flexible plan for governance of the Community, and for the overall development, administration, maintenance and preservation of a unique residential community, in which the Owners enjoy a quality life style as "good neighbors";

NOW, THEREFORE, Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Annexed Property (collectively, "Properties") shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the provisions of this Declaration and 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 Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale and lease of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth in this Declaration shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, and their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successive owners and assigns. All Units within this Community shall be used, improved and limited exclusively to single Family residential use.

ARTICLE 1
DEFINITIONS

Section 1.1 "Act" shall mean Nevada's Uniform Common Interest Ownership Act, set forth in Chapter 116 of Nevada Revised Statutes, as the same may be amended from time to time. Except as otherwise indicated, capitalized terms herein shall have the same meanings ascribed to such terms in the Act.

Section 1.2 "Allocated Interests" shall mean the following interests allocated to each Unit: a non-exclusive easement of enjoyment of all Common Elements in the Properties; allocation of Exclusive Use Areas, if any, pursuant to the Plat and as set forth herein; liability for Assessments pro-rata for Common Expenses in the Properties (in addition to any Special Assessments as set forth

herein); and membership and one vote in the Association, per Unit owned, which membership and vote shall be appurtenant to the Unit.

Section 1.3 "Annexable Area" shall mean all or any portion of that real property described in Exhibit "B" attached hereto and incorporated by this reference herein, all or any portion of which real property may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof. At no time shall any portion of the Annexable Area be deemed to be a part of the Community or a part of the Properties until such portion of the Annexable Area has been duly annexed hereto pursuant to Article 15 hereof.

Section 1.4 "Annexed Property" shall mean any and all portion(s) of the Annexable Area from time to time added to the Properties covered by this Declaration, by Recordation of Annexation Amendment(s) pursuant to Article 15 hereof.

Section 1.5 "ARC" shall mean the Architectural Review Committee created pursuant to Article 8 hereof.

Section 1.6 "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the Office of the Nevada Secretary of State, as such Articles may be amended from time to time.

Section 1.7 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments and Special Assessments.

Section 1.8 "Assessment, Annual" shall mean the annual or supplemental charge against each Owner and his or her Unit, representing a portion of the Common Expenses, which are to be paid in equal periodic (monthly, quarterly, or annually as determined from time to time by the Board) installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner and at the times and proportions provided herein.

Section 1.9 "Assessment, Capital" shall mean a charge against each Owner and his or her Unit, representing a portion of the costs to the Association for installation, construction, or reconstruction 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. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments

Section 1.10 "Assessment, Special" shall mean a charge against a particular Owner and his or her Unit, directly attributable to, or reimbursable by that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, plus interest and other charges on such Special Assessments as provided for herein.

Section 1.11 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.12 "Association" shall mean HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, and its successors and assigns. The Association shall be a "Sub-Association" as such term is defined in the Master Declaration.

Section 1.13 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article 6 hereof.

Section 1.14 "Balcony" shall mean a balcony on a Residential Unit, as constructed by Declarant on certain, but not necessarily all, Units in High Noon. No Owner or Person other than Declarant, in its sole and absolute discretion, shall have any right to construct or shall construct, a Balcony. No item whatsoever shall or may be stored on a Balcony.

Section 1.15 "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.16 "Board or Board of Directors" shall mean the Board of Directors of the Association, elected or appointed in accordance with the Bylaws and this Declaration. The Board is an "Executive Board" as defined by NRS § 116.045.

Section 1.17 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared, and approved pursuant to the provisions of this Declaration, including, but not limited to, Section 6.4 below.

Section 1.18 "Bylaws" shall mean the Bylaws of the Association, which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.19 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser.

Section 1.20 "Common Elements" shall mean all portions of the Properties conveyed to and owned by the Association, and all Improvements thereon. Subject to the foregoing, Common Elements may include, without limitation: private main entryway gates for Properties; private entryway monumentation and entry landscaping areas for the Properties; Private Streets; sidewalks; perimeter walls, fences; common landscape and greenbelt areas; hardscape and parking areas (other than Garages); all water and sewer systems, lines and connections, from the boundaries of the Properties, to the boundaries of Units (but not including such internal lines and connections located inside Units); pipes, ducts, flues, chutes, conduits, wires, and other utility systems and installations (other than those located within a Unit, which outlets shall be a part of the Unit), and heating, ventilation and air conditioning, as installed by Declarant or the Association for common use (but not including HVAC which serves a single Unit exclusively). Common Elements shall constitute "Common Elements" with respect to this Community, as set forth in NRS § 116.017.

Section 1.21 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, insurance, management, operation, repair and replacement of the Common Elements; painting over or removing graffiti on Exterior Walls/Fences, pursuant to Section 9.15 below; unpaid Special Assessments, and/or Capital Assessments; the costs of any commonly metered utilities and any other commonly metered charges for the Units, and Common Elements (including, but not necessarily limited to, the reasonably allocated costs of master water supply and master sewage disposal, if any, and costs of master trash pickup and disposal, if any); costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to the Manager, accountants, attorneys, consultants, and employees; costs of all utilities, landscaping, and other services benefiting the Properties; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Association, Common Elements, or Properties, or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, Manager, or any other Person handling the funds of the Association; any statutorily required ombudsman fees; taxes paid by the Association (including, but not limited to, any and all unsegregated

or "blanket" real property taxes for all or any portions of the Properties); amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties, or deemed prudent and necessary by the Board; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or pursuant to any applicable provision of NRS Chapter 116.

Section 1.22 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.021, and a Planned Community, as defined in NRS § 116.075.

Section 1.23 "County" shall mean Clark County, Nevada.

Section 1.24 "Declarant" shall mean D. R. HORTON, INC., a Delaware corporation, and its successors and any Person(s) to which it shall have assigned any rights hereunder by express written and Recorded assignment (but specifically excluding Purchasers, as defined in NRS §116.079).

Section 1.25 "Declarant Control Period" shall have the meaning set forth in Section 3.7 below.

Section 1.26 "Declaration" shall mean this instrument as it may be amended from time to time. This Declaration is a "Supplemental Declaration" as such is defined in the Master Declaration.

Section 1.27 "Deed of Trust" shall mean a mortgage or deed of trust, as the case may be.

Section 1.28 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.29 "Dwelling" shall mean a Residential Unit, designed and intended for use and occupancy as a residence by a single Family.

Section 1.30 "Eligible Holder," shall mean each Beneficiary, insurer and/or guarantor of a first Mortgage encumbering a Unit, which has filed with the Board a written request for notification as to relevant matters as specified in this Declaration.

Section 1.31 "Exclusive Use Areas" shall mean the entryways, and/or parking space(s), if any, other than Garages, shown as exclusive use areas on the Plat, and allocated exclusively to individual Units, together with such HVAC designed to serve a single Unit, but located outside of the Unit's boundaries. Use, maintenance, repair and replacement of Exclusive Use Areas shall be as set forth in this Declaration. Parking in designated areas shall be limited and governed pursuant to this Declaration, including, but not limited to, Sections 2.2, 2.17, and 10.18 below.

Section 1.32 "Exterior Wall(s)/Fence(s)" shall mean the exterior only face of Perimeter Walls/Fences (visible from public streets outside of and generally abutting the exterior boundary of the Properties).

Section 1.33 "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, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable Ordinances.

Section 1.34 "FHA" shall mean the Federal Housing Administration.

Section 1.35 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporations.

Section 1.36 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.37 "FNMA" or "GNMA". FNMA shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation. GNMA shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.38 "Garage Component" or "Garage" shall mean a garage, as shown on the Plat and/or expressly designated by Declarant as a Garage, which is part of a designated Unit. Subject to Section 2.15 and other provisions of this Declaration and the Plat, the Garage Component shall mean a 3-dimensional figure (associated with a designated Unit), the horizontal and vertical dimensions of which are delineated on the Plat. A Garage Component shall not be deemed independently to constitute a Unit, but shall be a part of and appurtenant to a Unit as designated by Declarant pursuant to this Declaration.

Section 1.39 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and the Rules and Regulations, (and, where applicable or required within the context, the Master Association Documents and/or LMA Association Documents) Any irreconcilable inconsistency among the Governing Documents shall be governed pursuant to Section 17.8 and 17.9, below.

Section 1.40 "HVAC" shall mean heating, ventilation, and/or air conditioning equipment and systems. HVAC, located on easements in Common Elements, which serve one Unit exclusively, shall constitute Exclusive Use Areas as to such Unit, pursuant to Sections 2.13 and 2.14, below.

Section 1.41 "Identifying Number", pursuant to NRS § 116.053, shall mean the number which identifies a Unit on the Plat.

Section 1.42 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, located in the Properties, including but not limited to Triplex Buildings and other structures, walkways, sprinkler pipes, entry way, parking areas, walls, parking areas perimeter walls, hardscape, Private Streets, sidewalks, curbs, gutters, fences, screening walls, block walls, retaining walls, stairs, landscaping, hardscape features, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, and so on.

Section 1.43 "Living Component" shall mean the portion of a Unit other than: (a) Garage Component, and (b) (if applicable) the Yard Component.

Section 1.44 "LMA Association" shall mean ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada non-profit corporation, its successors or assigns. The rights and duties of the LMA Association are as set forth in the LMA Declaration.

Section 1.45 "LMA Association Documents" (sometimes "LMA Governing Documents") shall mean the LMA Declaration, the LMA Association Articles of Incorporation and Bylaws, and the LMA Association Rules (if any).

Section 1.46 "LMA Property" shall mean the common elements, if any, owned by the LMA Association. LMA Property shall be subject to and governed by the LMA Association Documents.

Section 1.47 "LMA Declarant" shall mean the declarant under the LMA Declaration.

Section 1.48 "LMA Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for ARLINGTON RANCH Landscape Maintenance Association, Recorded by LMA Declarant, as the same from time to time may be amended and/or restated.

Section 1.49 "Manager" shall mean the Person, if any, whether an employee or independent contractor, hired as such by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 1.50 "Master Association" shall mean the ARLINGTON RANCH NORTH MASTER ASSOCIATION, a Nevada non-profit corporation, and its successors or assigns. The rights and duties of the ARLINGTON RANCH NORTH Master Association are as set forth in the ARLINGTON RANCH NORTH Master Declaration.

Section 1.51 "Master Association Documents" (sometimes "Master Governing Documents") shall mean the ARLINGTON RANCH NORTH Master Declaration, the ARLINGTON RANCH NORTH Master Association Articles of Incorporation and Bylaws, and the ARLINGTON RANCH NORTH Master Association Rules (if any).

Section 1.52 "Master Association Property" shall mean the common elements, if any, owned by the Master Association. Master Association Property shall be subject to and governed by the Master Association Documents.

Section 1.53 "Master Community" shall mean the ARLINGTON RANCH NORTH Master Community, subject to the Master Declaration and other Master Association Documents.

Section 1.54 "Master Declarant" shall mean the declarant under the ARLINGTON RANCH NORTH Master Declaration.

Section 1.55 "Master Declaration" shall mean the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for ARLINGTON RANCH NORTH Master Association, Recorded by Master Declarant, as said instrument from time to time may be amended and/or restated.

Section 1.56 "Member," "Membership." "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in this Declaration and the Articles and Bylaws.

Section 1.57 "Module" shall mean and refer to each Module as designated as such on the Plat. The Module includes all land and improvements (whether now or hereafter associated within its boundaries). Each Module typically includes one each of the Residential Units numbered 1, 2, and 3, as shown on the Plat, including associated Garage Components, and (with respect to Units 2 and 3) Yard Components associated therewith.

Section 1.58 "Mortgage," "Mortgagee," "Mortgagor." "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his or her Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his or her Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor"; and "Beneficiary" shall be synonymous with "Mortgagee." For purposes of this Declaration, "first Mortgage" or "first Deed of Trust" shall mean a Mortgage or Deed of Trust with first priority over other mortgages or deeds of trust on a Unit in the Properties and "first Mortgagee" or "first Beneficiary" shall mean the holder of a first Mortgage or Beneficiary under a first Deed of Trust.

Section 1.59 "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.60 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.61 "Ordinance(s)" shall mean all applicable ordinances and rules of the County, and/or other applicable government with jurisdiction.

Section 1.62 "Original Property" shall mean that real property described on Exhibit "A" attached hereto and incorporated by this reference herein, which shall be the initial real property made subject to this Declaration, immediately upon the Recordation of this Declaration.

Section 1.63 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees. Pursuant to Article 3 hereof, a vendee under an installment land sale contract shall be deemed an "Owner" hereunder, provided the Board has received written notification thereof, executed by both vendor and vendee thereunder.

Section 1.64 "Patio" shall mean a covered patio within a Yard Component. No Owner or Person other than Declarant (in its sole and absolute discretion) shall have any right to construct, or shall construct, a Patio.

Section 1.65 "Perimeter Wall(s)/Fence(s)" shall mean the walls and/or fences located generally around the exterior boundary of the Properties, constructed or to be constructed by or with the approval of Declarant.

Section 1.66 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.67 "Plat" shall mean the final plat map of HIGH NOON AT ARLINGTON RANCH, on file in Book 115 of Plats, Page 21, in the Office of the County Recorder, Clark County, Nevada, and any and all other plat maps of the Community Recorded by Declarant, as said plat maps from time to time may be amended or supplemented of Record by Declarant.

Section 1.68 "Private Streets" shall mean all private streets, rights of way, street scapes, and vehicular ingress and egress easements in the Properties, shown as such on the Plat, which Private Streets shall be Common Elements.

Section 1.69 "Properties" shall mean all of the Original Property described in Exhibit "A," attached hereto, together with such portions of the Annexable Area, described in Exhibit "B" hereto, as may hereafter be annexed from time to time thereto pursuant to Article 15 of this Declaration.

Section 1.70 "Purchaser" shall have that meaning as provided in NRS § 116.079.

Section 1.71 "Record," "Recorded," "Filed," or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.72 "Resident" shall mean any Owner, tenant or other person, who is physically residing in a Unit.

Section 1.73 "Residential Unit" shall mean a Unit , as set forth in Section 1.79, below.

Section 1.74 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Board pursuant to the Declaration and Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.75 "Sight Visibility Restriction Areas" shall mean those areas, if any, which are or may be located on portions of Common Elements and/or Units, identified on the Plat as "Sight Visibility Restriction Easements," in which the height of landscaping and other sight restricting Improvements (other than official traffic control devices) shall be limited to the maximum permitted height as may be set forth on the Plat.

Section 1.76 "Triplex Building" shall mean each residential triplex building, housing the Living Components and Garage Components of three attached Residential Units within the Properties, as shown on the Plat.

Section 1.77 "Unit" or "Residential Unit" shall mean that residential portion of this Community to be separately owned by each Owner (as shown and separately identified as such on the Plat), and shall include all Improvements thereon. As set forth in the Plat, a Unit shall mean a 3-dimensional figure: (a) the horizontal boundaries of which are delineated on the Plat and are intended to terminate at the extreme outer limits of the Triplex Building envelope and include all roof areas, eaves and overhangs; and (b) the vertical boundaries of which are delineated on the Plat and are intended to extend from an indefinite distance below the ground floor finished flooring elevation to 50.00 feet above said ground floor finished flooring, except in those areas designated as Garage Components, which are detailed on the Plat. Each Residential Unit shall be a separate freehold estate (not owned in common with the other Owners of Units in the Module or Properties), as separately shown, numbered and designated in the Plat. Units shall include appurtenant Garage Components, and certain (presently, Units 2 and 3 in each Module), but not all Units shall include Yard Components. Declarant discloses that Declarant has no present intention for any Unit 1 in a Module to have any Yard Component. The boundaries of each Unit are set forth in the Plat, and include the above-described area and all applicable Improvements within such area, which may include, without limitation, bearing walls, columns, floors, roofs, foundations, footings, windows, central heating and other central services, pipes, ducts, flues, conduits, wires and other utility installations.

Section 1.78 "Units That May Be Created" shall mean the total "not to exceed" maximum number of aggregate Units within the Original Property and the Annexable Area (which Declarant has reserved the right, in its sole discretion, to create) (i.e., 342 Units), subject to Section 14.1(h) below. Such number shall not be increased without written consent of the Master Declarant.

Section 1.79 "VA" shall mean the United States Department of Veterans Affairs.

Section 1.80 "Yard Component" shall mean (typically with respect to Units 2 and 3 in each Module) a 3-dimensional figure lying outside of and contiguous to the Triplex Building in a Module, the vertical boundaries of each are identical to the Module, and the horizontal boundaries of which are as set forth on the Plat. Declarant does not presently intend to construct any Yard Component with respect to Unit 1 in any Module.

Any capitalized term not separately defined in this Declaration shall have the meaning ascribed thereto in applicable provision of NRS Chapter 116.

ARTICLE 2
OWNERS' PROPERTY RIGHTS; EASEMENTS

Section 2.1 Ownership of Unit; Owners' Easements of Enjoyment. Title to each Unit in the Properties shall be conveyed in fee to an Owner. Ownership of each Unit within the Properties shall include (a) a Residential Unit, (b) one Membership in the Association, and (c) any easements appurtenant to such Unit over the Common Elements as described in this Declaration, the Plat, and/or in the deed to the Unit. Each Owner shall have a non-exclusive right and easement of ingress and egress and of use and enjoyment in, to and over the Common Elements, including, but not limited to, Private Streets, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject to the following:

(a) the right of the Association to reasonably limit the number of guests and tenants an Owner or his or her tenant may authorize to use the Common Elements;

(b) the right of the Association to establish uniform Rules and Regulations regarding use, maintenance and/or upkeep of the Common Elements and to amend same from time to time (such Rules and Regulations may be amended upon a majority vote of the Board), provided that such Rules and Regulations shall not irreconcilably conflict with this Declaration or the other Governing Documents;

(c) the right of the Association in accordance with the Declaration, Articles and Bylaws, with the vote of at least two-thirds (2/3) of the voting power of the Association and a majority of the voting power of the Board, to borrow money for the purpose of improving or adding to the Common Elements, and, in aid thereof, and subject further to the Mortgagee protection provisions of Article 13 of this Declaration, 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, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners;

(d) subject to any and all applicable provisions of the Master Declaration, and subject further to the voting and approval requirements set forth in Subsection 2.1(c) above, and the provisions of Article 13 of this Declaration, the right of the Association to dedicate, release, alienate, transfer or grant easements, licenses, permits and rights of way in all or any portion of the Common Elements to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members;

(e) subject to the provisions of Article 14 hereof, the right of Declarant and its sales agents, representatives and prospective Purchasers, to the non-exclusive use of the Common Elements, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and/or any other development(s), until the last Close of Escrow for the marketing and/or sale of a Unit in the Properties or such other development(s); provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(f) the other easements, and rights and reservations of Declarant as set forth in Article 14 and elsewhere in this Declaration;

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Elements in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and if not materially in accordance with such original design, finish or standard of construction, only with the vote or written consent of Owners holding seventy-five percent (75%) of the voting power of the Association, and the vote or written consent of a majority of the voting power of the Board, and the approval of a majority of the Eligible Holders;

(h) the right of the Association, acting through the Board, to replace destroyed trees or other vegetation and to plant trees, shrubs and other ground cover upon any portion of the Common Elements;

(i) the right of the Association, acting through the Board, to place and maintain upon the Common Elements such signs as the Board reasonably may deem appropriate for the identification, marketing, advertisement, sale, use and/or regulation of the Properties or any other project of Declarant;

(j) the right of the Association, acting through the Board, to reasonably restrict access to and use of portions of the Common Elements;

(k) the right of the Association, acting through the Board, to reasonably suspend voting rights and to impose fines as Special Assessments, and to suspend the right of an Owner and/or Resident to use Common Elements, for nonpayment of any Assessment levied by the Association against the Owner's Unit, or if an Owner or Resident is otherwise in breach of obligations imposed under the Governing Documents;

(l) the obligation of all Owners to observe "quiet hours" in the Common Elements, during the hours of 10:00 p.m. until 7:00 a.m. (or such other hours as shall be reasonably established from time to time by the Board in advance) during which "quiet hours," loud music, loud talking, shouting, and other loud noises shall not be permitted (whether inside or outside a Living Component, Garage Component, and/or Yard Component, or on Common Elements);

(m) the right of all Owners to similarly use and enjoy the Common Elements, subject to the Governing Documents;

(n) the exclusive rights of individual Units (and the Owners thereof) with regard to Limited Common Elements, as set forth in this Declaration;

(o) the obligations and covenants of Owners as set forth in Article 9 and elsewhere in this Declaration;

(p) the use restrictions set forth in Article 10 and elsewhere in this Declaration;

(q) the easements reserved in this Declaration, including, but not necessarily limited to, the easements reserved in various sections of this Article 2, and/or any other provision of this Declaration; and

(r) the restrictions, prohibitions, limitations, and/or reservations set forth in this Declaration.

Section 2.2 Easements for Parking. Subject to the use restrictions set forth in Article 10, below, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, to accommodate ordinary and reasonable guest parking, and to establish Rules and Regulations governing such parking and to reasonably enforce such parking limitations and rules (by all means which would be lawful for such enforcement on public streets), including the removal of any violating vehicle by those so empowered, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked for such purpose. Without limiting the foregoing, no vehicle may be parked in the same Association parking space for more than two consecutive days, and no Association parking space may be used for any storage purpose whatsoever.

Section 2.3 Easements for Vehicular and Pedestrian Traffic. In addition to the general easements for use of the Common Elements reserved herein, there are hereby reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, non-exclusive, appurtenant easements for vehicular and pedestrian traffic over the private main entry gate area and all Private Streets and common walkways within the Properties, subject to the parking provisions set forth in Section 2.2, above, and the use restrictions set forth in Article 10, below.

Section 2.4 Easement Right of Declarant Incident to Construction, Marketing and/or Sales Activities. An easement is hereby reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective purchasers of Units, guests, and other invitees, for access, ingress, and egress over, in, upon, under, and across the Properties, including 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 development, advertising, marketing and/or sales related to the Properties, or any portions thereof, or any other project of Declarant; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his Family, guests, or invitees, to or of that Owner's Unit, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 14.1(a) hereof. Without limiting the generality of the foregoing, until such time as the Close of Escrow of the last Unit in the Properties, Declarant reserves the right to control any and all entry gate(s) to the Properties, and neither the Association nor any one or more of the Owners shall at any time or in any way, without the prior written approval of Declarant in its discretion, cause any entry gate in the Properties to be closed during Declarant's marketing or sales hours (including on weekends and holidays), or shall in any other way impede, hinder, obstruct, or interfere with Declarant's marketing, sales, and/or construction activities.

Section 2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for: (a) placement, use, maintenance and/or

replacement of any fire hydrants on portions of Common Elements, and other purposes regularly or normally related thereto; and (b) local governmental, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees and agents, to enter upon any part of the Common Elements or any Unit, for the purpose of carrying out their official duties.

Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes. In addition to the foregoing easements, there shall be and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements reasonably upon, over and across Common Elements and portion of Units, for installation, maintenance, repair and/or replacement of public and private utilities, electric power, telephone, cable television, water, sewer, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district, of ingress or egress over the Common Elements and portions of Units; and easements for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Properties). There is hereby created a blanket easement in favor of Declarant and the Association upon, across, over, and under all Units and the Common Elements, for the installation, replacement, repair, and maintenance of utilities (including, but not limited to, water, sewer, gas, telephone, electricity, "smart" data cabling, if any, and master and cable television systems, if any), provided that said easement shall not extend beyond, across, over, or under any structure located on any Unit. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances in the Properties and to install, repair, and maintain water, sewer and gas pipes, electric, telephone and television wires, circuits, conduits and meters. Notwithstanding anything to the contrary contained in this Section, no sewer, electric, water or gas lines or other utilities or service lines may be installed or relocated within the Properties until the Close of Escrow of the last Unit in the Properties, except as approved by Declarant. This easement shall in no way affect any other Recorded easements in the Properties. There is also hereby reserved to Declarant during such period the non-exclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant in connection with the orderly development of any property in the Properties. Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant thereof. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Units, for the control, installation, maintenance, repair and replacement of water and/or sewage lines and systems for watering or irrigation of any landscaping on, and/or sewage disposal from or related to Common Elements. In the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association. Without limiting the foregoing, each Owner acknowledges that there will be only one sewer lateral servicing each three attached Residential Units, and that the backflow preventor and sewer cleanout for all of the Residential Units in a Triplex Building may be located in the Garage of one of the Residential Units. In the event that such backflow preventor or sewer cleanout is so located, the Owner of such Garage shall provide the Owners and/or Residents of the other two Units in the Module with reasonable rights and access within such Garage as may be necessary to reasonably use and maintain and repair such devices. In the event "emergency" access to or over a Garage is reasonably necessary, and the Owner of the Garage cannot reasonably be contacted, the Association shall have an easement over and upon such Garage, to reasonably remediate such "emergency" condition.

Section 2.7 Additional Reservation of Easements. Declarant hereby expressly reserves for the benefit of each Owner and his or her Unit, reciprocal, non-exclusive easements over the adjoining Unit(s), for the support, control, maintenance and repair of the Owner's Unit and the utilities serving such Unit. Declarant further expressly reserves, for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, non-exclusive easements over all Units and the Common Elements, for the control, installation, maintenance and repair of utility services and drainage facilities serving any portion of the Properties (which may be located on portions of Units), for drainage of water resulting from the normal use thereof or of neighboring Units and/or Common Elements, for the inspection, painting, any required customer service work and/or maintenance and/or repair of those Exclusive Use Areas for which the Association is expressly responsible pursuant to this Declaration, and for painting, maintenance and repair of any Unit or portion thereof, pursuant to the Declaration. In the event that any utility or third Person exceeds the scope of any easement pertaining to the Properties, and thereby causes bodily injury or damage to property, the injured or affected Owner or Resident shall pursue any and all resultant claims against the offending utility or third Person, and not against Declarant or the Association. In the event of any minor encroachment of a Unit (including Yard Component, if applicable) upon the Common Elements (or vice versa), or other Unit, as a result of initial construction, or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist, so long as the minor encroachment exists. Declarant and each Owner of a Unit, shall have an easement appurtenant to such Unit over the Unit line to and over the adjacent Unit and/or adjacent Common Elements, for the purposes of accommodating any natural movement or settling of any Unit, any encroachment of any Unit due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, patio walls and architectural features comprising parts of the original construction of any Unit. Declarant further reserves (a) a non-exclusive easement on and/or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit of Declarant and its agents and/or contractors, for any inspections and/or required repairs, and (b) a non-exclusive easement on and/or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit (but not the obligation) of Declarant, the Association, and their respective agents, contractors, and/or any other authorized party, for the maintenance and/or repair of any and all landscaping and/or other Improvements located on the Common Elements and/or Units.

Section 2.8 Encroachments. The physical boundaries of an existing Unit (including Yard Component, if applicable), or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than any metes and bounds expressed in the Plat or in an instrument conveying, granting or transferring a Unit, regardless of settling or lateral movement and regardless of minor variances between boundaries shown on the Plat or reflected in the instrument of grant, assignment or conveyance and the actual boundaries existing from time to time.

Section 2.9 Easement Data. The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any and all easements and licenses shown on and created by the Plat is the same as the Recording data for the Plat.

Section 2.10 Owners' Right of Ingress and Egress. Each Owner shall have an unrestricted right of ingress and egress to his, Unit reasonably over and across the Common Elements, which right shall be appurtenant to the Unit, and shall pass with any transfer of title to the Unit.

Section 2.11 No Transfer of Interest in Common Elements. No Owner shall be entitled to sell, lease, encumber, or otherwise convey (whether voluntarily or involuntarily) his interest in any of the

Common Elements, or in any part of the component interests which comprise his Unit, except in conjunction with a conveyance of his Unit. No transfer of Common Elements, or any interest therein, shall deprive any Unit of its rights of access. Any attempted or purported transaction in violation of this provision shall be void and of no effect.

Section 2.12 Ownership of Common Elements. Title to the Private Streets and other Common Elements shall be conveyed to and held by the Association; provided that each Owner, by virtue of Membership in the Association, shall be entitled to non-exclusive use and enjoyment of the Private Streets and other Common Elements, subject to the Governing Documents. The Association shall own the Common Elements. Except as otherwise limited in this Declaration, each Owner shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Unit.

Section 2.13 Exclusive Use Areas. Each Owner of a Unit shall have an exclusive easement for the use of the entry designed for the sole use of said Unit, as an Exclusive Use Area, appurtenant to the Unit. The foregoing easements shall not entitle an Owner to construct anything or to change any structural part of the easement area. Certain HVAC serving one Unit exclusively are also Exclusive Use Areas, as set forth in Section 2.14 below.

Section 2.14 HVAC. Easements are hereby reserved for the benefit of each Unit, Declarant, and the Association, for the purpose of maintenance, repair and replacement of any heating, ventilation, and/or air conditioning and/or heating equipment and systems ("HVAC") located in the Common Elements; provided, however, that no HVAC shall be placed in any part of the Common Elements other than its original location as installed by Declarant, unless the approval of the Board is first obtained. Notwithstanding the foregoing or any other provision in this Declaration, any HVAC which is physically located within the Common Elements, but which serves an individual Unit exclusively, shall constitute an Exclusive Use Area as to the Unit exclusively served by such HVAC, and the Owner of the Unit (and not the Association) shall have the duty, at the Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving the Unit, subject to the original appearance and condition thereof as originally installed by Declarant, subject to ordinary wear and tear. Notwithstanding the foregoing, concrete pads underneath HVAC shall not constitute part of HVAC, but shall be deemed to be Common Elements.

Section 2.15 Garages. Declarant shall convey fee title to Garages, as part of Residential Units to which appurtenant, to Owners, provided that each such Garage shall be deemed to be appurtenant to the designated Unit, and shall not be deemed to independently constitute a Unit. The boundaries and dimensions of a Garage Component shall be as set forth in the Plat, and are subject to the boundaries and dimensions of the staircase (if applicable) and other portions of the adjoining Residential Unit; provided that maintenance and repair obligations related thereto shall be as set forth in Section 9.3(a), below. Upon conveyance of a Garage by Declarant to a Purchaser in fee, the Garage shall be deemed forever after to be an inseparable part of the Unit to which appurtenant. In no event shall the Garage thereafter be conveyed, encumbered, or released from any lien except in conjunction with, and as an integral part of, the conveyance, encumbrance, or release of said Unit. Any purported conveyance, encumbrance, or release of a Garage, separate from the entire Unit, shall be void and of no effect. Each Owner of a Garage Component shall have an easement over the walls and ceiling of the neighboring Residential Unit 1 adjacent to such Garage Component for the purpose of attaching screws, fasteners, fixtures, shelves, cabinets and garage door openers to the walls and ceilings of the Garage Component, and shall have an easement over portions of the adjoining Residential Unit for purposes of reasonable access to and maintenance and repair of electrical, sewer, and other utility lines

servicing such Garage Component. Without limiting the foregoing, each Owner of a Residential Unit shall have an easement over the adjoining Garage Component for purposes of reasonable access to and maintenance and repair of the staircase or upstairs area, or electrical, sewer, and other utility lines, and sewer cleanouts, servicing or related to such Residential Unit. Additionally, each Owner of a Unit 2 and/or Unit 3 within a Triplex Building shall have an easement over the portions of Unit 1 immediately surrounding the Garage Component in Unit 2 and/or Unit 3, for reasonable usage thereof. The easement rights set forth in this Section are subject to the restrictions set forth in Article 10 (including, but not limited to, restrictions pertaining to "noise", "nuisance", and "vibrations").

Section 2.16 Driveway Areas. No parking shall be permitted in any driveway area (provided that temporary loading and unloading may be permitted on an occasional basis), unless specifically approved in advance and in writing by the Board, and then subject to: (a) Section 10.18 below, (b) any limitations or prohibitions imposed by Declarant in its sole discretion pursuant to Section 14.1 below, and/or (c) the Rules and Regulations. Neither Declarant nor the Association (nor any officer, manager, agent, or employee respectively thereof) shall be liable for damage to or theft of any vehicle or any contents thereof.

Section 2.17 Cable Television. Each Owner, by acceptance of a deed to his Unit, acknowledges and agrees that, in the event Declarant has pre-wired and installed a complete cable television system ("CATV") within the Unit (including, but not limited to, cable television outlets for the Unit), such CATV system and all components as so installed, shall not constitute the property of the Owner, but shall be the sole property of Declarant or Master Declarant (or, at their option, of a cable company selected thereby), and there shall be, and hereby is, reserved a non-exclusive easement in gross on, over, under or across the Unit for purposes of installation and maintenance of such cable television equipment, for the benefit of Declarant, Master Declarant, or such other cable company as may be selected respectively thereby. Without limiting the foregoing, Declarant or the Association may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners, and, in such event, Declarant may grant easements for maintenance of any such master or cable television service.

Section 2.18 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements, or any facilities respectively thereon, or by abandonment of his Unit or any other property in the Properties.

Section 2.19 Alteration of Units. Declarant reserves the right to change the interior design and arrangement of any Unit and to alter the boundaries between Units (including Garage Components and/or Yard Components, if applicable), so long as Declarant owns the Units (or Garage Component or Yard Component) so altered. No such change shall increase the number of Units nor alter the boundaries of the Common Elements.

Section 2.20 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or similar assessments of any Owner may, in the opinion of the Association, become a lien on the Common Elements, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Special Assessment.

Section 2.21 Additional Provisions for Benefit of Handicapped Persons. To the extent required by applicable law, provisions of the Governing Documents, and policies, practices, and services, shall be reasonably accommodated to afford handicapped Residents with equal opportunity to use and enjoy their Dwellings. Pursuant to the foregoing, Declarant may cause to be installed certain

handrails or other accommodations for the benefit of handicapped Residents, on or within areas appurtenant or proximate to certain Units, or other areas of the Properties, as may be deemed by Declarant to be reasonably necessary. Handrails in portions of driveway areas or other areas which pertain to certain designated Units shall be Exclusive Use Areas appurtenant to such Units. To the extent required by applicable law, the Association shall reasonably accommodate handicapped Residents, to afford such Residents equal opportunity to use and enjoy their Dwellings, and the Association shall permit handicapped Residents to make reasonable modifications to their living areas which are necessary to enable them to have full enjoyment of the premises. The Association shall comply with all applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person. In the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, applicable law shall prevail, and the Association shall not adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law. Installation by Declarant of handrails in driveway areas (or installation by Declarant of other devices to reasonably accommodate handicapped Residents in other areas of the Properties) shall raise absolutely no inference that such devices are in any regard "standard" or that they will or may be installed with respect to all or any other Units or all or any other areas of the Properties.

Section 2.22 Avigation Easements. Declarant hereby reserves, for itself, and/or for the Association, for the Master Declarant, and/or for the Master Association, the unilateral right to grant avigation easements over Common Elements, to applicable governmental entity or entities with jurisdiction; and each Owner hereby covenants to sign such documents and perform such acts as may be reasonably required to effectuate the foregoing.

Section 2.23 Hose Bib Spaces. Certain parking spaces ("Hose Bib Spaces") are or may be located within or nearby High Noon and/or the neighboring communities of First Light and/or Twilight, and are intended for use by all Residents within the Master Community in connection with washing of their vehicles at Hose Bib Spaces located within the Master Association. Such Hose Bib Spaces are intended for use and enjoyment by all Residents of the ARLINGTON RANCH NORTH Master Community, and all Residents of the Master Community shall have an easement of reasonable access to and from, and use and enjoyment of, such Hose Bib Spaces for their intended purpose.

Section 2.24 Master Metered Water. Water (and/or sewage) for Common Elements and Units (including, but not limited to, Limited Components and Yard Components) at High Noon shall or may be master metered at the Master Community level, and master water (and/or master sewage, if applicable) allocated to Units within High Noon and the adjacent community of First Light. Periodic water (and or sewage) costs allocable to each Unit shall be paid by the Owner of said Unit, regardless of level or period of occupancy (or vacancy) and regardless of whether or not the Unit has an appurtenant Yard Component.

Section 2.25 Prohibition of Ownership of Multiple Units Within a Triplex Building. Notwithstanding any other provision herein, to the maximum extent allowed by applicable law, the following provisions of this Section 2.25 shall apply and be enforced. Ownership and/or occupancy by the same Person or such Owner and any Family member of more than one Unit within the same Triplex Building shall be strictly prohibited. In the event the same Person or Family should be found to own and/or occupy more than one Unit within the same Triplex Building, then such Person or Family shall be required to immediately divest ownership and/or terminate occupancy of such extra Unit(s) so that such Person and Family shall own and/or occupy no more than one Unit per Triplex Building. A Person or Family violating this Section 2.25 shall submit to the jurisdiction of a Court of competent jurisdiction, and shall not oppose any application by the Association or Declarant for a temporary restraining order, preliminary injunction, and/or permanent injunction, to enforce this Section 2.25, and/or to prohibit any

violation hereof, and such Person and/or Family shall pay all related attorneys' fees and costs of the Association and/or Declarant incurred in connection with enforcement of this Section 2.25.

ARTICLE 3
HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION

Section 3.1 Organization of Association. The Association is, or shall be, by not later than the date the first Unit is conveyed to a Purchaser, incorporated under the name of HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, or similar name, as a non-profit corporation, pursuant to NRS Chapter 82. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents, and in compliance with applicable Nevada law.

Section 3.2 Duties, Powers and Rights. Duties, powers and rights of the Association are those set forth in this Declaration, the Articles and Bylaws, together with its general and implied powers as a non-profit corporation, generally to do any and all things that a corporation organized under the laws of the State of Nevada may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, including any applicable powers set forth in NRS § 116.3102, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents, or in any applicable provision of NRS Chapter 116. The Association shall make available for inspection at its office by any prospective purchaser of a Unit, any Owner, and any Eligible Holders, during regular business hours and upon reasonable advance notice, current copies of the Governing Documents and all other books, records, and financial statements of the Association.

Section 3.3 Membership. Each Owner (including Declarant, by virtue of owning title to any Unit), upon acquiring title to a Unit, shall automatically become a Member of the Association, and shall remain a Member until such time as his or her ownership of the Unit ceases, at which time, his or her membership in the Association shall automatically cease. Membership shall not be assignable, except to the Person to whom title to the Unit has been transferred, and each Membership shall be appurtenant to, and may not be separated from, fee ownership of the Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

Section 3.4 Transfer of Membership. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. An Owner who has sold his or her Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and Assessments attributable to his or her Unit until fee title to the Unit sold is transferred. If any Owner should fail or refuse to transfer his or her Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the purchaser shall have a valid proxy from the seller of said Unit, pursuant to Section 4.6, below. The Association may levy a reasonable transfer fee against a new Owner and his or her Unit (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association. The new Owner shall, if requested by the Board or Manager, timely attend an orientation

to the Community and the Properties, conducted by an Association Officer or the Manager, and will be required to pay any costs related to obtaining entry gate keys and/or remote controls, if not obtained from the prior Owner at Close of Escrow.

Section 3.5 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters; but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern. The Bylaws shall provide:

(a) the number of Directors (subject to Section 3.6 below) and the titles of the Officers;

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

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

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

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

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

(g) a method for amending the Bylaws.

Section 3.6 Board of Directors.

(a) The affairs of the Association shall be managed by a Board of three (3) Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. If a Director is sued for liability for actions undertaken in his or her role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the

Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is not a record Owner, he shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his or her successor.

(b) The term of office of a Director shall not exceed two (2) years. A Director may be elected to succeed himself or herself. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held at the Annual Meeting, as set forth in Section 4.3 below.

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

Section 3.7 Declarant's Control of Board. During the period of Declarant's control ("Declarant Control Period"), as set forth below, Declarant at any time, with or without cause, may remove or replace any Director appointed by Declarant. Directors appointed by Declarant need not be Owners. Declarant shall have the right to appoint and remove the Directors, subject to the following limitations:

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

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

(c) The Declarant Control Period shall terminate on the earliest of: (i) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Units That May Be Created; (ii) five (5) years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (iii) five (5) years after any right to annex any portion of the Annexable Area was last exercised pursuant to Article 15 hereof.

Section 3.8 Control of Board by Owners. Subject to and following the Declarant Control Period: (a) the Owners shall elect a Board of at least three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, within ninety (90) days of his appointment or election, certify in writing that he is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The Board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners' meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

EXHIBIT "16"

KOELLER | NEBEKER | CARLSON | HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE SUSAN H. JOHNSON, DISTRICT JUDGE,
Respondents,
and
D.R. HORTON, INC.,
Real Party in Interest.

No. 58630

FILED

JUL 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DIRECTING ANSWER

This original petition for a writ of mandamus challenges a district court order addressing petitioner's standing to assert various constructional defect claims.

Having reviewed the petition, it appears that petitioner has set forth issues of arguable merit and that an answer to the petition is warranted. Therefore, real party in interest, on behalf of respondents, shall have 30 days from the date of this order to file and serve an answer, including authorities, against issuance of the requested writ. Petitioner shall have 15 days from the date of service of real party in interest's answer to file and serve any reply.

It is so ORDERED.

Douglas, C.J.

cc: Hon. Susan Johnson, District Judge
Angius & Terry LLP/Las Vegas
Koeller Nebeker Carlson & Haluck, LLP/Las Vegas
Wood, Smith, Henning & Berman, LLP

11-19795

EXHIBIT "14"

KOELLER | NEBEKER | CARLSON | HALUCK LLP

300 South Fourth Street, Suite 500
Las Vegas, NV 89101

IN THE SUPREME COURT OF THE STATE OF NEVADA

D.R. HORTON INC., a Delaware Corporation Petitioner, vs. EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the COUNTY OF CLARK; and the HONORABLE SUSAN H. JOHNSON, District Judge, Respondent. HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, Real Party in Interest.	Supreme Court Case No.: District Court Case No.: A542616 Department No.: XXII

PETITION FOR WRIT OF MANDAMUS,
OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

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THE HONORABLE SUSAN JOHNSON
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TABLE OF CONTENTS

		Page
AFFIDAVIT OF IAN P. GILLAN, ESQ.		iv
I.	ISSUES PRESENTED	2
II.	INTRODUCTION	2
III.	STATEMENT OF THE CASE	4
IV.	A WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION, IS THE PROPER EXTRAORDINARY RELIEF TO PREVENT EXTREME AND IRREPARABLE PREJUDICE TO THE PETITIONER AND THE UNNAMED, INDIVIDUAL HOMEOWNERS WITHIN THE HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION	8
V.	RESPONDENT COURT ERRONEOUSLY FAILED TO APPLY AN NRCP 23 ANALYSIS TO THE CLAIMS BROUGHT BY THE ASSOCIATION REGARDING THE SO-CALLED "BUILDING ENVELOPE"	10
VI.	RESPONDENT COURT ARBITRARILY AND CAPRICIOUSLY ABUSED ITS DISCRETION IN FAILING TO PERFORM AN NRCP 23 ANALYSIS, AS MANDATED IN THE SEPTEMBER 3, 2009 ORDER OF THIS COURT AND *FIRST LIGHT II*	13
VII.	RESPONDENT COURT IMPROPERLY FAILED TO CONDUCT THE REQUIRED NRCP 23 ANALYSIS	15
VIII.	EVEN IF RESPONDENT COURT WERE TO PERFORM THE PROPER NRCP ANALYSIS, THE FACTS OF THIS CASE WOULD NOT SATISFY THE NRCP 23 ANALYSIS	17
IX.	THE DISTRICT COURTS OF THIS STATE MUST FOLLOW THE BINDING PRECEDENT ESTABLISHED BY THE NEVADA SUPREME COURT	19
X.	CONCLUSION	21

TABLE OF AUTHORITIES

Cases:	Page:
ANSE, Inc. v. Eighth Jud. Dist. Ct., 192 P.3d 738, 740 & 744-5 (Nev. 2008)	20
Ashokan v. State, Dept. of Ins., 109 Nev. 662, 856 P.2d 244 (1993)	8
Court at Aliante Homeowners' Association v. D.R. Horton, Case No. A527641	7
Crawford v. State, 121 P.3d 582, 585 (2005)	8
Dayside Inc. v. Dist. Ct., 119 Nev. 404, 407, 75 P.3d 384, 386 (2003)	9
Dorrell Square Homeowners' Association v. D.R. Horton, Inc., Case No. A527688	7
D.R. Horton, Inc. v. Dist. Ct., 125 Nev. ___, 215 P. 3d 697 (2009)	1
Elwood Investors Co. v. Behme, 361 N.Y.S.3d 488, 492, (N.Y. Sup. 1974)	8
First Light II, 125 Nev.Ad.Op.	*passim*
Grotts v. Zahner, 115 Nev. 339, 342, 989 P.2d 415, 417 (1999)	19
Jeep Corp. v. Dist. Ct., 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982)	8
Marshall v. Dist. Ct., 108 Nev. 459, 466, 836 P.2d 47, 52 (1992)	8
Payne v. Tennessee, 501 U.S. 808, 827 (1991)	19
Secretary of State v. Burk, 124 Nev. 56, ___, 188 P.3d 1112, 1124 (2004)	19
Shelton v. Dist. Ct., 64 Nev. 487, 185 P.2d 320 (1947)	9
Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 124 P.3d 530 (2005)	*passim*
State v. Draper, 27 P.2d 39, 50 (Utah 1993)	8
State ex rel. Dept. of Transp. v. Thompson, 99 Nev. 358, 662 P.3d 1138 (1983)	8
Stocks v. Stocks, 64 Nev. 431, 438, 183 P.2d 617, 620 (1947)	19
Thomas v. Washington Gas Light Co., 448 U.S. 261, 272 (1980)	20
United States v. Va Lerie, 385 F.3d 1141, 1155 (8th Cir. 2004)	19

Vasquez v. Hillery, 474 U.S. 254, 265 (1986).....19

View of Black Mountain Homeowner's Association v. The America Black Mountain Limited Partnership, Case No. A590266.....7

Statutes:

N.R.S. 34.160.....8

N.R.S. 34.320.....8

N.R.S. 34.330.....8

N.R.S. 40.600 *et seq.* 4

N.R.S. 40.645.....4

N.R.S. 116.000 *et seq.* 21

N.R.S. 116.3102(1)(d)..... *passim*

Other Authorities:

Black's Law Dictionary.....19

Rules:

NRCP 23.....*passim*

AFFIDAVIT OF IAN P. GILLAN, ESQ. IN SUPPORT OF D.R. HORTON, INC.'S PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, IAN P. GILLAN, ESQ., being first duly sworn on oath, deposes and states under penalty of perjury that the following assertions are true and correct, and of my own personal knowledge:

1. I am an attorney duly licensed to practice law in the State of Nevada, and I am a Partner of the law firm KOELLER NEBEKER CARLSON & HALUCK, LLP, attorneys for Petitioner, D.R. HORTON, INC. in support of the D.R. HORTON, INC.'S PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION.

2. I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in the brief regarding matter in the record to be supported by a referenced to the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

3. This Petition is being pursued because the Eighth Judicial District Court of Clark County, Nevada abused its discretion by ruling that the Association does not have to satisfy the analysis and prerequisites of *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev.Ad.Op. 35, 215 P.3d 697 (2009) and *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005) and NRCP 23 before it can litigate constructional defect claims in a representative capacity on behalf of its members for defects affecting the Units.

4. I have discussed the PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION with the Petitioner and have obtained authorization to file the same.

5. A true and correct copy of the Association's Complaint, is attached hereto as Exhibit "1".

6. A true and correct copy of the Order of the District Court, dated August 13, 2007, is attached hereto as Exhibit "2".

7. A true and correct copy of the Association's Notice Pursuant to Chapter 40, dated January 21, 2008, is attached hereto as Exhibit "3".

8. A true and correct copy of D.R. Horton's Motion for Partial Summary Judgment, dated April 14, 2008, is attached hereto as Exhibit "4".

9. A true and correct copy of the District Court Order Granting D.R. Horton's Motion for Partial Summary Judgment, dated July 9, 2008, is attached hereto as Exhibit "5".

10. A true and correct copy of the Association's Petition for Writ of Prohibition or Mandamus, dated November 20, 2008, is attached hereto as Exhibit "6".

11. A true and correct copy of the Nevada Supreme Court Order Granting Petition, dated September 3, 2009, is attached hereto as Exhibit "7".

12. A true and correct copy of the Association's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d), dated September 30, 2010, is attached hereto as Exhibit "8".

13. A true and correct copy of D.R. Horton's Opposition to the Association's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d), dated October 19, 2010, is attached hereto as Exhibit "9".

14. A true and correct copy of the Association's Reply to D.R. Horton's Opposition to the Association's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d), dated November 3, 2010, is attached hereto as Exhibit "10".

15. A true and correct copy of the Transcript of District Court Hearing of November 10, 2010, is attached hereto as Exhibit "11".

16. A true and correct copy of the District Court Order, dated February 2, 2011, is attached hereto as Exhibit "12".

17. A true and correct copy of D.R. Horton's Motion for Reconsideration, dated March 1, 2011, is attached hereto as Exhibit "13".

18. A true and correct copy of The High Noon at Arlington Ranch CC&Rs, at Section 1.77, is attached hereto as Exhibit "14".

20. A true and correct copy of the Association's Notice of Defects, dated January 7, 2008, is attached hereto as Exhibit "15".

21. A true and correct copy of the District Court's Finding of Fact, Conclusions of Law and Order, dated January 31, 2011, is attached hereto as Exhibit "16".

FURTHER YOUR AFFIANT SAYETH NAUGHT.

IAN P. GILLAN, ESQ.

SUBSCRIBED and SWORN to before me this 9th day of June, 2011.

NOTARY PUBLIC

GAYLE FUENTES
Notary Public-State of Nevada
APPT. NO. 07-2151-1
My App. Expires November 01, 2014

COMES NOW PETITIONER, D.R. HORTON, INC., a Delaware Corporation [hereinafter referred to as, "Petitioner"], by and through Robert C. Carlson Esq., Megan K. Dorsey, Esq., and Ian P. Gillan, Esq., of the law firm of KOELLER, NEBEKER, CARLSON & HALUCK, LLP, its attorneys, and hereby petitions the Supreme Court of Nevada to issue a Writ of Mandamus or, in the alternative, Writ of Prohibition, to overturn the Eighth Judicial District Court's [hereinafter referred to as "Respondent Court"] February 10, 2011, Findings of Fact, Conclusions of Law and Order [hereinafter referred to as the "Order"].

This extraordinary relief is necessary to cure the Respondent Court's arbitrary and capricious abuse of discretion in failing to follow and enforce this Court's holding in the matter of *D.R. Horton, Inc. v. Dist. Ct.*, 125 Nev. ___, 215 P.3d 697 (2009) [hereinafter referred to as "*First Light II*"], by refusing to apply the analysis of NRCP 23 and *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 124 P.3d 530 (2005) [hereinafter referred to as "*Shuette*"], and in granting the High Noon at Arlington Ranch Homeowner's Association's [hereinafter referred to as the "Association'] Motion for Declaratory Relief Re: Standing Pursuant to NRS 116.3102(1)(d). This extraordinary relief is also necessary to cure Respondent Court's arbitrary and capricious abuse of discretion in improperly finding the Association may litigate claims for alleged constructional defects in a representative capacity, on behalf of its individual members, without performing the NRCP 23 analysis required by the holdings of *First Light II* and *Shuette*, and expressly ruling that such an analysis was unnecessary.

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This Petition is made and based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and such oral arguments or documentary evidence as may be presented to this Honorable Court.

DATED this 9th day of June, 2011.

KOELLER NEBEKER CARLSON & HALUCK, LLP

BY: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. ISSUES PRESENTED

1. Did Respondent Court arbitrarily and capriciously abuse its discretion in failing to perform an NRCP 23 analysis, as mandated in *First Light II*[1], when finding the Association would be permitted to litigate issues related to myriad alleged construction defects affecting individual Units on behalf of individual homeowners?

II. INTRODUCTION

This Court's Decision in *First Light II* sets forth clear and certain guidelines which are required to be followed by the District Courts of this State when faced with cases where

[1] In this case, the Court also issued an Order on September 3, 2009 regarding the High Noon at Arlington Ranch Homeowners' Association's Petition for Writ of Mandamus, which mirrored the language of the *First Light II* decision. Petitioner refers to the *First Light II* decision herein, as it was the published Opinion of the Court, but asserts Respondent Court specifically violated the mandates within the September 3, 2009 Order issued in this case.

homeowners' associations seek to represent the interests of individual homeowners in construction defect lawsuits. Specifically, the District Courts had to conduct and document a thorough NRCP 23 analysis utilizing the principles set forth in *Shuette*.[2] This is an analysis the District Courts had been performing since the *Shuette* case was handed down in December of 2005 without challenge to this Court's mandate.

In the case at hand, the Respondent Court made a reasoned analysis and decision that the Association did not have standing to represent the 194 homeowners with regards to the defects within those Units, despite the assignment of rights of the homeowners. However, in the same opinion, Respondent Court erroneously determined the same analysis was not required for defects occurring in the "building envelope." This determination was made in spite of the fact that, per the CC&Rs, the elements claimed to make up the "building envelope" are within the Units. The use of the term "building envelope" is concerning because it appears the Association is using the term to avoid the required NRCP 23 analysis. The myriad defect allegations themselves did not change; the innumerable potential causes did not change; the potential and variable alleged damages did not change; the Causes of Action did not change; the defenses thereto did not change; and the general incompatibility of these alleged myriad defects with NRCP 23 and the principles espoused within *Shuette* did not change. The only thing that changed was the illusory and improper conglomeration and relabeling of numerous defects into two words: "building envelope."

The district courts of this State are constitutionally and jurisdictionally barred from disregarding the Opinions and Orders of the Nevada Supreme Court. The Rule of Law and the foundations of our State Judicial System would erode if this were not the case. The citizenry of this State must be able to rely on a formal and orderly Judicial System.

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[2] In *First Light II*, this Court even provided additional guidance for the Respondent Courts to follow stating the Courts "must determine, among other issues, which units have experienced constructional defects, the types of defects alleged, the various theories of liability, and the damages necessary to compensate individual unit owners." *See, Id.* at 704.

Accordingly, Respondent Court's arbitrary determination that the mandates within this Court's decision in *First Light II* are not applicable cannot stand.

Respondent Court concluded in its February 10, 2011 order, "[The Association] did not have standing to represent the 194 Units' owners with respect to the sundry of individualized claims for constructional defects within the interior of their Units. However, in this Court's view, claims relating to constructional defects located upon or within the buildings' envelopes are different, and affect every member of the common-interest community." This conclusion disregards the *First Light II* decision, the Association's own CC&Rs and leads to a misapplication of the law. Respondent Court improperly expands that conclusion, and erroneously determines NRCP 23 would nullify NRS 116.3102(1)(d) if it were applied to the defects at the "building envelope."

NRCP 23 and NRS 116.3102(1)(d) are not in conflict with each other. Respondent Court's February 10, 2011 Order simply disregards the *First Light II* Opinion and, for that reason, must be reversed.

III. STATEMENT OF THE CASE

High Noon at Arlington Ranch consists of 342 Units in a development of 114 buildings in Las Vegas. Each Unit is a separate, freehold estate within the common-interest community named High Noon at Arlington Ranch [hereinafter referred to as the "Development"].

On June 7, 2007 the Association improperly and prematurely filed a Complaint against Petitioner. (*See*, the Association's Complaint, attached hereto as Exhibit "1".) The Complaint alleged construction defects in common areas and residential buildings at the Development. (*Id.*). The Association sought and was granted a stay of the pre-litigation process in order to comply with NRS 40.600 *et seq*. (*See*, Order of the District Court, dated August 13, 2007, attached hereto as Exhibit "2".) On January 21, 2008, six months after the filing of the Complaint, the Association sent notice pursuant to NRS 40.645 [hereinafter "Chapter 40 Notice"]. The Chapter 40 Notice also alleged defects in both the common areas and Units.

(*See*, the Association's Notice Pursuant to Chapter 40, dated January 21, 2008, attached hereto as Exhibit "3".)

On April 14, 2008, Petitioner brought a Motion for Partial Summary Judgment, which argued the Association lacked standing to bring suit for claims regarding Units that were owned and maintained by individual homeowners. (*See*, D.R. Horton's Motion for Partial Summary Judgment, dated April 14, 2008, attached hereto as Exhibit "4") (Attachments to Original omitted).

On July 9, 2008, Respondent Court granted the Motion for Partial Summary Judgment in Petitioner's favor, finding the Association lacked standing to bring claims related to the individual Units at the Development. That finding was based on the Development's Conditions, Covenants and Restrictions (hereinafter "CC&Rs"). (*See*, District Court Order Granting D.R. Horton's Motion for Partial Summary Judgment, dated July 9, 2008, attached hereto as Exhibit "5".)

In response to Respondent Court's Order Granting Motion for Partial Summary Judgment, on November 20, 2008, the Association filed a Petition for Writ of Prohibition or Mandamus in this Court. (*See*, the Association's Petition for Writ of Prohibition or Mandamus, dated November 20, 2008, attached hereto as Exhibit "6") (Attachments to Original omitted). This Court granted the Petition on September 3, 2009, concluding Respondent Court needed to conduct an analysis pursuant to this Court's holding in *First Light II*. (*See*, Nevada Supreme Court Order Granting Petition, dated September 3, 2009, attached hereto as Exhibit "7".)

The Association filed its Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d) [hereinafter referred to as the "Association Motion"] on September 30, 2010. (*See*, the Association's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d), dated September 30, 2010, attached hereto as Exhibit "8") (Attachments to Original omitted). In the Association's Motion, the Association argued that it had "standing" to sue for defects in the individual Units

on behalf of 194 homeowners, as the homeowners' standing was transferred to the Association when they each assigned their rights to the Association. (*Id.*). The Association also argued that there was a conflict between *First Light II*, the Supreme Court's holding in *Shuette*, NRCP 23 and NRS 116.3102(1)(d). (*Id.*). This alleged conflict was based on NRS 116.3102(1)(d), which allows a homeowners' association to sue on behalf of two or more individual homeowners on matters affecting the common-interest community, and the numerosity requirement in NRCP 23, as set out in *Shuette* and reaffirmed in *First Light II*. (*Id.*). Thus, the Association argued the Supreme Court's holding in *First Light II* and *Shuette* facially violated the Nevada Legislature's intent in drafting NRS 116.3102(1)(d). (*Id.*).

Petitioner filed an Opposition to the Association's Motion. (*See*, D.R. Horton's Opposition to the Association's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d), dated October 19, 2010, attached hereto as Exhibit "9".) Petitioner argued the assignment of the claims to the Association could not be relied upon to grant "standing" to the Association, because the assignment had conditioned recovery by any homeowner on assigning their right to sue to the Association. (*Id.*). Petitioner also contended the Association had yet to make a showing as to the alleged defects and, *under First Light II*, no determination of whether these alleged defects would satisfy the requirements of NRCP 23 could be performed. (*Id.*)

The Association filed a reply to Petitioner's Opposition and argued the homeowners' assignments of rights would afford it standing to sue because a person is permitted to contractually assign their legal rights to others. (*See*, the Association's Reply to D.R. Horton's Opposition to the Association's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d), dated November 3, 2010, attached hereto as Exhibit "10".) The Association further argued that under an NRCP 23 analysis, it should be granted the right to sue on behalf of individual homeowners as the requirements of the rule were easily met, including that each homeowner allegedly had

defects to the roofs, decks, stucco, windows, fire resistive construction, and structural components. (*Id.*)

The Association's Motion was heard on November 10, 2010. (*See*, Transcript of District Court Hearing of November 10, 2010, attached hereto as Exhibit "11".) Respondent Court entered its Order on February 10, 2011. (*See*, District Court Order, dated February 2, 2011, attached hereto as Exhibit "12".) As it did in prior cases, Respondent Court found that NRCP 23's numerosity requirement was contrary to the legislative intent of NRS 116.3102(1)(d), because seeking to sue on behalf of only two homeowners under NRS 116.3102(1)(d) would never fulfill the requirement under NRCP 23. (*Id.*); (*see also, View of Black Mountain Homeowner's Association v. The America Black Mountain Limited Partnership, Case No. A590266, See, Dorrell Square Homeowners' Association v. D.R. Horton, Inc., Case No. A527688, and See, Court at Aliante Homeowners' Association v. D. R. Horton, Case No. A527641).* Respondent Court further found that it did not matter how the Association came to be in a representative capacity for the individual homeowners; the assignments by the Development's homeowners did not allow the Association to circumvent an NRCP 23 analysis under *First Light II* as to the interior of each Unit. (*See*, Exhibit "12".)

Nevertheless, Respondent Court conducted no NRCP 23 analysis for alleged defects to the "building envelope." In fact, Respondent Court stated that the NRCP 23 analysis was unnecessary in that regard. The Association's counsel defined the "building envelope" as exterior walls, wall openings (such as windows and doors) and roofs. Respondent Court then granted the Association the right to sue on behalf of individual homeowners for alleged defects to the building envelope.

Petitioner filed a Motion for Reconsideration of the Order on March 1, 2011, based on Respondent Court's inconsistent analysis and incorrect application of *First Light II*. (*See*, D.R. Horton's Motion for Reconsideration, dated March 1, 2011, attached hereto as Exhibit "13".) Respondent Court denied Petitioner's Motion for Reconsideration following a hearing on the Motion on March 29, 2011.

IV. A WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION, IS THE PROPER EXTRAORDINARY RELIEF TO PREVENT EXTREME AND IRREPARABLE PREJUDICE TO THE PETITIONER AND THE UNNAMED, INDIVIDUAL HOMEOWNERS WITHIN THE HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION

The Supreme Court of Nevada has the authority to issue Writs of Mandamus to control arbitrary or capricious abuses of discretion by district courts. *See*, *Marshall v. Dist. Ct.*, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992). A Writ of Mandamus, pursuant to N.R.S. 34.160, and a Writ of Prohibition, pursuant to N.R.S. 34.320, are counterparts in that mandamus compels a government body or official to perform a legally mandated act, whereas prohibition compels a government body or official to cease performing acts beyond its legal authority. *See*, *e.g.*, *Ashokan v. State, Dept. of Ins.*, 109 Nev. 662, 856 P.2d 244 (1993).

An abuse of discretion occurs if the district court's decision is arbitrary and capricious or if it exceeds the bounds of the law or reason. *Crawford v. State*, 121 P.3d 582, 585 (2005). "Arbitrary and capricious" is defined as a willful and unreasonable action without consideration or in disregard of the facts or law, or without a determining principle. *Elwood Investors Co. v. Behme*, 361 N.Y.S.2d 488, 492, (N.Y. Sup. 1974). An "abuse of discretion" is defined as the failure to exercise sound, reasonable and legal discretion. *State v. Draper*, 27 P.2d 39, 50 (Utah 1993). "Abuse of discretion" is a strict legal term indicating the appellate court is of the opinion that there was a commission of an error of law by the trial court. *Id.* It does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge, but refers to the clearly erroneous conclusion and judgment – one that is clearly against logic. *Id.*

Petitions for extraordinary Writs are addressed to the sound discretion of this Court and may only issue where there is no "plain, speedy, and adequate remedy" at law. *See*, NRS 34.330; *State ex rel. Dept. of Transp. v. Thompson*, 99 Nev. 358, 662 P.3d 1138 (1983). However, "each case must be individually examined, and where circumstances reveal urgency or strong necessity, extraordinary relief may be granted." *Jeep Corp. v. Dist. Ct.*, 98 Nev.

440, 443, 652 P.2d 1183, 1185 (1982) (*citing, Shelton v. Dist. Ct.*, 64 Nev. 487, 185 P.2d 320 (1947)). This Court will exercise its discretion to consider Writ Petitions, despite the existence of an otherwise adequate legal remedy, when an important issue of law needs clarification, and this Court's review would serve considerations of public policy, sound judicial economy, and administration. *Dayside Inc. v. Dist. Ct.*, 119 Nev. 404, 407, 75 P.3d 384, 386 (2003).

Here, Petitioner respectfully submits Respondent Court exceeded the scope of its authority and abused its discretion in entering the Order, which does not follow the directives of this Court's holdings in *First Light II* and *Shuette* or this Court's September 3, 2009 Order in this case. Respondent Court's failure to perform an analysis pursuant to NRCP 23 to determine whether the Association had the authority to bring alleged constructional defect claims within the "building envelope" in a representative capacity -- in accordance with binding precedent -- was a serious violation of the rights of Petitioner and the individual homeowners within the Development.

Respondent Court's ruling allows the Association to improperly assert claims for alleged constructional defects for property which is owned by individual homeowners, without an analysis of the procedural safeguards of NRCP 23. The performance of this analysis was mandated by this Court in *First Light II* as necessary in constructional defect cases where a homeowners' association seeks to bring claims on behalf of individual owners. To permit this ruling to stand would allow the Association to circumvent the rules and reasoning prescribed by this Court in *First Light II* and *Shuette*, and would create a de facto class-type representative action without any of the mandated controls of NRCP 23.

The requested relief is necessary to prevent undue prejudice to Petitioner should the underlying matter proceed with the Association pursuing claims in a representative capacity for individual homeowners at the Development. An extraordinary Writ is the only procedural avenue available to Petitioner to address this wrong, as this matter would proceed in an entirely different manner should the Association be found not to be allowed to bring suit on

behalf of individual homeowners. The time and expense that would be spent in moving forward with this case without a determination of whether Respondent Court's ruling was an arbitrary and capricious abuse of discretion would not be economic in the view of the parties or the judicial system.

Additionally, Petitioner respectfully submits Respondent Court's refusal to apply binding precedent in making its ruling is the exact type of arbitrary and capricious abuse of discretion Writs of Mandamus seek to prevent. Petitioner thus respectfully requests this Court exercise its discretion and grant its Petition for a Writ of Mandamus, or in the Alternative, Writ of Prohibition, to compel Respondent Court to follow the binding precedent of this Court in *First Light II* and *Shuette* and as set forth in its September 3, 2009 Order.

V. RESPONDENT COURT ERRONEOUSLY FAILED TO APPLY AN NRCP 23 ANALYSIS TO THE CLAIMS BROUGHT BY THE ASSOCIATION REGARDING THE SO-CALLED "BUILDING ENVELOPE"

Under *First Light II* and *Shuette*, Respondent Court was required to perform a full NRCP 23 analysis before ruling that the Association was permitted to sue in a representative capacity. In addition to the numerosity requirement, an analysis of NRCP 23's commonality, typicality and adequacy requirements should have been performed by Respondent Court. *See*, *Shuette* at 847, 124 P.3d at 530. Association's counsel has clustered several elements of the Units into a grouping called the "building envelope." The CC&Rs expressly define those elements as being a part of the individualized Units and owned by the individual homeowners. As such, it had to be shown, *inter alia*, that the alleged defects in the "building envelope" were common to those Units for which the Association sought to file claims.

In the Association's Motion for Declaratory Relief filed September 30, 2010, Counsel for the Association defined the "building envelope" of the homes in the Development as "the exterior of the building, the roof, the stucco, the balconies and decks, the exterior doors and

the windows." (*See*, Exhibit "8".)[3] However, grouping those areas of the Units together and giving them a common name does not demonstrate satisfaction of NRCP 23.

In its February 10, 2011 Order, Respondent Court misinterpreted the law set forth by this Court and failed to perform an NRCP 23 analysis as it accepted the Association's definition of "building envelope" in spite of the CC&Rs of the Association. In that Order, Respondent Court held, "there is no doubt constructional defects within or upon the Units' 'building envelopes' affect the common-interest community, and thus, this Court concludes [the Association] has standing to sue on behalf of two or more of its members for constructional defects which are limited to 'the exterior of the building, the roof, the stucco, the balconies and decks, the exterior doors and the windows.'" (*See*, Exhibit "12".) Respondent Court continued "In so holding, this Court notes claims made by [the Association] for constructional defects to the building exteriors, or 'envelope' are different than those addressed in [*First Light II*], whereby no class action analysis under NRCP 23 need be undertaken with respect to such causes of action." (*See*, *Id.*)

As this Court is aware, it is not a matter of whether the elements of an individual's property *affect* the common-interest community, but whether the alleged defects are occurring *in* a unit within the community. The CC&Rs at the Development clearly define the boundaries of each individually owned Unit as:

> "Unit" or "Residential Unit" shall mean that residential portion of this community to be separately owned by each owner . . . . As set forth in the Plat, a Unit shall mean a 3-dimentional figure: (a) the horizontal boundaries of which are delineated on the Plat and are intended to terminate at the extreme outer limits of the Triplex Building envelope and include all roof areas, eaves and overhangs. . . . Each residential Unit shall be a separate freehold estate (not owned in common with the other Owners of Units in the Module or Properties), as separately shown, numbered and designated in the Plat. . . . The boundaries of each Unit are set forth in the Plat, and include the above described area and all applicable improvements within such areas, which may include, without limitation, bearing walls, columns,

[3] It is of import that Plaintiff's counsel in this particular case has included "balconies and decks" within the "building envelope." None of the other cases include those elements of the units within the amorphous definition.

floors, roofs, foundations, footings, windows, central heating and other central services, pipes, ducts, flues, conduits, wires and other utility installations." (*Id.*)

(*See*, The High Noon at Arlington Ranch CC&Rs, at Section 1.77, attached hereto as Exhibit "14") (*see also*, Exhibit "5" (wherein Respondent Court defines the applicable CC&Rs)). Further, Section 9.3 of the CC&Rs places the sole responsibility for maintenance and repairs of the individual Units on the homeowner. (*See*, Exhibit "15".)

Respondent Court arbitrarily accepted the Association's position that those items included in the "building envelope," are somehow distinct from those items on the interiors of the Units. Respondent Court found that the plumbing and electrical systems are a part of the individualized Units. This delineation is a clear abuse of discretion, as the roofs, exterior doors, exterior windows, and other elements of the "building envelope" are defined in the exact same section, and in some cases exact same sentence, as the plumbing and electrical work. Respondent Court's failure to perform an NRCP 23 analysis on the alleged defects at the "exterior building, the roof, the stucco, the balconies and decks, the exterior doors and the windows," is an express failure to comply with this Court's precedent in determining whether a homeowners' association may bring claims on behalf of individual home owners. The Court in *First Light II* made no distinction between the interior and exterior of the units. But rather, any allegations concerning a unit must go through the NRCP 23 analysis.

For this reason, under the mandates set out by this Court in *First Light II* and *Shuette*, an analysis under NRCP 23 was required before Respondent Court could determine the Association would be permitted to maintain its suit on behalf of its individual homeowner members and alleged constructional defects in the "building envelope." Respondent Court explicitly stated that it did not complete such an analysis, and therefore extraordinary relief is warranted.

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VI. RESPONDENT COURT ARBITRARILY AND CAPRICIOUSLY ABUSED ITS DISCRETION IN FAILING TO PERFORM AN NRCP 23 ANALYSIS, AS MANDATED IN THE SEPTEMBER 3, 2009 ORDER OF THIS COURT AND *FIRST LIGHT II*

Pursuant to *First Light II*, NRCP 23 and *Shuette*, the Association was not permitted to bring a representative action for the alleged constructional defects concerning the Units in this case. On February 10, 2011, Respondent Court disregarded the elements of NRCP 23 and *Shuette* when determining whether the Association had the ability to sue regarding the "building envelope." As such, Petitioner respectfully submits Respondent Court arbitrarily and capriciously abused its discretion in failing to perform an analysis under NRCP 23, as mandated by this Court's September 3, 2009 Order and the holding in *First Light II*, before finding the Association was permitted to bring claims for alleged constructional defects in a representative capacity on behalf of individual homeowners.

The September 3, 2009 Nevada Supreme Court Order in this case declared,

> Here, High Noon alleged several causes of action against Petitioner, claiming, in part that both the individual units and the common areas of the community have various defects and deficiencies pertaining to for example, **structure**, electrical, plumbing, and **roofing**. Therefore, in accordance with the analysis set forth in D.R. Horton, we direct the district court to review the claims asserted by High Noon to determine whether the claims conform to class action principles, and thus, whether High Noon may file suit in a representative capacity for constructional defects affecting individual units.

(*See*, Exhibit "7".) This Court specifically mandated Respondent Court review the claims asserted by the Association under the analysis in *First Light II*. (*See*, *id.*). Furthermore, this Court specifically mandated Respondent Court to "determine whether the claims conform to class action principles." (*See*, *id.*)

Under this Court's holding in *First Light II*, a homeowners' association has standing to bring alleged constructional defect claims in a representative capacity on behalf of individual homeowners for matters affecting the common-interest community, pursuant to N.R.S.

116.3102(1)(d).[4] *See*, *First Light II*, at 215 P.3d 697, 700. However, pursuant to *First Light II*, the inquiry as to whether a homeowners' association may bring suit in a representative capacity does not end with the grant of standing provided by N.R.S. 116.3102(1)(d). Even where N.R.S. 116.3102(1)(d) confers standing on a homeowners' association to bring suit in a representative capacity, a district court must conduct an analysis under NRCP 23, and this Court's holding in *Shuette*, to determine whether a representative suit is appropriate. *Id.* at 703. This Court added the protective safeguard to the analysis of whether a homeowners' association would be permitted to bring a representative suit because homeowners' associations in such representative suits act much like class action suit representatives. *Id.* This Court further noted that "[b]ecause constructional defect actions may be complex, it is particularly important for the district court to thoroughly analyze NRCP 23's requirements and document its findings." *Id.* at 704.

This Court continued in *First Light II* by noting "representative actions filed by homeowners' associations are amenable to the same treatment as class action lawsuits brought by individual homeowners, which we discussed in *Shuette*." *Id.* As such, when a "homeowners' association brings suit on behalf of its members, a developer may, under *Shuette*, challenge whether the associations' claims are subject to class certification." *Id.* at 704. If the associations' claims are challenged regarding the class certification principles, a district court must conduct a thorough analysis under NRCP 23, and this analysis requires a district court "to consider whether claims and various theories of liability satisfy the requirements of numerosity, commonality, typicality, adequacy, and, as in *Shuette*, whether 'common questions of law or fact predominate over individual questions,'" *Id.* (*quoting*, *Shuette* at 850, 124 P.3d at 539).

A shared experience, without more, will not satisfy the requirements of NRCP 23 and, as such, a district court "must determine, among other issues, which units have experienced

[4] N.R.S. 116.3102(1)(d) states, in pertinent part, that "the [homeowners'] association may ... (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common interest community."

constructional defects, the types alleged, the various theories of liability, and the damages necessary to compensate individual unit owners." *Id.* at 704. As such, under the mandates set out by this Court in *First Light II* and *Shuette*, an analysis under NRCP 23 was required before Respondent Court could rule that the Association would be permitted to maintain its suit on behalf of its individual homeowner members and alleged constructional defects in the "building envelope." Such was not done and extraordinary relief is thus warranted.

VII. RESPONDENT COURT IMPROPERLY FAILED TO CONDUCT THE REQUIRED NRCP 23 ANALYSIS

Respondent Court cannot disregard this Court's Orders, Opinions and the Nevada Rules of Civil Procedure simply because standing has been conferred on an entity. "Standing" under N.R.S. 116.3102(1)(d) and class action analysis under NRCP 23 are separate inquiries. A district court must make a determination regarding both inquiries under *First Light II*. The NRCP 23/*Shuette* analysis required by this Court in *First Light II* is a procedural device utilized to determine whether the representative action can properly be maintained in a construction defect case in Nevada. Without conducting an analysis of the procedural NRCP 23/*Shuette* step, a district court cannot properly rule that a homeowners' association can maintain a representative action for alleged constructional defects.

In *Shuette*, this Court stated the policy of class action lawsuits was to "promote efficiency and justice in the legal system by reducing the possibilities that courts will be asked to adjudicate many separate suits arising from a single wrong." *See*, 121 Nev. 837, 846. In order to ensure that this policy is being effectively protected, a court must analyze the several factors of NRCP 23 before certifying a class. *Id.* This same analysis is required when determining if a homeowners' association has the right to sue in a representative capacity, because such an association is acting in the same capacity as the representative plaintiff in a class action law suit. *See, First Light II*, 215 P.3d at 703.

Petitioner respectfully submits Respondent Court's February 10, 2011 Order ignored the distinction between standing and the analysis required under NRCP 23 which, in

combination, permits a district court in certain circumstances to allow a homeowners' association to bring suit in a representative capacity on behalf of individual homeowners for alleged defects. While Respondent Court's February 10, 2011 Order sets out the holdings of *First Light II* and notes that analysis under NRCP 23 and *Shuette* are required as to the individual Units, its failure to conduct such an analysis when considering the "building envelope" suggests Respondent Court believes standing conferred on the Association pursuant to N.R.S. 116.3102(1)(d) alone permits a homeowners' association to bring a representative suit. (*See*, Exhibit "7".)

Additionally, Respondent Court stated that "requiring a homeowner's association to meet all the prerequisites of NRCP 23 before it can litigate[] on behalf of its members[] constructional defects affecting the common-interest community, such as those upon or within exterior walls wall openings and roofs, would nullify NRS 116.3102(1)(d)." (*Id.*) This statement makes it clear that Respondent Court has improperly comingled or eliminated the proper two step analysis needed for a district court to certify that a homeowners' association may bring a representative claim.[5]

To protect the safeguards put in place by this Court regarding class action lawsuits and representative suits by homeowners' associations for alleged constructional defects, district courts cannot be permitted to rule that an association may sue in a representative capacity on behalf of individual homeowners without conducting an analysis under NRCP 23 and *Shuette*.

Given the mandates of this Court's holdings in its September 3, 2009 Order and *First Light II*, Respondent Court's failure to perform an analysis under NRCP 23 was an unreasonable disregarding of established law in Nevada. As such, Petitioner respectfully requests this Court exercise its discretion and grant Petitioner's Petition for a Writ of Mandamus, or in the Alternative, Writ of Prohibition, and remand this matter to Respondent

[5] Real Party in Interest position in this regard was recently rejected by the Nevada legislature in A.B.85, as that bill died prior to reaching the floor of either house of the legislature.

Court with instructions to properly analyze NRCP 23 in regards to defects found in the "building envelope."

VIII. EVEN IF RESPONDENT COURT WERE TO PERFORM THE PROPER NRCP ANALYSIS, THE FACTS OF THIS CASE WOULD NOT SATISFY THE NRCP 23 ANALYSIS.

The Association cannot establish the requirements of NRCP 23 with regard to its "building envelope" defect allegations. A plaintiff must establish, under NRCP 23, *inter alia*, a numerosity of members, a commonality of law or fact to each member, a typicality of claims or defenses of the representative Plaintiff and the class members, and an adequate protection of each member's interest.

The Association alleged defects in the "building envelope" of the Units, as well as the systems within the "building envelope," such as the fire, plumbing and electrical systems. For example, the Association alleged in its Notice of Defects, dated January 7, 2008, that inspections found 56 total feet of stucco cracks on 65 of the Development's buildings. (*See*, the Association's Notice of Defects, dated January 7, 2008, attached hereto as Exhibit "15".) The Notice did not differentiate between which wall of the buildings allegedly had the cracks, or how large the alleged cracks were on each individual Unit. (*See*, District Court's Findings of Fact, Conclusions of Law and Order, dated January 31, 2011, attached hereto as Exhibit "16") (wherein Respondent Court summarized Appellants' expert reports which totaled hundreds of pages). This leaves the result of an alleged 1 inch of stucco cracks on each building, or put another way, an alleged 1 inch of stucco cracks per every three Units. (*Id.*) The Association has not shown a commonality of alleged defects throughout the Units in order for the Association to bring claims for all Plaintiffs. (*Id.*)

This same deficiency arises with each of the other defects alleged by the Association. In its Notice, the Association provided expert reports for defects to what it now calls the "building envelope." (*See*, Exhibit "15".) The Association's roofing expert inspected 54 of the 114 buildings. (*Id.*) The expert broke down the roofing defects into two groups

depending on the elevation of the building, 10 subcategories and then 60 more subcategories for both elevation groups. (*Id.*) Another of the Association's experts visually inspected 46% of the decks and invasively tested 6% of the decks. (*Id.*) That expert delineated 4 subcategories of defects for the decks that were invasively tested. (*Id.*) Another expert inspected 57 sliding glass doors at certain units, and invasively tested 11. (*Id.*) That expert broke the defects down into three subcategories. (*Id.*) Another expert inspected 71 exterior doors, with two subcategories of defects. (*Id.*) Lastly, an Association expert visually inspected 719 windows and invasively tested 25 windows, which was .08% of the total number of windows. (*Id.*)

The Association has not provided any evidence that would show the alleged defects are common, have the same alleged cause or would even cost the same to fix at different Units. The Association tested a miniscule number of homes for defects, and then extrapolated those results onto the remaining Units. There has been no evidence produced by the Association to show the claims of the Unit owners are common to other Unit owners or typical. In fact, alleged defects found at the balconies, doors, roof defects and windows are divided into many subcategories of alleged defects. It is not clear how an alleged defect with several subcategories of alleged defects found at a small number of Units and then extrapolated onto 194 Units could be said to meet the requirements of commonality or typicality found in NRCP 23.

Were Respondent Court to perform the proper NRCP analysis, the Association would not be able to establish that the alleged defects in the "building envelope" comply with the requirements found in NRCP 23. Therefore, Petitioner respectfully requests this Court exercise its discretion and grant its Petition for a Writ of Mandamus, or in the Alternative, Writ of Prohibition, and remand this matter to Respondent Court with instructions to enter an Order denying the Association's Motion to bring representative claims for alleged defects to the "building envelope," or at least to properly analyze NRCP 23 in regards to defects found in the "building envelope."

IX. THE DISTRICT COURTS OF THIS STATE MUST FOLLOW THE BINDING PRECEDENT ESTABLISHED BY THE NEVADA SUPREME COURT

The failure of Respondent Court in its February 10, 2011 Order to follow the clear mandates of *First Light II* and *Shuette* flies in the face of the foundational doctrine of *stare decisis*. "The doctrine of stare decisis, which means to 'stand by things decided,' 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *United States v. Va Lerie*, 385 F.3d 1141, 1155 (8th Cir. 2004) (*quoting, Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). "The [United States] Supreme Court has recognized [that] 'the important doctrine of stare decisis ... ensures that the law will not merely change erratically, but will develop in a principled and intelligible fashion.'" *Va Lerie*, at 1155 (*quoting, Vasquez v. Hillery*, 474 U.S. 254, 265, (1986)). "The Court also has acknowledged [that] stare decisis 'permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.'" *La Verie*, at 1155 (*quoting, Vasquez* at 265-266).

This Court recognizes the doctrine of *stare decisis* in the same manner as the United States Supreme Court. Specifically, this Court has stated that its "decisions ... hold positions of permanence in this court's jurisprudence – precedent that, under the doctrine of *stare decisis*, we will not overturn absent compelling reasons for so doing. Mere disagreement does not suffice." *Secretary of State v. Burk*, 124 Nev. 56, ___, 188 P.3d 1112, 1124 (2004) (*citing*, Black's Law Dictionary 1442 (8th ed. 2004) (defining "*stare decisis*" as the "doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again."); *see also, Stocks v. Stocks*, 64 Nev. 431, 438, 183 P.2d 617, 620 (1947) (noting that the doctrine of stare decisis is "indispensible to the due administration of justice"); *Grotts v. Zahner*, 115 Nev. 339, 342, 989 P.2d 415, 417 (1999) (Rose, J., dissenting)

(noting that the doctrine of stare decisis serves "'societal interests in ... consistent, and predictable application of legal rules'" (*quoting, Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 272 (1980))).

Respondent Court did not adhere to or recognize potential implications with the doctrine of *stare decisis* when rendering its February 10, 2011 Order. Rather, Respondent Court failed to apply the established precedent set by this Court in *First Light II.* The law in this State, pursuant to *First Light II* and *Shuette*, requires a district court to perform an analysis under NRCP 23 before granting permission to a homeowners' association to bring a representative suit on behalf of individual Unit owners for alleged constructional defects affecting the individual Units. Respondent Court's failure to adhere to established precedent was an arbitrary and capricious abuse of discretion, as mere disagreement with this Court's holdings in its September 3, 2009 Order and *First Light II* does not give Respondent Court license to disregard Nevada's clearly established precedent.

Contrary to the principles of *stare decisis* Respondent Court *sua sponte* suggested an inapplicable conflict in the instance of a homeowners' association seeking to represent only two (2) homeowners. (*See*, Exhibit "12".) As this Court recognized, NRS 116.3102(1)(d) only *creates eligibility* for a homeowners' association to act as a representative on behalf of Unit owners in litigation; but it does not extinguish all other requirements which apply to any litigant acting in a representative capacity in a constructional defect action. To conclude otherwise would create an improper classification of construction defect litigants whereby individual homeowners seeking to litigate the claims of others would be subject to the analysis of NRCP 23, but an association would not be subject to the NRCP 23 analysis for the exact same claims of others. Such a classification would be contrary to constitutional equal protection requirements, and this Court previously indicated it would not create such classifications. *See, ANSE, Inc. v. Eighth Jud. Dist. Ct.*, 192 P.3d 738, 740 & 744-5 (Nev. 2008). Consistent with the foregoing, this Court held, "[w]e conclude that representative actions filed by homeowners' associations are amendable to the same treatment as class action

lawsuits brought by individual homeowners, which we discussed in *Shuette*". *See, First Light II*, 215 P.3d at 704. Respondent Court cannot ignore these rulings.

Petitioner submits if Respondent Court refused to apply and enforce the holding and law of *First Light II* in reliance upon any perceived conflict between NRS 116.000 *et seq.* and representative action analysis of the holdings of *First Light II* and *Shuette* and NRCP 23, such refusal is an unsupportable and incorrect result that requires correction by extraordinary relief.

X. CONCLUSION

Respondent Court arbitrarily and capriciously abused its discretion in failing to perform an NRCP 23 analysis pursuant to this Court's September 3, 2009 Order and its *First Light II* Opinion in granting the Association's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d).

As such, Petitioner respectfully requests that this Court exercise its discretion and grant the instant Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition, and further respectfully requests that this Court remand this matter to Respondent Court to properly analyze the Association's ability to bring forth claims under the NRCP 23 analysis.

DATED this 9th day of June, 2011.

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EXHIBIT "15"

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IN THE SUPREME COURT OF THE STATE OF NEVADA

D.R. HORTON, INC., A DELAWARE CORPORATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE SUSAN JOHNSON, DISTRICT JUDGE,
Respondents,
and
HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION,
Real Party in Interest.

No. 58533

FILED

AUG 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DIRECTING ANSWER

This original petition for a writ of mandamus or prohibition challenges a district court order holding that real party in interest may litigate, on behalf of individual homeowners, claims for alleged constructional defects in individual units. Having reviewed the petition, it appears that petitioner has set forth issues of arguable merit and that petitioner may have no plain, speedy, and adequate remedy in the ordinary course of the law. Therefore, real party in interest, on behalf of respondents, shall have 20 days from the date of this order within which to file an answer, including authorities, against issuance of the requested

11-24296

writ. Petitioner may file any reply within 20 days from the date that real party in interest's answer is served.

It is so ORDERED.

Douglas, C.J.

cc: Hon. Susan Johnson, District Judge
Koeller Nebeker Carlson & Haluck, LLP/Las Vegas
Angius & Terry LLP/Las Vegas

EXHIBIT "13"

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DISTRICT COURT

CLARK COUNTY, NEVADA

HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, for itself and for all others similarly situated, Plaintiff, v. D.R. HORTON, INC., a Delaware Corporation DOE INDIVIDUALS 1-100, ROE BUSINESSES or GOVERNMENTAL ENTITIES 1-100, inclusive, Defendants.	CASE NO.: A542616 DEPT NO.: XXII (ELECTRONIC FILING CASE) **D.R. HORTON, INC.'S MOTION FOR RECONSIDERATION OF ORDER DATED FEBRUARY 10, 2011**

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COMES NOW Defendant D.R. HORTON, INC. ("D.R. Horton"), by and through its attorneys, Wood, Smith, Henning & Berman, LLP, and hereby moves this Court to respectfully hear D.R. Horton's Motion for Reconsideration of this Court's Order dated February 10, 2011.

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This Motion is based on the following Memorandum of Points and Authorities, the attached exhibits and affidavits, the papers and pleadings on file, and any oral argument the Court may entertain.

DATED: March 15, 2011

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NOTICE OF MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant, D.R. HORTON, INC., respectfully requests that the Court conduct a hearing on Defendant, D.R. HORTON, INC.'s Motion For Reconsideration of Order dated February 10, 2011, before the above entitled Court at _____ a.m. on the _____ day of _____, 2011, or as soon thereafter as the matter may be heard.

DATED: March ___, 2011

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I.

INTRODUCTION

D.R. Horton seeks reconsideration of the Court's Order dated February 10, 2011 (the "Order"). The Court issued its Order after hearing oral argument on Plaintiff High Noon at Arlington Ranch Homeowner's Association (the "HOA") Motion for Declaratory Relief Re: Standing Pursuant To Assignment and Pursuant to ***NRS*** 116.3102(1)(d) filed September 30, 2010, and heard on November 10, 2010. As set forth in the Order, the Court found that the HOA lacked standing to assert defect claims alleged to exist within the individual homes at the Subject Property for failing to satisfy the class action requirements of ***NRCP*** 23 and *D.R. Horton, Inc. v. District Court*, 125 Nev. ___, 215 P.3d 697 (2009)(hereinafter "*First Light II*"). The Court did find that the HOA did have standing to assert defect claims with regard to "building envelopes," finding that issues alleged as to "building envelopes" pursuant to ***NRS*** 116.3102(1)(d). D.R. Horton takes issue with that portion of the Order addressing "building envelope" defect allegations.

The primary concern D.R. Horton brings to this Court's attention is that the Order appears to be inconsistent in applying class action principles to defect claims alleged to exist within individual homes, and those alleged to exist outside the individual residences. In the underlying moving papers, the HOA has taken the position that both categories of defects, those affecting individual homes and those within the "building envelope" affect each and every member of the common interest community. From there, the HOA argued that ***NRS*** 116.3102(1)(d) empowered it to assert both categories of defect claims.

The Order sets forth that the Court rejected the HOA's position that ***NRS*** 116.3102(1)(d) applied to defect allegations within the individual residences, and found that such defect claims must satisfy the class action requirements of ***NRCP***

23 instead. But, the Order also indicates that the Court did accept the HOA's position as to "building envelope" defect allegations. The natural consequence of these findings is that confusion now exists as to why class action analysis is appropriate for defect claims that the HOA alleges affect the entire common interest community, but only so long as such defect claims affect "building envelopes." As set forth in its pleading papers and in oral argument before the Court, the nature of the defects alleged as to "building envelope" do not affect each and every member of the community, let alone two (2) homeowners. Indeed, as the "building envelope" defects are either so *de minimis* or else unique that require the HOA to satisfy the class action principles of ***NRCP*** 23 and *First Light II*.

II.

FACTUAL BACKGROUND

1. High Noon at Arlington Ranch consists of 342 triplex home condominiums in a 114-building development in Las Vegas, Nevada. Each condominium is a separate, freehold estate within the common-interest community called High Noon at Arlington Ranch.

2. Prior to serving its NRS 40.645 Notice, the HOA filed a Complaint against D.R. Horton on June 7, 2007, alleging breach of warranty, breach of contract and breach of fiduciary duty for alleged construction defect.

3. Six months after commencing suit, on January 21, 2008, the HOA sent an NRS 40.645 Notice to D.R. Horton alleging defects in both the common areas and each of the 342 individual units at the Subject Property (hereinafter, the "Chapter 40 Notice" or "Notice"). The HOA included the following expert materials in support of this Notice:

a. Report of Electrical Deficiencies for Arlington Ranch dated October 10, 2007, prepared by JN2 Electrical Consulting, Co.;

b. Structural Defects Report dated October 31, 2007, prepared by Marcon Forensics;

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c. List of Civil Defects dated January 8, 2008, prepared by Burkett & Wong;

d. Preliminary Defect List and Repair Recommendations dated January 7, 2008, prepared by R.H. Adcock/Architect & Associates, Inc.;

e. Plumbing/Mechanical Preliminary Defect List dated January 7, 2008, prepared by Harvey Kreitenberg; and

f. Preliminary Summary of Geotechnical Investigation dated November 9, 2007, prepared by TerraPacific.

4. Also on January 21, 2008, the HOA sent a Supplemental Notice of Compliance with Nevada Revised Statute 40.645 to D.R. Horton in order to provide D.R. Horton with a Revised Plumbing & Mechanical Preliminary Defect List and Defect Locator Matrix by Harvey Kreitenberg (the Supplemental Notice, together with the NRS 40.645 Notice, are hereinafter referred to collectively as the "Notice").

5. Motion for Declaratory Relief Re: Standing Pursuant To Assignment and Pursuant to ***NRS*** 116.3102(1)(d) filed September 30, 2010, and heard on November 10, 2010.

6. The Court entered the Order on February 10, 2011.

III.

LEGAL ANALYSIS

A. Reconsideration of the Order Is Warranted Due to the Inconsistent Application of *NRCP* 23 and *First Light II*.

D.R. Horton seeks reconsideration of the Order pursuant to ***EDCR*** 2.24. As noted hereinabove, the Order appears to be inconsistent in the manner in which the Court applied the class action requirements of ***NRCP*** 23 and *First Light II*. Specifically, the Order sets forth that the Court utilized the class action analysis for the defect allegations within the individual homes, but analyzed defect claims as to

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the "building envelopes" under ***NRS*** 116.3102(1)(d). Because confusion exists in light of apparently 2 separate tests for 2 different categories of defects, reconsideration of the Order is warranted.

In ruling that class action analysis is not appropriate for the "building envelope" defect allegations, the Court premised its decision on its view that "claims relating to constructional defects located upon or within the buildings' envelopes are different, and affect every member of the common-interest community."[1] The Court further supported its ruling by noting that "requiring a homeowner's association to meet all prerequisites of ***NRCP*** 23 before it can litigate, on behalf of its members, constructional defects affecting the common-interest community, such as those upon or within exterior walls, wall openings, and roofs, would nullify ***NRS*** 116.3102(1)(d)."[2] The Court also noted that defect allegations as to systems that may be contained within a "building envelope" are "not elements common to the entire community."[3]

The problem arises, however, when examining the actual "building envelope" defect claims. For example, the Notice provides that 56 linear feet of stucco cracks were measured and observed. Even if considered in the context of the 65 buildings inspected, each building allegedly exhibits **less than 1 inch** of alleged stucco cracking. This must be considered in the context that each building, and its corresponding "building envelope," is comprised of at least 4 primary walls. Thus, the Notice actually sets forth that **less than 1 inch** of alleged stucco cracking occurs at some location somewhere upon the primary walls. To conclude, as the Order sets forth, that less than 1 inch of alleged stucco cracking at any given building presents a claim that affects the entire common-interest

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[1] See, Order, p. 18, ll. 26-28; p. 19, ll. 1.

[2] *Id.*, p. 18, ll. 15-18.

[3] *Id.*, p. 18, ll. 20-23.

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community, is troubling. That less than 1 inch of stucco cracking could affect 2 or members of a building, let alone the entire common-interest community, belies logic and the actual facts.

This is true as to the remaining categories of "building envelope" defects. As set forth in the Notice, defect allegations as to the decks and balconies involve 5 subcategories, all of which occur at different locations and in different quantities.[4] The Notice also sets forth that each different plan type (101, 102, and 103) all have different balconies and/or decks, with differing manners of access.[5] Similarly with exterior doors, there are 4 subcategories of defects, each alleged to exist in varying as to the nature, extent and location. The same is true of the roofing defects and the windows. The sheer number of subcategories of defects, interspersed throughout the Project, do not confirm that any given defect issue affects the entire common-interest community. If anything, the Notice confirms, in the same manner as it does with regard to defects within the individual homes, that defects at the "building envelopes" are not common or typical, much less consisting of a predominate question of fact or law. The failure of the Order to apply class action analysis to claims that do not affect the entire common-interest community requires clarification.

Further, this Court, while noting that *D.R. Horton, Inc. v. District Court*, 123 Nev. 468, 168 P.3d 731 (2007)(hereinafter, "*First Light I*") permits an extrapolated notice, did not harmonize this decision with ***NRS*** 40.645 2 (b) and (c). The Court correctly noted that:

> "When multiple homes are believed to contain a common defect, the Legislature intended allowing owners to formulate a pre-litigation notice using expert opinions and extrapolation, **so long as their notices satisfy the "reasonable detail requirement of NRS**

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[4] See, the HOA's Notice, p. 62-73.

[5] *Id.* p. 62.

40.645(2)." (Emphasis added).[6]

By way of review, ***NRS*** 40.645 2 (b) and (c) provide in pertinent part, as follows:

> 2. The notice given pursuant to subsection 1 **must:**
>
> (b) Specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim; and
>
> (c) Describe in reasonable detail the cause of the defects if the cause is known, the nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each residence or appurtenance to the extent known. (*Id.*)(Emphasis added).

In this instance, the Plaintiff's Notice completely ignores these requirements, even through the alleged defects were purportedly measured by the Plaintiffs' experts.

The statute uses the words "must" and hence D.R. Horton maintains that this provision must be harmonized with an extrapolated notice to provide the requisite detail. As an example, the Notice in this case could have, but completely failed to, specified where the alleged stucco and drywall cracks in the buildings are purportedly located, all while claiming to have measured the alleged cracks. This deliberate withholding of detail is yet a further example of the Plaintiffs attempting to hide their claims to completely undermine and frustrate D.R. Horton and its subcontractor's right to inspect and repair.

Plaintiff could have easily stated that certain walls were inspected and found to have these defects, and then, based upon a reasonable sample, extrapolated these claims to the walls not inspected. Instead, Plaintiff withheld all information about the claims other than their purported length, and presented the Court with a conclusion that cannot be tested, *i.e.* that the defects meet the

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[6] See, Order, p. 12, ll. 12-16.

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requirements of both the Statute and the Case law. As such, no analysis under the Case law or Statute was possible and as a matter of law, D.R. Horton contends that these claims cannot be found to be in compliance with the mandates of the Legislature and the Nevada Supreme Court.

Accordingly, D.R. Horton requests that the Court reconsider and clarify its prior Order and require the Plaintiffs to specify with reasonable detail their claims, even those that are purportedly extrapolated, so that an appropriate inquiry can be conducted.

IV.

CONCLUSION

WHEREFORE, based upon the foregoing, D.R. Horton respectfully requests that this Court grants its Motion for Reconsideration, and reconsider its Order. The Order appears to inconsistently apply *First Light II* in considering whether the defect allegations set forth in the HOA's Notice require class action analysis under ***NRCP*** 23, or analysis under ***NRS*** 116.3102(1)(d). In addition, both types of analysis appear to need to be in compliance with ***NRS*** 40.645 (b) and (c), something that the Plaintiff has not provided enough detail in their Notice to allow either D.R. Horton or this Court to do.

DATED: March 15th, 2011

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, for itself and for all others similarly situated, **Plaintiff,** **Vs.** **D.R. HORTON, INC., a Delaware Corporation; DOE INDIVIDUALS 1-100; ROE BUSINESS or GOVERNMENTAL ENTITIES 1-100, inclusive,** **Defendants.**	**Case No. 07A542616** **Dept. No. XXII** ***Electronic Filing Case***

ORDER

This matter, concerning Plaintiff's Motion for Declaratory Relief Re: Standing Pursuant To Assignment and Pursuant to NRS 116.3102(1)(d) filed September 30, 2010, came on for hearing on the 10th of November 2010 at the hour of 9:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiff HIGH NOON AT ARLIINGTON RANCH HOMEOWNERS ASSOCIATION appeared by and through its attorney. PAUL P. TERRY, JR., ESQ. of the law firm, ANGIUS & TERRY; and Defendant D.R. HORTON, INC. appeared by and through its attorneys, JOEL D. ODOU, ESQ. and THOMAS E. TROJAN, ESQ. of the law firm, WOOD SMITH HENNING & BERMAN. Having reviewed the papers and pleadings on file herein, heard oral arguments of the parties and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

1. Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS

1. Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS

ASSOCIATION is the governing body of a 342-unit triplex townhouse planned development/ common-interest community created pursuant to NRS Chapter 116 and located within Las Vegas, Clark County, Nevada. The community consists of townhouse units, owned by the Association's members, as well as common elements owned by Plaintiff over which the homeowners have easements and enjoyment.

2. The community was developed, constructed and sold by Defendant D.R. HORTON, INC. in or about 2004 to 2006.[1]

3. The subject property consists of 114 structures, each building of which contains three (3) units, for a total of 342 homes. The instant action involves claims for damages arising out of constructional defects within the building envelopes in which Plaintiff has no ownership interest, as well as within the interiors of 194 units for which Plaintiff has obtained assignments from those homes' owners.[2] The alleged constructional defects include, but are not limited to structural, fire safety, waterproofing defects, and deficiencies in the civil engineering/landscaping, roofing, stucco and drainage, architectural, mechanical, plumbing, HVAC, acoustical, electrical, and those relating to the operation of windows and sliding doors.[3]

4. Plaintiff defines "building envelope" as "the exterior of the building, the roof, the stucco, the balconies and decks, the exterior doors and the windows."[4]

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[1] *See* Complaint filed June 7, 2007, Paragraph 10, p. 3.

[2] *See* Exhibit 5 to Plaintiff's Motion for Declaratory Relief filed September 30, 2010. According to Defendant D.R. HORTON, INC., the assignments number 193, not 194. *See* Defendants' Opposition to Plaintiff's Motion for Declaratory Relief Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d) filed October 19, 2010, p. 11.

[3] *See* Complaint filed June 7, 2007, Paragraph 16, p. 4.

[4] *See* Plaintiff's Motion for Declaratory Relief, p. 1.

5. Plaintiff now moves this Court for declaratory relief, and adjudge the Association has standing to assert:

standing to assert:

a. All constructional defect claims in the 194 units for which Plaintiff has procured assignment of rights from the units' owners;

b. Constructional defect claims within the structures' envelope, structural and fire resistive systems in those buildings which contain a unit for which the Association has procured an assignment of rights; and

c. Constructional defect claims within the building envelope, structural and fire resistive systems in all structures pursuant to NRS 116.3102(1)(d).

CONCLUSIONS OF LAW

Plaintiff's Standing To Assert Claims Within 194 Units Assigned To It By Owners

1. NRS Chapter 116, also known as the Uniform Common-Interest Ownership Act (UCIOA), applies to all common-interest, planned communities. *Also see* D.R. Horton, Inc. v. District Court, 125 Nev. ____, 215 P.3d 697, 701 (2009).[5] The purpose of the UCIOA is to "make uniform the law with respect to the subject of this chapter among states enacting it." NRS 116.1109(2). Here, Plaintiff HIGH NOON AT ARLINGTON HOMEOWNERS ASSOCIATION moves the Court for declaratory relief to determine, *inter alia,* whether it has standing to assert all constructional defect claims in the 194 units for which Plaintiff has procured assignment of rights from the units' owners.

2. From a procedural perspective, the units' owners association may commence a civil action only upon a vote or written agreement of the owners of units to which at least a majority of the votes of the association's members are allocated. *See* NRS 116.31088(1).[6] Notably, however,

[5]This decision also has been dubbed by the courts and attorneys as *"First Light II."*

[6]The provisions of NRS 116.31088(1) do not apply to civil actions that are commenced to (1) enforce payment

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

no person other than a unit's owner may request dismissal of the civil action commenced by the association on the ground the association failed to comply with any provision of NRS 116.31088.
association on the ground the association failed to comply with any provision of NRS 116.31088.

See NRS 116.31088(3).

3. In interpreting NRS 116.31088(3), the Nevada Supreme Court concluded the statute prohibits a non-member from challenging the adequacy of the procedure underling the commencement of a civil action. D.R. Horton, Inc. 125 Nev. ____, 215 P.3d at 701. However, there is nothing in NRS 116.31088 that precludes a developer from challenging whether the homeowners' association may assert claims in a representative capacity on behalf of its members. *Id., citing* Restatement (Third) of Property: Servitudes §6.11 (2000)("If either the members on behalf of whom the association sues or the association meets normal standing requirements, the question whether the association has the right to bring a suit on behalf of the members is an internal question, which can be raised only by a member of the association."). That is, a non-member developer is barred *only* from challenging the adequacy of the internal procedures a homeowner's association follows before commencing a civil action on behalf of its members. *Id.*

4. NRS 116.3102 addresses the powers of a unit owners' association, which includes whether it has standing to sue or be sued. It provides in pertinent part:

> 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:
>
> . . .
>
> (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters *affecting the common-interest community.*

(Emphasis added)

5. In D.R. Horton, Inc., 125 Nev. ____, 215 P.3d at 702-703, the Nevada Supreme Court concluded NRS 116.3102(1) was ambiguous because the statute was susceptible to two reasonable interpretations—either the "common-interest community" included individual units or it

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of an assessment; (2) enforce the association's declaration, bylaws or rules; (3) enforce a contract with a vendor; (4) proceed with a counterclaim; or (5) protect the health, safety or welfare of the association's members.

did not. To resolve the ambiguity, the high court turned to other provisions and definitions contained in NRS Chapter 116, along with the Restatement (Third) of Property and its commentary,
contained in NRS Chapter 116, along with the Restatement (Third) of Property and its commentary,
to determine the Legislature's intent. Ultimately, the Nevada Supreme Court determined the collaboration of definitions of "common-interest community," NRS 116.021, "unit," NRS 116.093, and "common elements," NRS 116.017, lead to the conclusion units are considered a part of the common-interest community, whereby "on matters affecting the common-interest community," a homeowner's association had standing to assert claims affecting individual units.

6. In so holding, however, the Nevada Supreme Court also concluded that, because NRS 116.3102(1)(d) and Restatement (Third) of Property: Servitudes §6.11 permitted a homeowners' association to file an action in a representative capacity, the statutory grant must be reconciled with the principles and analysis of class action lawsuits and concerns related to constructional defect class actions, which the high court addressed in Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 124 P.3d 530 (2005). D.R. Horton, Inc., 125 Nev. ____, 215 P.3d at 703. As noted by the Nevada Supreme Court, 215 P.3d at 703-704:

> ...the commentary to Restatement (Third) of Property section 6.11, which reaffirms that a homeowners' association has standing to assert claims affecting individual units, also provides, "[i]n suits where no common property is involved, the association functions much like the plaintiff in a class-action litigation, and questions about the rights and duties between the association and the members with respect to the suit will normally be determined by the principles used in class-action litigation." Restatement (Third) of Prop.: Servitudes §6.11 cmt. a (2000).
>
> Therefore, because a homeowners' association functions much like a plaintiff in a class action, we conclude that when an association asserts claims in a representative capacity, the action must fulfill the requirements of NRCP 23, which governs class action lawsuits in Nevada. And we turn to both NRCP 23 and the principles addressed in *Shuette* to determine how "questions about the rights and duties between the association and the members," Restatement (Third) of Prop.: Servitudes §6.11 cmt. a, shall be resolved. When describing the policy behind class action lawsuits, this court has declared that "class actions promote efficiency and justice in the legal system by reducing the possibilities that courts will be asked to adjudicate many separate suits arising from a single wrong." *Shuette*, 121 Nev. at 846, 124 P.3d at 537. However, in *Sheutte*, this court announced that because a fundamental tenet of properly law is that land is unique, "as a practical matter, single-family residence constructional defect cases will rarely be appropriate for class action treatment." *Id.* at 854, 124 P.3d at 542. In other words, because constructional defect cases related to multiple properties and will typically involve different types of constructional damages, issues

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

concerning causation, defenses, and compensation are widely disparate and cannot be determined through use of generalized proof. *Id.* at 855, 124 P.3d at 543. Rather, individual parties must substantiate their own claims and class action certification is not appropriate. parties must substantiate their own claims and class action certification is not appropriate. *Id.*

7. As noted above, in this case, Plaintiff HIGH NOON AT ARLINGTON HOMEOWNERS ASSOCIATION moves the Court for declaratory relief and to adjudge it has standing to assert *all* constructional defect claims within the 194 units for which it has procured assignment of rights from the units' owners. Applying the analysis above, this Court concludes it makes no difference how Plaintiff came to act as its members' or units' owners' representative, whether by assignment of claims, vote or other internal procedure. That is, the assignments of claims by units' owners to their homeowner association do not dispel the requirements set forth by the Nevada Supreme Court in D.R. Horton, Inc., 125 Nev. ____, 215 P.3d 697, that must be met by Plaintiff in order to have standing. To wit, the appropriate question here is not whether an assignment of claims permits a homeowner's association to act on behalf of its member. It is whether the Complaint, filed by the Association, and seeking damages, *inter alia,* for all constructional defect claims within the 194 individual units, fulfills the requirements of NRCP 23, which governs class action lawsuits. As noted more fully below, this Court determines Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION has not fulfilled the requirements of NRCP 23, and thus, has no standing to make or maintain claims made in its representative capacity on behalf of its members for constructional defects within the units' interiors.

8. There is no question class action lawsuits are designed to allow representatives of a numerous class of similarly situated people to sue on behalf of that class in order to obtain a judgment that will bind all. Shuette, 121 Nev. at 846, 124 P.3d at 537, *citing* Johnson v. Travelers Insurance Co., 89 Nev. 467, 471, 515 P.2d 68, 71 (1973). Class actions promote efficiency and justice in the legal system by reducing the possibilities courts will be asked to adjudicate many

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

separate suits arising from a single wrong, and individuals will be unable to obtain any redress for "wrongs otherwise irremediable because the individual claims are too small or the claimants too
"wrongs otherwise irremediable because the individual claims are too small or the claimants too
widely dispersed." *Id.*

9. It is Plaintiff's burden to prove the case is appropriate for resolution as a class action. *Id.*, *citing* Cummings v. Charter Hospital, 111 Nev. 639, 643 896 P.2d 1137, 1140 (1995). Therefore, when deciding to certify a case to proceed as a class action, the district court must look to NRCP 23(a) and (b) in "pragmatically determin[ing]" whether the units' owners have shown "it is better to proceed as a single action, [than as] many individual actions[,] in order to redress a single fundamental wrong." *Id.*, *citing* Deal v. 999 Lakeshore Association, 94 Nev. 301, 306, 579 P.2d 775, 778-779 (1978).

10. Under NRCP 23(a), plaintiffs, seeking to certify the case as a class action, ***must*** establish four (4) prerequisites:

a. *First,* the "numerosity" prerequisite requires the members of a proposed class be so numerous that separate joinder of each member is impracticable;

b. *Second,* the "commonality" prerequisite necessities the existence of questions of law or fact common to each member of the class;

c. *Third,* the "typicality" prerequisite calls for a showing the representative parties' claims or defenses are typical of the class' claims or defenses; and

d. *Fourth and last,* the "adequacy" prerequisite mandates the representative parties be able to fairly and adequately protect and represent each class member's interest. *Id.*, *citing* NRCP 23(a)(1), (2), (3) *and* (4).

11. Before a class action can be certified, it must be shown the putative class has so many members that "joinder of all members is impracticable." *See* NRCP 23(a)(1). While the ***numerosity*** prerequisites mandate no minimum number of individual members, a putative class of forty (4) or

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

more generally will be found to be numerous.[7] Impracticability of joinder cannot be speculatively based on merely the number of class members; it must be positively demonstrated in an based on merely the number of class members; it must be positively demonstrated in an "examination of the specific facts of each case."[8] "Impracticable does not mean impossible;"[9] in examining the circumstances under which impracticality is asserted, courts may consider "judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members," among any other relevant factors.[10] As the Nevada Supreme Court stated in Shuette, 121 Nev. at 847, 124 P.3d at 538: "Under those considerations, the joinder of two hundred plaintiffs might not prove impracticable when they live in geographical proximity with one another and are asserting claims for which, if proven, they may statutorily recover attorney's fees."

12. Under the ***commonality*** prerequisite, class certification is proper *only* when "there are questions of law or fact common to the class." *See* NRCP 23(a)(2). Questions are common to the class when their answers to one class member hold true for all other class members.[11] Commonality does not require "all questions of law and fact must be identical, but that an issue of law or fact exists that inheres in the complaints of all the class members."[12] To wit, this prerequisite may be satisfied by a single common question of law or fact. Shuette, 121 Nev. at 848, 124 P.3d at 538, *citing* Monaco v. Stone, 187 F.R.D. 50, 61 (E.D.N.Y. 1999).

13. ***Typicality*** demands the claims or defenses of representative parties be typical of those

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[7] *See* Cummings, 111 Nev. 639, 896 P.2d 1137 (concluding a class of three or four plaintiffs is insufficiently numerous to justify certification of a class action); *also see* Kane v. Sierra Lincoln-Mercury, Inc., 91 Nev. 178, 533 P.2d 464 (1975)(involving an instance where 85 dissimilarly-situated plaintiffs were joined in the action).

[8] *See* Golden v. City of Columbus, 404 F.3d 950, 965-966 (6th Cir. 2005), *quoting* General Telephone Co. v. EEOC, 446 U.S. 418-330 (1980).

[9] *See* Robidoux v. Celani, 987 F.2d 931, 935 (2nd Cir. 1993).

[10] *Id.*, 987 F.2d at 936.

[11] *See* Spera v. Fleming, Hovenkamp & Grayson, P.C., 4 S.W.3d 805, 810 (Tex.App. 1999)[interpreting an analogous Texas provision, Texas Rule of Civil Procedure 42(a)(2)].

[12] *Id.*, 4 S.W.3d at 811.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

asserted by the class. Generally, the typicality prerequisite concentrates upon defendants' actions, not on plaintiffs' conduct.[13] Hence, defenses that are unique to the representative party rarely will not on plaintiffs' conduct.[13] Hence, defenses that are unique to the representative party rarely will defeat this prerequisite unless they "threaten to become the focus of the litigation."[14] As stated by the Nevada Supreme Court in Shuette, 121 Nev. at 848-849, 124 P.3d at 538-539, "[t]he typicality prerequisite can be satisfied[] by showing that 'each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability.'[15] Thus, the representatives' claims need not be identical, and class action certification will not be prevented by mere factual variations among class members' underlying individual claims. For instance, typicality of claims can result when each owner in a condominium complex 'suffer[s] damage'[16] by way of being assessed for repairs to leaky common area roofs, even though some of the individual unit owners have not otherwise suffered from leakage problems."

14. Lastly, and with respect to the ***adequacy*** requirement, a class action may proceed *only* when it is shown the representative parties have the ability too "fairly and adequately protect the interests of the class." *See* NRCP 23(a)(4). This inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent."[17] Class representative members must "possess the same interest and suffer the same injury" as other class members.[18] For example, representative parties of a single class of persons with varying asbestos-related injuries cannot

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[13] *See* Wagner v. NutraSweet Co., 95 F.3d 527, 534 (7th Cir. 1966)["Typicality under [FRCP] 23(a)(3) should be determined with reference to the [defendant's] actions, not with respect to particularized defenses it might have against certain class members."]; Forman v. Data Transfer, Inc., 164 F.R.D. 400, 404 (E.D.Pa. 1995)["When inquiring into the typicality requirement under [FRCP] 23(a)(3), the focus must be on the defendants' behavior and not that of the plaintiffs."].

[14] *See* Gary Plastic Packaging v. Merrill Lynch, 903 F.2d 176, 180 (2nd Cir. 1990); Carbajal v. Capital One, 219 F.R.D. 437, 440 (N.D. Ill. 2004)("The claims of a proposed class representative are considered atypical if the representative is subject to a unique defense that is reasonably likely to be a major focus of the litigation....[I]f the class representative is likely to be preoccupied with a unique defense, his claims are atypical.").

[15] *Quoting* Robidoux, 987 F.2d at 936.

[16] *Quoting* Deal, 94 Nev. at 306, 579 P.2d at 778.

[17] Amchem Products, Inc. v. Windsor, 521 U.S. 591, 625 (1997).

[18] *Id.* 521 U.S. at 625-626, *quoting* East Texas Motor Freight v. Rodriquez, 431 U.S. 395, 403 (1977), *and* Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 216 (1974).

adequately advance the interests of the entire class when the individual class members have disparate medical statuses, and, therefore, conflicting views on how a limited amount of recovery
disparate medical statuses, and, therefore, conflicting views on how a limited amount of recovery
should be divided, dispersed, or otherwise dealt.[19]

15. In addition to meeting the aforementioned NRCP 23(a) requirements, plaintiffs seeking to maintain a class action must show one of three conditions set forth in NRCP 23(b):

a. Separate litigation by individuals in the class would create a risk the opposing party would be held to inconsistent standards of conduct or that non-party members' interests might be unfairly impacted by the other members' individual litigation;

b. The party opposing the class has acted or refused to act against the class in a manner making appropriate class-wide injunctive or declaratory relief; or

c. Common questions of law or fact predominate over individual questions, and a class action is superior to other methods of adjudication.[20]

16. The ***predominance*** prong of the third condition "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."[21] The questions of law or fact at issue in this analysis are those that "qualify each class member's case as a genuine controversy."[22] Therefore, the questions class members have in common must be significant to the substantive legal analysis of the members' claims.

While the NRCP 23(b)(3) ***predominance*** inquiry is related to the NRCP 23(a) ***commonality*** and ***typicality*** requirements, it is more demanding.[23] The importance of common questions must predominate over that of questions peculiar to individual class members. For example, common questions predominate over individual questions if they significantly and directly impact each class

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[19] Shuette, 121 Nev. at 849, 124 P.3d at 539.
[20] *Also see* Shuette, 121 Nev. at 849-850, 124 P.3d at 539.
[21] Amchem Products, Inc., 521 U.S. at 623.
[22] *Id.*
[23] Shuette 121 Nev. at 850, 124 P.3d at 540, *citing* Amchem Products, Inc., 521 U.S. at 623-624.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

member's effort to establish liability and entitlement to relief, and their resolution "can be achieved through generalized proof."[24] On the other hand, when the facts and law necessary to resolve the

through generalized proof."[24] On the other hand, when the facts and law necessary to resolve the

claims vary from person to person taking into account the nature of the defenses presented, or when the resolution of common questions would result in "superficial adjudications which...deprive either [party] of a fair trial,"[25] individual questions predominate, whereby class action would be an inappropriate method of adjudication. As noted by the United States Supreme Court, courts should exercise caution in allowing a class action to proceed when the "individual stakes are high and disparities among class members great."[26]

17. ***Superiority,*** the second prong to the third NRCP 23(b) condition, questions whether class action is the superior method for adjudicating the claims, thereby promoting the interests of "efficiency, consistency, and ensuring that class members actually obtain relief."[27] A proper class action prevents identical issues from being "litigated over and over[,] thus avoid[ing] duplicative proceedings and inconsistent results."[28] It also assists class members obtain relief when they might be unable or unwilling to individually litigate an action for financial reasons or for fear of repercussion.[29]

18. As set forth in Shuette, 121 Nev. at 852, 124 P.3d at 541, other factors worth considering include members' interests in individually controlling the litigation, whether and the extent to which other litigation of the matter by class members has already commenced, the desirability of litigating the class action in the particular forum, whether the class action will be manageable, and the time and effort a district court must expend in becoming familiar with the

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[24] Moore v. PaineWebber, Inc., 306 F.3d 1247, 1252 (2nd Cir. 2002).
[25] City of San Jose v. Superior Court of Santa Clara County, 525 P.2d 701, 711 (Cal. 1974).
[26] Shuette, 121 Nev. at 851, 124 P.3d at 540, *quoting* Amchem Products, Inc., 521 U.S. at 625.
[27] Ingram v. The Coca-Cola Co., 200 F.R.D. 684, 701 (N.D.Ga. 2001).
[28] Shuette, 121 Nev. at 852, 124 P.3d at 540-541, *quoting* Ingram, 200 F.R.D. at 701.
[29] *Id.*

case.[30] The court must determine whether other adjudication methods would allow for efficient resolution without compromising any parties' claims or defenses.

resolution without compromising any parties' claims or defenses.

19. While NRS 40.600 to 40.695, inclusive, governs actions involving constructional defects, these statutory provisions neither forbid nor sanction proceeding with a class action. However, they do impact NRCP 23(b) analysis.[31] In addressing whether class action in this case is the super method, this Court also should consider the parties' ability to comply with NRS Chapter 40's requirements concerning constructional defects if the class action certification is granted.

20. Before commencing an action under NRS Chapter 40, claimants generally must give reasonably detailed notice to the contractor of "the defects or any damages or injuries to each residence or appurtenance," and any known causes involved in the claim. *See* NRS 40.645(2)(b); *but see* D.R. Horton v. District Court, 123 Nev. 468, 168 P.3d 731 (2007)[32] {when multiple homes are believed to contain a common defect, the Legislature intended allowing owners to formulate a pre-litigation notice using expert opinion and extrapolation, so long as their notices satisfy the "reasonable detail" requirement of NRS 40.645(2)]. The contractor is required to respond, in writing, to each notice of alleged constructional defects. Under NRS 40.600 to 40.695, inclusive, the parties have continuing responsibilities, including the duty to provide notice to prospective purchasers of houses that are or have been the subject of constructional defect claims.[33] Under NRS Chapter 40, settlements are encouraged,[34] but if an action is commenced, a claimant is permitted to recover certain damages that were proximately caused by a constructional defect, including any reasonable attorney's fees.[35]

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[30] Peltier Enterprises, Inc. v. Hilton, 51 S.W.3d 616, 625 (Tex.App. 2000).
[31] Shuette, 121 Nev. at 852, 124 P.3d at 541.
[32] This case has also been referred to by courts and attorneys as the *"First Light I."*
[33] *See* NRS 40.688.
[34] *See* NRS 40.650, 40.665.
[35] *See* NRS 40.655.

21. NRS Chapter 40 provisions reveal the Legislature intended to provide contractors with an opportunity to repair defects in homes, a goal that should not be inhibited by class action with an opportunity to repair defects in homes, a goal that should not be inhibited by class action certification.[36] Thus, when class actions make "reasonably detailed" notice of all defects impractical or would tend to deprive a contractor of the opportunity to inspect and repair the defects, and instead, forces it into a class damages settlement or trial, the class action method of adjudication ins not superior to individual actions.[37] Further, class action treatment would not be superior if it is likely to force homeowners who do not suffer from defects to disclose defect litigation to prospective buyers. Finally, as recognized by a federal district court, "[w]here a statute provides attorney's fees to a prevailing plaintiff[,] there is less incentive to protect by class certification individuals with small claims."[38] As a consequence, class actions may not be suitable for many constructional defect cases given the manner in which NRS Chapter 40's statutory framework provides for dispute resolutions.

22. As a practical matter, single-family residence constructional defect cases rarely will be appropriate for class action treatment.[39] Class actions involving real property are often "incompatible with the fundamental maxim that each parcel of land is unique."[40] Allowing class actions to proceed on issues, especially those of liability, that involve variables particular to "unique" parcels of land would require either an alteration of this principal or an extensive sub-

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[36]*See* Shuette, 121 Nev. at 853, 124 P.3d at 542, *citing* Bruce v. Jim Walters Homes, Inc., 943 S.W.2d 121, 123 (Tex.App. 1997)("The [analogous Texas law: Residential Construction Liability Act] was enacted to promote settlement between homeowners and contractors and to afford contractors the opportunity to repair their work in the face of dissatisfaction."); Hearing on S.B. 395 before the Assembly Judiciary Committee, 68th Leg. (Nev. June 23, 1995)(recognized Nevada's constructional defects law, codified in NRS Chapter 40, is modeled on Texas law); Hearing on S.B. 241 before the Senate Commerce and Labor Committee, 72nd Leg. (Nev. March 19, 2003)(discussed the 2003 amendments to NRS Chapter 40, designed to promote the repair of constructional defects issues without court action).

[37]*Also see* Shuette, 121 Nev. at 854, 124 P.3d at 542, noting the comparison between NRS 40.6452's instruction regarding common constructional defects, permitting claimants to "opt in" to a notice by requesting an inspection of the alleged defect, with NRCP 23(c)'s terms allowing a putative class member to "opt out" of a class action.

[38]Shuette, 121 Nev. at 854, 124 P.3d at 542, *quoting* Maguire v. Sandy Mac, Inc., 145 F.R.D. 50, 53 (D.C.N.J. 1992).

[39]Shuette, 121 Nev. at 854, 124 P.3d at 542.

[40]City of San Jose, 525 P.2d at 711.

classification system that would effectively defeat the purpose of the class action altogether.[41] Where specific characteristics of different land parcels are concerned, "these uniqueness factors
Where specific characteristics of different land parcels are concerned, "these uniqueness factors
weigh heavily in favor of requiring independent litigation of the liability to each parcel and its owner."[42]

23. Even when the uniqueness of real property is not substantially implicated, constructional defect cases relating to several different properties are often complex, involving allegations between numerous primary and third parties concerning different levels or types of property damages. In many instances, these types of cases present issues of causation, liability defenses, and damages that cannot be determined or presumed through the use of generalized proof, but rather require each party to individually substantiate his claims.[43] In addition to individualized issues of fault, any recovery in such cases often "implicate[s] myriad 'house specific' issues, including...the type of repair needed on each house, local building code requirements, the costs of materials needed for the repairs, and labor rates."[44]

24. When constructional defect issues such as causation and impact are widely disparate and cannot be established by generalized proof, individual trials on those issues are necessary. Although the need for individualized proof regarding damage determinations such as when they cannot be made by "mathematical or formula computations," generally will not defeat class action certification, it nevertheless may make proceeding with a class action unmanageable.[45] Indeed, "if

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[41] *Id.*

[42] *Id.*

[43] Muise v. GPU, Inc., 851 A.2d 799, 813-823 (N.J.Super.Ct.App.Div. 2004)(discussing and distinguishing when class actions might be appropriate, despite the need for individualized proof, such as when there exist predominating common questions of liability and "the fact of damage."); *also see* Hicks v. Kaufman & Broad Home Corp., 107 Cal.Rptr.2d 761, 764, 773 (Ct.App. 2001)(recognizing that "each class member would have to come forward and prove specific damage to [his] home" and the cause of that damage).

[44] In Re: Stucco Litigation, 175 F.R.D. 210, 215 (E.D.N.C. 1997)(analyzing a request to certify a nationwide class of homeowners).

[45] State of Alabama v. Blue Bird Body Co., Inc., 573 F.2d 309, 329 (5th Cir. 1978); *also see* Johnson, 89 Nev. at 473-474, 515 P.2d at 72-73.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

the effect of class certification is to bring in thousands of possible claimants whose presence will, in actuality, require a multitude of mini-trials (a procedure which will be tremendously time consuming
actuality, require a multitude of mini-trials (a procedure which will be tremendously time consuming
and costly), then the justification for class certification is absent."[46] For this reason, and as the high court in Shuette noted, 121 Nev. at 856, 124 P.3d at 543, courts in other jurisdictions seldom are able to conclude common questions predominate over individual issues, and that any remaining individual questions would be manageable. They consistently have refused to certify class actions premises on constructional defects in single-family homes.

25. Such statements are not to suggest, however, class action suits involving NRS Chapter 40 never are appropriate. Class action treatment may be proper under NRCP 23 if the constructional defect case or issue involves a singular defect that predominates over any other problems which remain minimal.

26. In this case, this Court concludes Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION who urges the Court, by virtue of the assignment of 194 units' owners' claims, to adjudge it has standing to represent those homeowners with respect to all constructional defect claims found within their units, has not met the prerequisites set forth in NRCP 23(a) and (b). *First,* Plaintiff has not adequately demonstrated to this Court the "commonality" element set forth in NRCP 23(a)(2) is met. That is, it has not adequately demonstrated an issue of law or fact exists that inheres in the complaints of all the 194 units' owners. Instead, the Association identifies a myriad of vague complaints in Paragraph 16 of the Complaint, which include, but are not limited to structural, fire safety, waterproofing defects, and deficiencies in the civil engineering/landscaping, roofing, stucco and drainage, architectural, mechanical, plumbing, HVAC, acoustical, electrical, and those relating to the operation of windows and sliding doors. *Second,* given the myriad of constructional defects alleged, it is also difficult to perceive whether they are

[46] *Id.*, 573 F.2d at 328.

typical of those found within the 194 assigned-claims' homes. Even Plaintiff has admitted it has not visually inspected or destructively tested all 342, or even the 194 "assigned" units within the

visually inspected or destructively tested all 342, or even the 194 "assigned" units within the

development.

27. As Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION cannot satisfy the ***commonality*** and ***typicality*** requirements of NRCP 23(a), its claims also fail to satisfy the more demanding ***predominance*** prong of NRCP 23(b)(3). Plaintiff has not shown the importance of common questions predominate over the relevance of issues peculiar to the individual 194 members. As noted by the high court in Shuette, 121 Nev. at 858, 124 P.3d at 545, a shared experience alone does not justify a class action.[47]

28. In addition, Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION has not met its burden of showing a class action is the ***superior*** method for adjudicating claims of the purported class, i.e. the 194 units' owners, the second prong of NRCP 23(b)(3). It has not shown to this Court's satisfaction that class certification would promote the interests of "efficiency, consistency, and ensuring that class members actually obtain relief."[48] It has not shown class certification would prevent identical issues from being "litigated over and over[,] thus avoid[ing] duplicative proceedings and inconsistent results."[49] If anything, Plaintiff's inability to obtain assignments from the other 148 units' owners gives some indication additional litigation may occur *even if* this Court determined class action, concerning the assigned claims, was appropriate. Lastly, given the damages that are recoverable under NRS40.655, it is difficult to perceive all, or most of 194 units' owners are either unable or unwilling to individually litigate their claims either for financial reasons or for fear of repercussion.[50]

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[47] *Citing* Amchem Products, Inc., 521 U.S. at 623-624.
[48] Ingram, 200 F.R.D. at 701.
[49] Shuette, 121 Nev. at 852, 124 P.3d at 540-541, *quoting* Ingram, 200 F.R.D. at 701.
[50] *Id.*

29. Notwithstanding the aforementioned, the certification of a class would deprive Defendant D.R. HORTON, INC. of "reasonably detailed" notice and then the opportunity to inspect
Defendant D.R. HORTON, INC. of "reasonably detailed" notice and then the opportunity to inspect
and repair the defects, as required under NRS Chapter 40. Plaintiff has not sustained its burden of showing the property damage suffered by each of the 194 individual homeowners is the same. Use of the limited extrapolation to each home is unfair to both Defendant and any homeowner who suffered harm that may be additional or different than that incurred by his neighbors. If there is varying property damage caused by the units' differing deficiencies, the damage calculation would not fit into a simple equation, but rather, it would require additional and separate litigation.

30. Further, if Defendant asserts a "mitigation of damages" defense,[51] such could create additional questions requiring individualized proof. By its nature, mitigation issues exist when the wrongdoer attempts to minimize damages owed by showing the harmed person failed to take reasonable care to avoid incurring additional damages. In this case, each of the 194 units' owners may have acted differently and mitigated damages more or less than other units' owners.

31. In short, for the reasons stated above, this Court declines to certify the claims of 194 units' owners as a class under NRCP 23, and thus, concludes Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION does not have standing to pursue claims arising from constructional defects located within the interiors of the 194 individual units, irrespective of the assignments of the causes of action.

Plaintiff's Standing To Assert Claims For Constructional Defects Within Building Envelopes

32. By the express language set forth in NRS 116.3102(1)(d), a homeowners' association, such as Plaintiff, may institute litigation on behalf of itself or two or more units' owners on matters affecting the common-interest community. There is no doubt constructional defects within or upon

[51]Notably, although this case is now over three and one-half (3 ½) years old, Defendant D.R. HORTON, INC. has not filed an Answer, or asserted affirmative defenses, as yet.

the units' "building envelopes" affect the common-interest community, and thus, this Court concludes Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION
concludes Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION
has standing to sue on behalf of two or more of its members for constructional defects which are limited to "the exterior of the building, the roof, the stucco, the balconies and decks, the exterior doors and the windows." In so holding, this Court notes claims made by Plaintiff for constructional defects to the building exteriors, or "envelope" are different than those addressed in D.R. Horton, Inc., 125 Nev. ____, 215 P.3d 697, whereby no class action analysis under NRCP 23 need be undertaken with respect to such causes of action.

33. In D.R. Horton, Inc., 125 Nev. ___, 215 P.3d 697, the Nevada Supreme Court was petitioned for extraordinary writ relief, and asked to resolve whether a homeowner's association had standing to pursue constructional defect claims on behalf of its members with respect to alleged defects *within* or *inside* individual units located within a common-interest community. Because the provisions of NRS Chapter 116, among other sources, demonstrated a common-interest community included individual units, the high court concluded that, under NRS 116.3102(1)(d), a homeowner's association had standing to file a representative action on behalf of its members for constructional defects within the individual units of the common-interest community. However, because such actions are filed by a homeowners' association in a representative capacity for individual units, the Nevada Supreme Court held the claims must be analyzed according to class action principles set forth in NRCP 23 and Shuette, 121 Nev. 837, 854-857, 124 P.3d 530, 542-544.

34. Here, as noted above, this Court concluded Plaintiff HIGH NOON AT ARLIINGTON RANCH HOMEOWNERS ASSOCIATION did not have standing to represent the 194 units' owners with respect to the sundry of individualized claims for constructional defects within the interiors of their units. However, in this Court's view, claims relating to constructional defects located upon or within the buildings' envelopes are different, and affect every member of the

common-interest community. Such is true even where, as in this case, units' owners typically are responsible for maintaining their homes' exteriors and to repair any defects. Indeed, members of the

responsible for maintaining their homes' exteriors and to repair any defects. Indeed, members of the

Association have a justifiable expectation that maintenance and repairs to the 114 triplex building exteriors will be consistent, and not a myriad of piecework upkeep to each structure, or portion thereof.

35. To conclude a homeowner's association must adhere and meet all the prerequisites of NRCP 23 before it may litigate on behalf of unit owners on matters affecting the common-interest community, would be contrary to the legislative intention set forth in NRS 116.3102(1)(d). Indeed, the Nevada Legislature clearly set forth within this statute the homeowner's association may institute, defend or intervene in litigation in its own name on behalf of a minimum of *two* units' owners. "Two," however, is a number or figure that never would meet the "numerosity" requirement of NRCP 23. *See* Cummings, 111 Nev. at 643, 896 P.2d at 1140 (concluding a class of three or four plaintiffs is insufficiently numerous to justify certification of a class action). Thus, requiring a homeowner's association to meet all the prerequisites of NRCP 23 before it can litigate, on behalf of its members, constructional defects affecting the common-interest community, such as those upon or within exterior walls, wall openings and roofs, would nullify NRS 116.3102(1)(d).

36. With the aforementioned being said, this Court finds fire resistive or other systems, such as plumbing and electrical, that may be contained within the buildings' walls are interior in nature, or located within the individual unit, and not elements necessarily common to the entire community. Thus, this Court concludes the Association must meet the requirements of NRCP 23 in demonstrating it has standing to represent its members with respect to claims relating to constructional defects to fire resistive, plumbing and electrical systems.

Accordingly, based upon the foregoing,

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SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

IT IS HEREBY ORDERED, ADJUDGED AND DECREED Plaintiff HIGH NOON AT ARLINGTON HOMEOWNERS ASSOCIATION'S Motion for Declaratory Relief Re: Standing ARLINGTON HOMEOWNERS ASSOCIATION'S Motion for Declaratory Relief Re: Standing Pursuant To Assignment and Pursuant to NRS 116.3102(1)(d) filed September 30, 2010 is granted in part, denied in part, as set forth above and below;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED Plaintiff HIGH NOON AT ARLINGTON HOMEOWNERS ASSOCIATION has no standing to assert all constructional defect claims in the 194 units for which Plaintiff has procured an assignment of rights from the units' owners. *See* NRCP 23 (a) and (b).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED Plaintiff HIGH NOON AT ARLINGTON HOMEOWNERS ASSOCIATION may "institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community, including, as set forth in this case, constructional defects that may affect the 114 triplex "building envelopes," or exterior walls, wall openings (such as windows and doors) and roofs. *See* NRS 116.3102(1)(d). Such constructional defect claims do not include those affecting the units' owners' fire resistive, plumbing or electrical systems that may be located within the interior or exterior walls, whereby Plaintiff has no standing to assert those causes of actions in a representative capacity.

DATED this 25th day of January 2011.

SUSAN H. JOHNSON, DISTRICT COURT JUDGE

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

EXHIBIT "11"

KOELLER | NEBEKER | CARLSON | HALUCK LLP
300 South Fourth Street, Suite 500
Las Vegas, NV 89101

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION, Plaintiff, vs. D R HORTON, INC., Defendant.	CASE NO. A-542616 DEPT. XXII

BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE

NOVEMBER 10, 2010

RECORDER'S TRANSCRIPT OF HEARING RE: PLAINTIFF'S MOTION FOR DECLARATORY RELIEF RE: STANDING PURSUANT TO ASSIGNMENT AND PURSUANT TO NRS 116.3102(1)(d)

APPEARANCES:

For the Plaintiff: PAUL P. TERRY, ESQ.

For the Defendant: JOEL D. ODOU, ESQ.
THOMAS E. TROJAN, ESQ
DAVID JENNINGS, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

WEDNEDAY, NOVEMBER 10, 2010 AT 9:44:35 A.M.

THE COURT: Okay. Let's go ahead and start with High Noon at Arlington Ranch Homeowners Association versus D R Horton, case number 07-A-542616.

MR. TERRY: Good morning, Your Honor. Paul Terry appearing on behalf of the Plaintiffs.

MR. ODOU: Good morning, Your Honor. We we're sitting in the cheap seats. Joel Odou and Tom Trojan on behalf of D R Horton, and David Jennings from D R Horton is with us.

MR. JENNINGS: Good morning.

THE COURT: Okay. And, counsel, I have gone through your paperwork, I understand the issues. And have you all had a chance to review my decision in -- oh gosh, it was the Henderson one -- the Mountain --

MR. TERRY: View of Black --

THE COURT: -- well, Black Mountain --

MR. TERRY: -- View of Black Mountain.

THE COURT: View of Black Mountain case.

MR. TERRY: I'm very familiar with it, Your Honor.

MR. ODOU: We've reviewed it.

THE COURT: Okay. All right. With that said, I am prepared to hear argument.

MR. TERRY: Well, Your Honor, since I know that you read the papers I'll be brief and then respond to any issues that happen to rise.

THE COURT: I do have a question. You indicated that the Homeowners Association wants to -- they've been assigned certain claims I guess by certain

homeowners --

MR. TERRY: Correct.

THE COURT: -- but don't they have different issues dealing with respect to defects in their units? I mean, I can understand your position with respect to possibly a joinder action, but I don't know that -- I mean, have you satisfied the class allegations with respect to the assignments with respect to units?

MR. TERRY: I'm not aware of any nor did I see any in any of the papers of a requirement of satisfying class action allegations where there is in fact an assignment.

THE COURT: Well, I know but we'd have to treat it as a joinder as opposed to a class. Would you agree?

MR. TERRY: Absolutely.

THE COURT: Okay.

MR. TERRY: No question about it, it would be --

THE COURT: all right.

MR. TERRY: -- it would be a joinder case; we would have to treat it as such. That is correct.

THE COURT: Okay. I'm listening.

MR. TERRY: All right. So, what -- the gist of our motion is that there are three separate and distinct basis for a jurisdiction that the Association is asserting. The first as the Court already noted, is that with respect to an assignment the Association steps into the shoes of those individual homeowners and therefore has the right for standing purposes -- which is what we're here for today, for standing purposes to assert any claims whether they're inside or outside of those units because they step into the shoes of the homeowner so they can make the same

claim that the homeowner would make. So that applies to right now approximately 199 of the 342 units.

The Association has authority to represent what we believe are claims similar to what would exist under 31.02(1) (d), but really kind of a separate and independent basis and that because the Association has the rights of at least one homeowner and 107 of the buildings then it has the right to bring any claims that would impact that owner and for the same reasons frankly as exists in -- under 3102 and your decision in View of Black Mountain. Because the Association steps into the shoes of the homeowner the homeowner would have under traditional principles of proximate cause, nothing fancy, would have a right to bring the claim with respect to any defect in their building which impacted or affected their unit whether or not it was physically located within their unit. And that -- again, that's a -- that's a simple proximate cause analysis. So that would -- to take sort of a -- one example, if there's a broken countertop in a neighboring unit clearly that doesn't affect another units -- it doesn't affect the other units. However, if there's a structural defect some place in the building or there's a defect in the fire resistive systems somewhere else in the building that does affect all the units in the building and therefore under, again, basic principles of proximate cause that individual owner would have a right to bring the claim whether or not it physically existed within the confines of their unit or existed some place else in the building because it affects their unit under proximate cause.

So the second basis for the Association's standing which would apply to the 107 buildings in which the Association has at least one unit owner who has assigned the claim would apply to the building envelope, it would apply to the structural system, and would apply to the fire resistive system but would not apply to

any of the individual defects that were within the neighboring units because they didn't affect that unit and therefore proximate cause wouldn't allow them to bring that claim. So that's the second basis. Then we have a third basis for jurisdiction -- a little bit of belts and suspenders here, a third basis and that's the one that's the subject of this Court's ruling in the View of Black Mountain and that's that under 116.3102.1(d) the Association has standing to bring claims that affect common property in other words property that's shared with other owners in the same building; in this case in View of Black Mountain they were duplexes, in this case it's even clearer because they're triplexes. And again contrary to the assertion in D R Horton's opposing papers, these are not separate and distinct buildings that are stuck together. It's even more I think compelling than in view of Black Mountain because in fact the units are stacked. And we've put in the affidavit of Tom Sanders who's the architect we've retained when the assertion was made in the opposing papers. In fact they were complete, separate and distinct buildings that were -- units that were stuck together. That's in fact architecturally incorrect they're not and which is why we had Mr. Sanders submit an affidavit to the Court.

The one difference really between the assertions that we're making in this case and the findings of this Court in View Black Mountain is that we have included in the Association's standing -- or in our request for declaration of standing the structural systems and the fire resistive systems. And that is based on the -- on the notion that even though they are inside the building they're not inside the units, those are the dividing lines between the units. And again for the same reason as under proximate causation, if there's a defect in the firewall or what we found missing firewalls in one unit and it's in the same building it necessarily affects every other unit in the building. The same thing is true with respect to structural defects. If

there's a structural defect somewhere in the building it affects everybody in that building (1). And (2) you have a very practical problem which is that if there's a structural defect in one part of the building and my unit is in another part of the building how do I get access to get in there and do those repairs? So, as a practical matter the Association is in the best position to do that and in fact that's why we assert 3102.1(d) those claims are suitable for handling by the Association. Of course if there's any defect that's within a unit that doesn't affect the other units then clearly the Association doesn't have standing under either proximate causation or under 3102(d).

So where we differ, or if you will, expand upon this Court's ruling in View of Black Mountain is that we've included the structural systems and the fire resistive systems because we believe they directly impact all the units in the building. So, that's the basis for the Association's request for a declaration of standing.

THE COURT: Thank you. Mr. Odou?

MR. ODOU: Good morning, Your Honor. I have a prop. If you'll bear with me I'd like to prop it up. We're gonna do a little Wheel of Fortune, and Mr. Trojan is gonna help me out although we only have one letter to turn.

THE COURT: You might win with just one letter.

MR. ODOU: Or at least be able to guess it.

MR. TERRY: Unless this is a -- one of the exhibits, I haven't seen this before so --

MR. ODOU: It was one of the exhibits.

THE COURT: Do you want to look at it real quick before I see it?

MR. TERRY: Well --

THE COURT: Why don't you show it to counsel.

MR. ODOU: It was attached to our pleadings.

MR. TERRY: All right. Then I have no objection.

THE COURT: Okay.

MR. ODOU: Thank you, sir.

You know, Your Honor, this case has had a very long and tortured history beginning in 2007 with a complaint rather than a Chapter 40 notice, that has lead to D R Horton fighting for its rights to see the units. D R Horton has been fighting for those rights now for three years just to get Chapter 40 started. What I've placed before you is a blow up of an exhibit attached to our pleadings which is the 189 units we've never seen. We've been fighting for three years to find out what the claims are in those units.

So, just taking a step back for a moment and discussing -- where we began our discussion today or where the Court's began its discussion today about Black Mountain. This case is significantly different from Black Mountain. This case is significantly identical to two cases this Court's already decided, Dorrell Square and Court at Aliante both involving the same cc and r's, both involving virtually the identical same claims. We heard a minute ago counsel for the Plaintiff say if it doesn't affect two or more units and we're not making a claim for it. That's not true at all, Your Honor, in looking at their defect list which is attached to their moving papers they have sliding glass door claims. In their sliding glass door claims they say ninety-one percent of the units are affected. You don't need to go into an adjoining unit to fix a sliding glass door, that doesn't affect the common interest. Moreover, the person who is in the best position to know of their sliding glass door to leak is all of those people with a red dot. Any one of those people could have

picked up the phone and called D R Horton and said my sliding glass door leaked. That didn't happen here. Instead a Plaintiff attorney went out, signed up those people and said, hey, you want to sue D R Horton? They did. Then we said, okay, show us where the sliding glass door leaks. Oh no, that's too burdensome, we can't do that for you, we're not going to let you into those 189 units.

Your Honor, if you look at the claims for the windows they say one hundred percent of the windows leak. Again, 189 units we've never been into. They say, well, that doesn't matter because we've got assignments. Of the assignments that they have -- they have 193 by the way not 199 or -- whatever they had, it's 193 we counted. Of those assignments 72 of those homeowner never let us in to see what was going on in their unit. Of those assignments one of those homeowners called up D R Horton just a few weeks ago and said, hey, I've got a problem with an electrical defect can you come fix it? The homeowners don't know what those assignments say. Why do the homeowners not know what those assignments say? Because they're very deceptive. If you look at the exact language of the assignment it says they're assigning all claims. Well, that sounds fine but then they say --

THE COURT: What page are we on?

MR. ODOU: This is the big stack of exhibits from the Plaintiff. They have attached 199 or 196 --

THE COURT: Okay.

MR. ODOU: -- assignments.

THE COURT: And they all say --

MR. ODOU: They're all --

THE COURT: -- about the same --

MR. ODOU: -- the same thing. If you take any one of those they're all the

same. Look at paragraph G. "It is understood nothing in this assignment shall construe to obligate the Association in any way to undertake or pay for any particular repair to any individual unit". So then you recover the money supposedly for these units that no one is allowed to see but they're not obligated to fix them. They told the homeowners that. Well, what else did they tell the homeowners? Well, they told the homeowners, hey, sign this piece of paper because only those homeowners who sign this piece of paper can share in the recovery. Well, if you go to a homeowner and say, hey, you want to share in the recovery, sign this little piece of paper. Absolutely they're gonna sign.

So, D R Horton challenges the validity of those assignments just as a very threshold issue, we challenge what was been assigned. We also note that if this is an assignment and this is a joinder case now we again as we've had in this entire case have the cart before the horse, where's Chapter 40 been for these assignments? Where have these homeowners been about providing us notice? What window in your home leaks? What sliding glass door in your home leaks? What other issues do you have in your home that you want us to fix? We don't have that. What we have is a defect list on an extrapolated basis that says one hundred percent of the windows leak and we're not gonna let you see those units. That's what's happened in this case in the last three years.

We've brought two motions before this Court on motions to compel to get into these units. One of those motions was rendered moot because we had the summary judgment, another one of those motions was also rendered moot because of that, and the third motion that we filed on this issue -- I mean, I know we're beating a dead horse here, was to just get access to do the common areas which we've fought for. Then they tell the homeowners in their assignment, ahh well, D R

Horton doesn't want to do repairs. Really? We've been fighting for three years to just get out there to look at the units. These assignments are very, very deceptive, these assignments don't actually reflect what's happened which is the Homeowners Association has kept us away.

And another thing about these assignments, no where in them do they tell the homeowners gee, if you don't prevail in this case what happens. Or better yet, gee, did you know that Nancy Quon and company racked up a million dollars on this case already? You're joining this case but you owe Nancy Quon a 40 percent contingency fee or $350 and hour whichever is greater for her work on this case, you owe Nancy Quon expert fees and costs. And they say, oh well, you know, these expert fees and costs were incurred before these people assigned. Oh really? You're now using these same expert reports to justify moving forward in this case. There's a quantum meruit argument at a minimum that Nancy Quon and company can make a claim on this case. Why is all this relevant? Well, the same attorneys who are representing the Association against Nancy Quon are now representing the Homeowners Association in this case. There's a clear conflict of interest that they don't then tell their homeowners who are joining this case oh by the way, we're representing your Homeowners Association and it's your Homeowners Association, our client's best interest, that you join this case. It's not necessarily in your best interest; you just bought yourself a million dollars in debt. It's absolutely ridiculous this case has been so backwards for so long and we've been fighting for our right to just even see the units let alone do repairs.

Turning to the very issues between Black Mountain, Arlington, Aliante and Dorrell Square, all of those issues were raised on appeal before the Nevada Supreme Court. Those issues were fully briefed. The Nevada Supreme Court didn't

carve out an exception in *First Light II* and said, okay, we're gonna take anything on the exterior and maybe you have standing for that but you don't have to do a Rule 23 analysis you just go forward. Anything on the interior then you do a Rule 23 analysis. That's not what the Supreme Court did. When the Supreme remanded this case in this Court it said. "In accordance with the analysis set forth in the *D R Horton/First Light II*, we direct the District Court to review the claims asserted by High Noon to determine whether or not those claims conform to class action principles". That's what we are supposed to be doing, that's what we're supposed to have done a year ago in this case. Instead for the last year the Plaintiffs have been dragging their feet, going door to door handing people a piece of paper and say, hey, you want to share in the recovery sign right here. And that's what's gotten us here today.

This case has a trial date, D R Horton hasn't even answered or filed a third party complaint because we have no way of knowing (1) who the Plaintiffs are (2) what the claims are and (3) who are the subcontractors implicated. We keep sending the subcontractors a notice and they're telling us, well, what are we supposed to do with it? We can't go do repairs; no one will let us out there to do repairs.

The cart has been before the horse too long. What D R Horton is asking this Court to do is to start at the beginning and look at Chapter 40. Before a claimant commences a claim or amends a complaint to add a claim for constructional defect there are certain requirements that they have to conform to, is to provide us a notice, okay? The notice that we've got is an extrapolated notice, it doesn't tell me where the defects are in each one of those red dots that won't let me see them. We need an accurate notice to tell us where the defects are. That's step

one. Step two, they either need to let us into those units or dismiss those units from the case.

Now this Court didn't have an opportunity to address that because the prior motion became moot when this thing went up on appeal, so the Court has an opportunity to address that now. They're not letting us into the units, they can't make a claim. It's no different than a personal injury case where the Plaintiff doesn't want to provide their medical records and they don't want to tell you what part of their body is injured. It's the exact same thing. We say just trust us, just pay us. That doesn't work in Chapter 40 and it shouldn't work here.

Lastly, the whole issue about, you know, let's take Black Mountain and segregate it out from Dorrell Square and Courts at Aliante, it doesn't make any sense it's the exact same cc and r's, it's the exact same claims. The Plaintiff's experts are virtually the same, they can't take what they've given us which says one hundred percent of the windows leak we're not gonna let you see it oh, and by the way, this is a class action case now and shift the burden of proof to the Defendants to now prove they're innocent. That's exactly what they're asking this Court to do. They're saying find this case as a class action and we'll deal with it later. Well, find the Defendants guilty and we'll deal with it later, they can prove they're innocent, that's not the way Chapter 40 works, that's not the way the law works and that's not the way this case should work.

THE COURT: Mr. Terry?

MR. TERRY: Yes, Your Honor. A couple of things. (1) This is not a motion requesting this Court to declare the adequacy of the Chapter 40 notice or whether or not the Chapter 40 notice -- Chapter 40 process has been concluded. This Court issued a stay, that stay remains in effect. This is a motion for a declaration of

standing. And I would point out to the Court as the Court is probably aware D R Horton argued extensively in prior cases that a resolution of the standing issue should be achieved prior to the conclusion of the Chapter 40 process.

So, we're here asking for a declaration of standing and it's a little odd that in other cases D R Horton has stood up and said, well, we want to resolve the standing before we move forward with Chapter 40 but now it seems like they're saying we want to resolve Chapter 40 before we move forward with standing. Really that's not before the Court. What's before the Court it's fairly simple and straight forward and that is what does the Association have standing for? And we've asked for a declaration of that. Any issues with respect to the Chapter 40 notice and whether or not they've seen enough units or not enough units, those are issues to be resolved, you know, on a different day with a different motion presumably in front of a special master as the Supreme Court directed in *First Light I* the standards for what's an adequate Chapter 40 notice. All of those issues were addressed in *First Light I* and I think the conclusion of the Court was we're gonna defer to the special master to get them access. And so, if they need access to more units in order make a decision that's really a question for another day.

The only issue before the Court today is what is the standing of the Association. The only really substantive argument that I heard was that somehow the assignments are invalid. Now, *First Light II* actually addressed an issue with respect to validity of the Association standing and at page 701 it made clear a builder has the right to challenge the adequacy of the Association's standing. A builder does not have authority to challenge the internal method by which the Association achieved its standing. That's only for individual owners of the Association to raise. Now, if you really want to I'd be happy to address these

different issues because I think they're all red herrings.

THE COURT: Well, let me ask you this. I am concerned -- I mean, I've got a trial date in July and what I'm hearing from the defense is that we haven't even completed the Chapter 40 process yet. I mean, has that been accomplished in your view?

MR. TERRY: In my view yes. Yes. There's a pending issue which frankly I don't think has been resolved by the courts yet and that is that does a builder or a subcontractor for that matter have a right to inspect every single unit in a common interest development when there's been notice for the purpose of frankly, from our view, conducting discovery or do they have a right to a sufficient number of those units that they can form an opinion as to whether or not defects exist and therefore whether or not they're going to propose some kind of a repair?

THE COURT: Well, under Chapter 40 if the developer elects can't they see every unit?

MR. TERRY: In a common interest development I don't think that's correct, no.

THE COURT: Because I don't know that -- it's my understanding that they did. That -- that's what -- the concern that I have. I mean, if -- this is what my thinking is. If I were inclined to say, yeah, the Homeowners Association has standing with respect to the envelope, the building envelope, they can represent homeowners on a joinder basis with respect to assignments whether they're good or not good depending on whose view you're looking at. I am concerned about if they want to look at every unit with respect to the interior or with respect to the structural as you're trying to say, I think they've got a right to do that. I mean, and looking at --

MR. TERRY: But, Your Honor, if I may?

THE COURT: Yes. Please.

MR. TERRY: That's not really the issue before the Court today. And I'd be happy to brief that carefully and we can -- and get a ruling from the Court and we can proceed on that basis but that's not what's before this Court right now, all that's before this Court right now is the issue of standing.

THE COURT: Well, I'm just concerned that this is an '07 case and we don't even have Chapter 40 completed yet. And I know that these issues are not briefed, but I am concerned about that.

MR. TERRY: I understand.

THE COURT: I mean, I don't know that I agree with you, Mr. Terry, that if -- they are only allowed to see so many of these units. That if they want to see every unit they're entitled to see every unit for which you're making a claim, whether it's the homeowners making a claim or whether the HOA is making the claim on their behalf. That's a concern that I have. I'm concerned about whether or not we're going to be disturbing this trial date and this is an '07 case.

Okay. I'm gonna let Mr. Terry finish, but your response, Mr. Odou?

MR. ODOU: Your Honor, the standing issue is incredibly critical. The standing issue and the reason why we haven't seen these units is because the Association isn't the proper vehicle to pursue this claim. The Association made a claim for the whole place; they couldn't get us into those 189 units. That's where the standing issue shines brightly. It's not a red herring at all. That's where Chapter 40 shines brightly. That's not a red herring either. That's why the Association is not the proper Plaintiff if there are going to be claims for those 189 red dots out there. That's where the class action analysis needs to happen in this case and that's where the class action analysis fails in this case.

THE COURT: Well, I don't think we're at a class action, I think we're at a joinder situation is what I'm understanding with respect to the alleged defects within the interiors of the units.

MR. ODOU: But they've asked for it for both. They've asked for a class action standing to pursue all of those windows that we've not been allowed to see. That's part of Bruce Mayfield's coined building envelope yet we're not allowed to see those. And then if we save this for a later date what's gonna happen is the Association is going to go gee, we're sorry, but these people didn't sign assignments therefore we can't compel them to let you in but we're still gonna take the information and do an extrapolation and stick you with that extrapolation at trial and say, well, we inspected a hundred windows and ninety-nine of them leaked. Well, yeah, you may have but you only got into ten units or twenty units because the other unit owners said no way and the Court may say, well, in that case we'll just not let them recover for those other units. Well, now we've got an extreme problem because now we've got the problem of all these homeowners who think, okay, the Association is taking care of this. Wait, they're not taking care of this? Well, they're going to repair it. Well, they're saying they're not going to repair it. That's why this case is so upside down, that's why this motion should be denied. Standing should be denied for the Homeowners Association. It's their burden to come forward and show that they can adequately represent all of the homeowners on the building envelope. They can't, the proof is right there in nice red dots everywhere. That's why the motion should be denied.

As far as the trial and the -- we've been crowing about that problem for a while now which is we don't know who the plaintiffs are, we don't know what the claims are, we sure as heck can't figure out who the third party defendants are.

There's no way this case can go to trial next year.

THE COURT: These sliding glass windows are they on the balcony or --

MR. ODOU: The sliding glass doors are -- these are triplexes, so it's the first floor sliding glass doors. They can't affect anybody else's unit. If you've got a leak in your sliding glass door it's leaking into your unit.

THE COURT: Okay. So that only affects the first floor not the second or third?

MR. ODU: In many cases.

THE COURT: Okay. Well if --

MR. ODOU: And it's the same with a lot of the other claims too. If -- the window claims, they don't leak from one window -- one unit into another. If they do they should put that evidence before the Court. There's no evidence of that. Yeah, they're not stacked on top of each other these are triplexes. So, one unit owner owns a first floor and a second floor. These are triplexes.

THE COURT: Okay. Now with respect to the assignment of the interior, if you're not allowed to get into certain units -- let's say that I were to grant the HOA's standing with respect to these assignments with respect to the interiors but you're not able to get into let's say fifty percent of the units --

MR. ODOU: That's what it's been.

THE COURT: -- because -- whatever it is, then wouldn't it be right for you to file a motion to dismiss with respect to that fifty percent because if they don't get cooperation then you -- I mean, in my view I'm looking at Chapter -- Chapter 40, I don't know that I agree with Mr. Terry that you only get to get into certain amount of units. If you want to go into all of them, I think you can go into all of them. And if there's no cooperation with respect to the fifty percent -- and I'm just throwing that

out there I don't know what the percentage is, then you got a motion to dismiss. They can represent them with respect to those homeowners.

MR. ODOU: We did exactly that in May of 2008, we brought before this Court that exact motion and not only --

THE COURT: And I denied it?

MR. ODOU: -- was it -- no, it was moot at that point because summary judgment had been granted but we brought that exact same motion. Moreover, that really highlights the problem that they did to us back in 2008. They'd scheduled an inspection of Mr. Smith's unit at 8:00 a.m. and inspected Mr. Jones unit at 5:00 p.m. And, oh by the way, stick around all day because we may be able to let you into some other units. They stuck it to us for thirty days out there at an exorbitant cost making our experts wait around day after day after day. That's all documented in our May, 2008 motion and it's one of the other reasons why this case has been so upside down for so long. It just highlights the fact that this Association is not the proper vehicle to be pursuing a representative claim in this case and it really underscores the fact that if a homeowner has an issue under Chapter 40 and what our legislature intended was for that homeowner to pick up the phone and call the developer. If the developer is unresponsive to ahead and file suit, but you don't file suit first and then figure it all out now three years later going on four.

This case has been upside down since the beginning then on top of that there's a million dollars in claims from these experts and other prior attorneys and none of these homeowners have any idea that they're getting into.

THE COURT: Well, that's a different issue I think then what we're talking about here. I mean, that gets into the validity of the assignments and so forth than --

MR. ODOU: If they're gonna do a joinder action and they want to put their

malpractice carrier on a risk for the fact they didn't advise these people of that, that's right, I don't have standing to crow about that. I do have standing to crow about the fact that none of these assignments ever issued a Chapter 40 notice, I do have standing to crow about the fact that 72 -- 71 of those assignments of those 193 refused to let me -- or let my clients rather and my client's subcontractors who are monitoring into their home.

THE COURT: Okay. Mr. Terry?

MR. TERRY: Yes. Oh boy, that's a lot of stuff -- a proverbial bucket thrown at the wall.

Again, I think the issues that are before this Court are pretty simple, does the Association have standing? We can -- at some point later on we can get down to, okay, if their -- if a portion of the case is based on joinder and they didn't get into a unit can they move to dismiss? And the answer is probably. I haven't really looked carefully at the law and how extrapolation might work or not work. But ultimately there is other ways of dealing with that, it doesn't really have anything to do with this -- the fundamental standing issue which is that if a homeowner is given standing to somebody else whether it's the Association or Joe Smith, you know, around town it really doesn't really make any difference, the law -- and we cited it in our brief, the law in Nevada is very clear you're allowed to assign a cause of action to somebody else.

Now, one of the issues that sort of sits around here and I think it's something of a red herring, and that's the issue of the -- for the procedural model that Quon, Bruce, Christensen used to use and that was because they had some notion that if they didn't file a law suit then a Chapter 40 notice might not protect their client's rights. Their standard practice was to file a law suit and then

immediately move for a stay and then go through the Chapter 40 process. And so when this Court talks about this being a 2007 case although technically that's correct, I think it's a bit of a misnomer because it just really had to do with how procedurally Quon, Bruce, Christensen handled their cases. It's not typical I think for really any of the other construction defect firms in town to be operating that way.

So, really what's going on as we're within the Chapter 40 process or the standard Chapter 40 process and we're at that particular point where you say okay we're asking for a declaration of standing, and that's really all that's going on here and it may be that a trial date has to be moved because of the fact we've been up and down to the Supreme Court and there's some unique aspects to these cases.

THE COURT: Well, you know, and I'm concerned too because unless the stay -- and I don't recall it saying that -- basically it says we're staying the Rule 41(e) tolling as well. I have to get you a trial date within five years of the filing. Of course there is the tolling of course whenever things went up to the Supreme Court which I probably need you to figure all that stuff out too, but I will tell you I do entertain as you well know motions to dismiss when Chapter 40 has not been adhered to. So, I get concerned about these things. And now I've gotta get you a trial date before 2012. You know, if -- of course I've got you a trial date right now in July and I'm concerned now because I'm hearing Chapter 40 still has not been taken care of.

Let me ask you this, Mr. Terry, if I were inclined to grant your motion with respect to the assignment of those -- of the interiors are you gonna be able to coordinate so that we're not having a situation where the developer goes out at 8:00 o'clock then he has to wait for the next unit at 5:00 and so forth, I mean -- because I think that the Chapter 40 process has gotta be adhered to.

MR. TERRY: I -- first off, Your Honor, again, I wasn't there --

THE COURT: I know.

MR. TERRY: -- when these events allegedly occurred.

THE COURT: You're the new kid on the block. I know.

MR. TERRY: And I would suggest with all due respect for everybody in the courtroom that just because a builder makes an allegation doesn't mean that the other side agrees with it or that the mere fact the builder made the allegation makes it correct regardless of how many times you repeat it.

So, the real question is will we cooperate with D R Horton irrespective of what may have happened between Quon, Bruce and D R Horton, I mean, I don't know, I wasn't there. I don't think we have a reputation in the community for trying to keep builders out of units. In fact, if they want -- we'll get them in there. Of the assigned claims it sounds like they've already been into more than half of them. As I understood he says there's 187 they haven't seen but of the assigned claims it's only 72 they haven't seen. So, they've already -- they've seen like almost 2/3 of the assigned claims already so it sounds like we only have like 72 or so that we need to get them into with respect to the assignments. So, that doesn't really seem like that's, you know, too great of burden.

And then, you know, then it really is incumbent upon us to come back to this Court and say okay we want a lifting of the stay. To the extent that there's issues with respect to gaining access, I think the Supreme Court, you know, indicated that the very accomplished special masters that we have available to us throughout the state are very good at issuing orders and providing directives to counsel as to what they need to do in order to satisfy compliance with Chapter 40. And again, I think we have a very good track record of doing that and we will do what we can to get them, you know, everything we can to get them in. And to the

extent that we can't then they clearly have a right to make a motion to have those claims dismissed and we'll deal with that issue when and if it arises.

THE COURT: Okay. This is what I'm going to do. I want to look at the issues with respect to the building envelope. I think I need to look at this issue a little bit more. With respect to the joinder action, I am going to allow the Homeowners Association to represent the homeowners that have assigned their claims, however, you're going to have to coordinate with the developer to get this Chapter 40 stuff taken care of with respect to the 72 or the half or whatever the number of units. And if you've got some uncooperative homeowners, you know, then it gets down to then are you going to be able to show, you know, prove your claim whether you're representing the homeowner or the HOA, and I would expect a motion to dismiss by the developer with respect to the uncooperative homeowners. You've gotta be able to bet a chance to look through those units if you exercise that right to do so.

So, I am gonna go ahead and grant the motion with respect to the joinder. And that is a joinder action, it is not a class and -- you know, until we determine whether or not it should be a class. I don't know if we've got that but that's not the basis of your motion. With respect to the structural -- you're talking about the interior walls like the firewalls and things -- I've gotta look at that a little bit more.

MR. TERRY: I understand.

THE COURT: And I am gonna look at the building envelope thing a little bit more so I'm taking that part under advisement.

MR. ODOU: Can I ask a couple of questions, Your Honor?

THE COURT: Sure.

MR. ODOU: Just real briefly. I assume the Court will look at the motion for

re-hearing that was filed in the companion cases because this is the building envelope --

THE COURT: Are you talking about the Dorrell Square and --

MR. ODOU: The building envelope issue --

THE COURT: -- I think --

MR. ODOU: -- was raised and it was Dorrell Square's motion for re-hearing. All the cases were grouped together and sent up to the Supreme Court and those issues were grouped together, sent up, the Court issued its ruling. The plaintiff's petitioned in Dorrell Square for a re-hearing arguing this very issue, the Supreme Court declined to hear that. Now, I know obviously read into that whatever you want but it's still --

THE COURT: Yeah, because -- it's been a while

MR. ODOU: -- it's an issue.

THE COURT: -- since I did the decisions on Dorrell Square and Courts at Aliante, but those are the only two that I had done actually evidentiary hearings on the adequacy of the extrapolated notice. And so what was cool about those two cases is that, I mean, all the defects were hashed out in those seven hour hearings or whatever they were, and from what I -- I went back and reviewed it and it wasn't just a building envelope case, it was -- they were looking at everything and I just went through the class action analysis. Of course the building envelope idea was not brought up in those cases so I saw that those were a little bit different, but I will be looking at the motions for re-hearing on those. But, I want to look at this one because it looks like these are very closely related --

MR. ODOU: And then --

THE COURT: -- in terms of issues.

MR. ODOU: They are, Your Honor. And then the second problem that we're gonna have is the notice that we originally got, the Chapter 40 notice from the Homeowners Association, it's not unit specific. There's no way for me to go into any of those units where they wouldn't let us in before and find out, okay, which one did you claim leaks. What they did is in their notice they said we inspected twenty units or whatever the numbers are. I don't -- well, I did have --

THE COURT: Well, they should be doing at least twenty percent I would think.

MR. ODOU: But my point is for us to now comply with Chapter 40 on a joinder action, just taking the joinder part of the case separately, we -- D R Horton believes that those homeowners have an obligation to do a proper Chapter 40 notice. Now, we could --

THE COURT: Well, wait a minute --

MR. ODOU: -- be back before you on that --

THE COURT: -- are they using the extrapolated notice? Then it gets down to whether or not that notice -- that extrapolated notice is adequate.

MR. ODOU: Exactly.

THE COURT: Are you --

MR. ODOU: So --

THE COURT: -- telling me we need a hearing on that?

MR. ODOU: We are going to. If we need to file a motion on that we certainly can, but the problem is gonna be that when you tell me, okay, my windows leak and you're joining this case I have a right and my client has a right to know, okay, which windows so we're not a wild goose chase, what are the claims that you're joining? What are the claims that you are making, you Mister Homeowner or you Miss

Homeowner are making against D R Horton and against the subcontractors? It's critical for the reason -- for the inspection, it's also critical for us to know that so we can put the correct subcontractors on notice.

When this case arose three years ago we put everybody on notice. They weren't happy to get that notice but that's the facts of life. Now it's a joinder action on behalf of these people who have signed assignments. That's fine but what am I -- who am I putting on notice for those things? Do I put on notice everybody again including the guy who was lucky enough to drive by the place? It just -- we have a Chapter 40 notice that's not going to work in the joinder part of the case is what I'm saying. So, I believe that the Court should instruct the homeowners that are joining the case to give a clear and adequate description as required by Chapter 40 what their claims are and then we can go forward.

THE COURT: Well, I think first of all we have to look at the extrapolated notice which was originally given on whether or not that is adequate because they can use an extrapolated --

MR. ODOU: Sure.

THE COURT: -- notice. So, are you telling me we need to schedule a hearing on the --

MR. ODOU: We --

THE COURT: -- adequacy?

MR. ODOU: -- absolutely will because the exact language of Chapter 40 says that you're supposed to describe the nature and extent of the defects within the home. This notice does not describe the nature and extent of the defects in any of these joinder homes.

THE COURT: When --

MR. ODOU: If you inspect Mrs. Jones unit and say there's a defect in Mrs. Jones unit that doesn't help us at all with Mrs. Smith's unit as to what defects if any she has. And there's where -- if it's a joinder action that's fine but it's gotta be a joinder action that complies with Chapter 40. Mrs. Smith has to comply with Chapter 40; she has to give us a list of her claims whatever --

THE COURT: But --

MR. ODOU: -- they are.

THE COURT: -- she can rely upon an extrapolated notice though. For example if -- let's say twenty percent of the units were reviewed and in one hundred percent of the cases or let's say eighty percent of the cases there was something wrong with, oh gosh, I -- let's just say that there was something wrong with the fixtures in the downstairs bathroom, well -- well, that gives enough notice in my view to the developer that you know what if it's in eighty percent of the cases you know that in eighty percent of the unit that maybe you might want to look there. That's up to you if you want to, if you don't want to that's up to you too. But, I mean, you've seen my orders with respect to the extrapolated notices I think on both --

MR. ODOU: We have, Your Honor, but what our point is is NRS 46.452(c) requires the claimant to describe in reasonable detail the cause of the defects if known, the nature and extent that is known of the damage or injury resulting from the defects and the location of the defect within each residence. We're saying --

THE COURT: And they can rely upon an extrapolated notice.

MR. ODOU: It doesn't help us to tell the subcontractor where to go look. It doesn't comply with the statute in D R Horton's view.

THE COURT: Okay. You're revisiting stuff we dealt with years ago, counsel. And I --

MR. ODOU: I'm really trying not to.

THE COURT: But if you're challenging the notice then what we can do is I can go ahead and set a day aside like on a Friday for us to discuss the adequacy of the extrapolated notice, we can do that. When would you be ready to do this?

MR. ODOU: Pretty much in two weeks with the exception of Thanksgiving. Three weeks.

THE COURT: Okay. Mr. Terry?

MR. ODOU: First week in December maybe.

THE COURT: I'm looking at --

MR. TERRY: Well, I mean, to the -- I'm just trying to think. To the extent that we're -- I mean, I have all the expert reports, I already have all the matrices showing exactly where the testing took place, etcetera. So, in that respect is this Court anticipating a full blown evidentiary hearing where I'm putting --

THE COURT: I did before. I mean, because they're challenging the sufficiency of the hearing -- I mean, of the notices and where they -- you know, and so forth. I will tell you --

MR. ODOU: Can we make a recommendation on that so we don't --

THE COURT: Pardon me?

MR. ODOU: Could I make a recommendation on that?

THE COURT: Sure.

MR. ODOU: Perhaps we could brief the issue, discuss amongst ourselves whether an evidentiary hearing is required --

THE COURT: That's perfect.

MR. ODOU: -- and then try and narrow the issues to whatever they are.

MR. TERRY: Yeah, I would --

THE COURT: That'd be fine.

MR. TERRY: -- I would say probably a submission by affidavit and maybe one witness on each side, you know --

THE COURT: That would be fine. Just to give you an FYI, it looks like if you're looking for a Friday afternoon -- now I do have trial so those are going to be intermixed and my secretary will probably kill me, but I do have the 10th and the 17th of December it looks like available and then I've got just about every Friday it looks like in January --

MR. TERRY: I could --

THE COURT: -- except for the 7th.

MR. ODOU: Counsel, would you prefer to brief those?

MR. TERRY: I could do December 17th, I couldn't do the 10th.

THE COURT: Okay. Why don't you get together and tell us what would be good for you and we will do our best to accommodate you. I mean, but I think --

MR. ODOU: Yeah, we can meet on that.

THE COURT: -- we better get this adequacy of this notice taken care of and get this and get this Chapter 40 stuff taken care of like asap because I don't like to disturb trial dates. And I'm a little concerned because I'm looking at the numbers of cases that the cd judges have to get set for trial and we've got a ton that were filed in 2008. Not as quite as many as 2007 but we -- I think we had 113 filed in 2007; in 2009 we had 110. We've got to get all these things set for trial. And then we've got the 2010 that we've got to get set for trial and we're dicking around with the 2007 and we're going to be abutting a five year rule problem. I've got concerns about that. So --

MR. TERRY: Your Honor, what we'll also do is we'll submit a brief on the five

year statute and hopefully it can be a joint brief but if not -- that sort of lays out what's happening in this case so we --

THE COURT: If you --

MR. TERRY: -- at least have that information.

THE COURT: If you both agree even to -- if there's an issue there and you both agree to extend it that's an issue. Although I don't like old cases but it is what is, but we've got to get it done right.

MR. ODOU: Yeah. We can't speak on behalf of the subcontractors is gonna be the problem. We could certainly accommodate the Plaintiffs and come to some understanding, but then the question is the subcontractors and the insurance carriers.

Just so I understand and just so we're all clear then, what we're gonna propose is that we will get with Plaintiff's counsel and come up with a briefing schedule as to the adequacy of the notice. And since we're the one's challenging the notice I'm presuming we would be the moving party, they will then oppose, we'll reply and then we will try and work with the Plaintiff's counsel as to whether or not an actual evidentiary hearing is going to happen.

THE COURT: And then figure out when you want to do it.

MR. ODOU: And then when we -- okay.

THE COURT: And let's see if we can't do it on a Friday.

MR. TERRY: Well, why don't -- why don't we reserve the 17th now just so that --

THE COURT: The 17th of December?

MR. TERRY: Yeah.

THE COURT: We can do that.

MR. ODOU: That's fine.

THE COURT: Is that good for you?

MR. ODOU: Yeah.

THE COURT: December 17th.

THE COURT CLERK: Is that at 8:30, Your Honor.

MR. ODOU: And then Your Honor is going to --

THE COURT: When do you want to -- what time in the morning? I usually start court at 8:30.

MR. ODOU: Fine.

THE COURT: 8:30?

MR. TERRY: 8:30 is fine with me.

THE COURT: Okay.

MR. ODOU: And then Your Honor is going to take under submission the standing issue for the Association to pursue the common area claims or what common claims and then there'll be a ruling on that --

THE COURT: And I'm gonna warn you right now -- and I think I can speak on behalf of the all cd judges; we're starting to get buried with a lot of these motions. And it's not just the cd cases that we've got; we've got under advisements in other cases as well. So, I mean, I'm starting to fall behind and I know I'm not the only judge.

MR. ODOU: Now, we have one that's been pending for about eight or nine months now which kind of --

THE COURT: In front of Judge --

MR. ODOU: -- the reason why I raise --

THE COURT: -- Earl?

MR. ODOU: Yeah. The reason why I raise it only is because of with our trial date -- eight or nine months from now we're in trial trying to figure out who's -- actually we wouldn't be in trial because we haven't answered. So, I think our trial date needs to be moved. I know we're here for sweeps next week but I just wanted to alert the Court that we need to have that discussion.

THE COURT: Okay. I'll discuss it with you next week.

MR. ODOU: Thank you, Your Honor.

MR. TERRY: Thank you, Your Honor.

MR. JENNINGS: Your Honor, Dave Jennings on behalf of D R Horton, bar number 6694.

There's just one issue I wanted to address briefly. I know you're going to take under advisement the building envelope issue and I wanted to -- I know Joel has touched on this already, but all the defects that are alleged -- that are included in the building envelope list of defects, those defects were all alleged in the underlying cases in *First Light*, Courts at Aliante, this one here, those all went up to the Supreme Court. Now, they did not segregate the interior defects versus the building envelope defects. I understand that, but all of those defects went up to the Supreme Court and the Plaintiff's argued a number of times both in the original briefing and on the motion for re-hearing that NRS 116.3102 did not require -- or does not require the HOA to go through a Rule 23 and *Shuette* analysis to determine whether or not they're allowed to represent them in a class action or representative capacity. And in both cases, both in the main briefing and the oral argument and in the motion for re-hearing the Supreme Court rejected the argument that the Plaintiffs put forth regarding 116.3102. And I've read the *Black Mountain* case, the ruling on that, and my understanding of that ruling -- and if I'm incorrect

then, you know, you can correct me, is that the Court ruled that 116.3102 does not require a Rule 23 and *Shuette* analysis because they're clearly matters that affect he common interest community but that's not the way the Supreme Court ruled on those same defect issues. It did not say some do and some don't, it said all do, all have to go through that analysis. And so when you -- I'm just pointing that out. When you take it under advisement I would go back -- well --

THE COURT: Okay. I -- let me tell you, I've read --

MR. JENNINGS: Yeah.

THE COURT: -- that *First Light* --

MR. JENNINGS: Sure.

THE COURT: -- decision I and II and let me tell you, I practically dissected that --

MR. JENNINGS: Sure. Sure.

THE COURT: -- decision. I understand what your position is.

MR. JENNINGS: Sure. I appreciate it. Thank you, Your Honor.

MR. ODOU: Thank you, Your Honor.

THE COURT: All right.

MR. TERRY: I take it you'll prepare the whole order?

THE COURT: Pardon me?

MR. TERRY: You'll prepare the entire order?

THE COURT: Well, I think one of you needs to prepare the order with respect to the joinder. You --

MR. TERRY: Okay.

THE COURT: I think you gotta indicate that I've granted the motion in part with respect to the joinder part and that I will be taking under advisement the other

issues.

MR. TERRY: Okay.

MR. ODOU: The Plaintiffs will prepare that order and run it past us.

MR. TERRY: Of course.

MR. ODOU: In the meantime --

THE COURT: Perfect.

MR. ODOU: -- I'll ship off a letter to them with the briefing -- proposed briefing schedule. We could even incorporate that if we want.

THE COURT: Perfect.

MR. TERRY: Great. Thank you, Your Honor.

THE COURT: Thank you.

MR. ODOU: Thank you, Your Honor.

[Proceedings concluded at 10:35:50 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

Norma Ramirez

NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
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